Appendix G
Comments Received on the DEIS

Borough President Recommendation

City Planning Commission

22 Reade Street, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application Nos: C 140440 MMM, N 150127 ZRM, C 150128 ZSM, C 150129 ZSM, and C 150130 ZSM

Docket Descriptions:

VANDERBILT CORRIDOR

IN THE MATTER OF applications submitted by the New York City Department of City Planning:

C 140440 MMM – pursuant to Sections 197-c and 199 of the New York City Charter, and Section 5-430 *et seq.* of the New York City Administrative Code for an amendment to the City Map involving:

- the elimination, discontinuance and closing of Vanderbilt Avenue between East 42nd Street and East 43rd Street;
- the establishment of Public Place above a lower limiting plane; and
- the adjustment of grades necessitated thereby;

including authorization for any acquisition or disposition of real property related thereto, in accordance with Map No. 30244 dated October 17, 2014 and signed by the Borough President; and

N 150127 ZRM – pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, concerning Article VIII, Chapter 1 (Special Midtown District), Borough of Manhattan, Community Districts 5 and 6.

(See Continued)

COMMUNITY BOARD NO: 5 & 6 BOROUGH: Manhattan

RECOMMENDATION

- ☐ APPROVE
- ■ APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- ☐ DISAPPROVE
- ☐ DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached

Gale A. Brewer

BOROUGH PRESIDENT

1/28/2015

DATE

Docket Descriptions, continued:

ONE VANDERBILT AVENUE

IN THE MATTER OF applications submitted by Green 317 Madison LLC and Green 110 East 42nd Street LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of special permits pursuant to:

C 150128 ZSM – Section 81-635 of the Zoning Resolution to allow the transfer of 114,050.25 square feet of floor area (2.63 FAR) from property located at 110 East 42nd Street (Block 1296, Lots 1001-1007) that is occupied by a landmark building (Bowery Savings Bank Building) to property bounded by 42nd Street, Madison Avenue, 43rd Street, and Vanderbilt Avenue (Block 1277, Lots 20, 27, 46, and 52) ;

C 150129 ZSM – Section 81-641 of the Zoning Resolution to allow an increase in floor area in excess of the basic maximum floor area ratio established in Row A of the Table in Section 81-211* (Maximum floor area ratio for non-residential or mixed buildings) up to a maximum floor area as set forth in Row O of such Table; and

C 150130 ZSM –Section 81-642 of the Zoning Resolution to modify, in conjunction with the special permit pursuant to Section 81-641 (Additional floor area for the provision of public realm improvements):

1. the street wall requirements of Sections 81-43 (Street Wall Continuity along Designated Streets) and 81-621 (Special street wall requirements);
2. the height and setback requirements of Sections 81-26 (Height and Setback Regulations – Daylight Compensation), 81-27 (Alternative Height and Setback Regulations – Daylight Evaluation), and 81-622 (Special height and setback requirements); and
3. the mandatory district plan elements of Sections 81-42 (Retail Continuity along Designated Streets), 81-45 (Pedestrian Circulation Space) and the requirements of Section 37-50 (REQUIREMENTS FOR PEDESTRIAN CIRCULATION SPACE), 81-47 (Major Building Entrances), 81-623 (Building lobby entrance requirements), and 81-624 (Curb cut restrictions and loading requirements);

to facilitate the development of a commercial building on property bounded by 42nd Street, Madison Avenue, 43rd Street, and Vanderbilt Avenue (Block 1277, Lots 20, 27, 46, and 52), in a C5-3 District, within the Special Midtown District (Grand Central Subdistrict), Community Districts 5 & 6, Borough of Manhattan.

ONE VANDERBILT AVENUE – (A) Application

C 150130(A) ZSM – IN THE MATTER OF an application submitted by Green 317 Madison LLC and Green 110 East 42nd LLC pursuant to Sections 197-c and 201 of the New York City Charter and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedures for the grant of a special permit pursuant to Section 81-642 of the Zoning Resolution to modify, in conjunction with the special permit pursuant to Section 81-641 (Additional floor area for the provision of public realm improvements):

1. the street wall requirements of Sections 81-43 (Street Wall Continuity along Designated Streets) and 81-621 (Special street wall requirements);
2. the height and setback requirements of Sections 81-26 (Height and Setback Regulations – Daylight Compensation), 81-27 (Alternative Height and Setback Regulations – Daylight Evaluation), and 81-622 (Special height and setback requirements); and
3. the mandatory district plan elements of Sections 81-42 (Retail Continuity along Designated Streets), 81-45 (Pedestrian Circulation Space) and the requirements of Section 37-50 (REQUIREMENTS FOR PEDESTRIAN CIRCULATION SPACE), 81-47 (Major Building Entrances), 81-623 (Building lobby entrance requirements), and 81-624 (Curb cut restrictions and loading requirements);

to facilitate the development of a commercial building on property bounded by 42nd Street, Madison Avenue, 43rd Street, and Vanderbilt Avenue (Block 1277, Lots 20, 27, 46, and 52), in a C5-3 District, within the Special Midtown District (Grand Central Subdistrict), Community Districts 5 & 6, Borough of Manhattan.

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Gale A. Brewer, Borough President

January 28, 2015

Recommendation on ULURP Application Nos. C 150128 ZSM, C 150129 ZSM, and C 150130 ZSM – One Vanderbilt Avenue by Green 317 Madison LLC and Green 110 East 42nd Street LLC; and Recommendation on ULURP Application Nos. N 150127 ZRM and C 140440 MMM – Vanderbilt Corridor by New York City Department of City Planning

PROPOSED ACTIONS

The New York City Department of City Planning ("Department of City Planning" or "DCP") seeks approval of a text amendment to modify Sections 81-211 (Maximum floor area ratio for non-residential or mixed buildings) and 81-635 (Transfer of development rights by special permit). The text amendment would create two new special permits in the Zoning Resolution ("ZR") subject to City Planning Commission ("CPC") approval, Sections 81-64 (Special Permit for Grand Central Public Realm Improvement Bonus) and 81-642 (Permitted modifications in conjunction with additional floor area). In a related and concurrent application, Green 317 Madison LLC and Green 110 East 42nd Street LLC (the "Applicants") seek approval of three special permits pursuant to ZR Sections 81-635, 81-641, and 81-642, to allow the transfer of floor area from a landmark building, to allow an increase in the maximum floor area ratio up to 30 FAR, and to modify, in conjunction with the increase in FAR in exchange for the provision of public realm improvements, street wall requirements, height and setback requirements, and mandatory plan elements, respectively, to facilitate the development of a commercial building on property bounded by 42nd Street, Madison Avenue, 43rd Street, and Vanderbilt Avenue (Block 1277, Lots 20, 27, 46, and 52) ("1 Vanderbilt"). The site is located in a C5-3 District within the Special Midtown District (Grand Central Subdistrict) in Manhattan Community Districts 5 and 6.

Additionally, DCP seeks an amendment to the City Map pursuant to Sections 197-c and 199 of the New York City Charter and Section 5-430 *et seq.* of the New York City Administrative Code to designate the portion of Vanderbilt Avenue between East 42nd Street and East 43rd Street as a public place, dedicated to pedestrian uses, under city ownership and under the jurisdiction of the New York City Department of Transportation (NYCDOT). No floor area will be transferred from this portion to the adjacent, adjoining zoning lots.

In evaluating the text amendment, this office must consider whether the modifications and new special permits are appropriate and beneficial to the community in which the eligible sites and

proposed 1 Vanderbilt project are situated. Any changes to the city map should be evaluated for consistency and accuracy, and given the land use implications, appropriateness for the growth, improvement and development of the neighborhood and borough.

Transfer of Development Rights

In order to obtain a special permit pursuant to ZR § 81-635, the design of the development must include a major improvement of the above or below-grade pedestrian or mass transit circulation network. This improvement must increase the general accessibility and security of the network, reduce points of pedestrian congestion and improve the general network connectivity. In order to allow the transfer of floor area from a granting lot, the requested permit requires that the CPC evaluate the benefits to the general public from the proposed improvement, and find that[1]:

(1) a program for the continuing maintenance of the landmark has been established[2];
(4) for developments or enlargements with a proposed floor area ratio in excess of 21.6 on zoning lots located within the Vanderbilt Corridor, the building has met the ground floor level, building design and sustainable design measures set forth in the applicable conditions and findings of Section 81-641;

Grand Central Public Realm Improvement Bonus

In order to obtain the second special permit pursuant to ZR § 81-641, the design of the development must include on-site or off-site, above or below-grade improvements to the pedestrian or mass transit circulation network, which may be provided in combination. In addition, the development will be evaluated to ensure that the proposed building represents an exceptional addition to the Special Midtown District. In order to allow an increase in the maximum permitted floor area ratio, or grant a floor area bonus, the permit requires that the CPC find that:

(1) for above-grade improvements to the pedestrian circulation network that are located:

(i) on-site, the proposed improvements will, to the extent practicable: consist of a prominent space of generous proportions and quality design that is inviting to the public; provide suitable amenities for the occupants; front upon a street or a pedestrian circulation space in close proximity to and within view of an adjoining sidewalk; provide or be surrounded by retail uses; be surrounded by transparent materials; provide connections to pedestrian circulation spaces in the

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[1] Improvements pursuant to findings (2) and (3) of this section are not required. Instead, improvements are provided and discussed in connection with the Grand Central Public Realm Improvement Bonus sought by the applicant under the special permit pursuant to ZR § 81-641. In addition, no modifications of bulk regulations are proposed pursuant this special permit. As such, findings (5) and (6) are not applicable.

[2] Per an Memorandum of Understanding (MOU 16-1080), dated August 6, 2014 with the New York City Landmarks Preservation Commission, a program for continuing maintenance of the Bowery Savings Bank, located at 110 East 42nd Street, a NYC Individual Landmark, has been established.

immediate vicinity, and be designed in a manner that combines the separate elements within such space into a cohesive and harmonious site plan, resulting in a high-quality public space; or

(ii) off-site, the proposed improvements to the public right-of-way, to the extent practicable will create: street and sidewalk design that support smooth circulation with comfortable places for walking and resting; opportunities for planting and improvements to pedestrian safety; and a better overall user experience of the above-grade pedestrian circulation network that supports the Grand Central Subdistrict as a high-density business district. Where the area of such improvement is to be established into a pedestrian plaza that will undergo a public design and review process through the Department of Transportation subsequent to the approval of this special permit, the Commission may waive this finding;

(2) for below-grade improvements to the pedestrian or mass transit circulation network, the proposed improvements, whether singularly or in any combination, will provide:

(i) significant and generous connections from the above-grade pedestrian circulation network and surrounding streets to the below-grade pedestrian circulation network;

(ii) major improvements to public accessibility in the below-grade pedestrian circulation network between and within subway stations and other rail mass transit facilities in and around Grand Central Terminal through the provision of new connections, or the addition to or reconfigurations of existing conditions; or

(iii) significant enhancements to the environment of subway stations and other rail mass transit facilities including daylight access, noise abatement, air quality improvement, lighting, finishes, way-finding or rider orientation, where practicable;

(3) the design of the ground floor level of the building:

(i) contributes to a lively streetscape through a combination of retail uses that enliven the pedestrian experience, ample amounts of transparency and pedestrian connections that facilitate fluid movement between the building and adjoining public spaces. Such design shall demonstrate consideration for the location of pedestrian circulation space, building entrances, and the types of uses fronting upon the street or adjoining public spaces;

(ii) will substantially improve the accessibility of the overall pedestrian circulation network, reduce points of pedestrian congestion and, where applicable, establish more direct and generous connections to Grand Central Terminal; and

(iii) will be well-integrated with the on-site, above or below-grade improvements required by this Section, where applicable and practicable;

(4) the proposed building:

(i) ensures light and air to the surrounding streets and public spaces through the use

of setbacks, recesses and other forms of articulation, and the tower top produces a distinctive addition to the Midtown Manhattan skyline which is well-integrated with the remainder of the building;

(ii) demonstrates an integrated and well-designed façade, taking into account factors such as street wall articulation and amounts of fenestration, which create a prominent and distinctive building which complements the character of the surrounding area, especially Grand Central Terminal; and

(iii) involves a program that includes an intensity and mix of uses that are harmonious with the type of uses in the surrounding area;

(5) the proposed development or enlargement comprehensively integrates sustainable measures into the building and site design that:

(i) are in keeping with best practices in sustainable design;

(ii) will substantially reduce energy usage for the building as compared to comparable buildings; and

(6) in addition to the foregoing:

(i) the increase in floor area being proposed in the development or enlargement will not unduly increase the bulk, density of population, or intensity of uses to the detriment of the surrounding area;

(ii) the public benefit derived from the proposed above or below-grade improvements to the pedestrian or mass transit circulation network merits the amount of additional floor area being granted to the proposed development or enlargement pursuant to this special permit; and

(iii) all of the separate elements within the proposed development or enlargement, including above or below-grade improvements, the ground floor level, building design and sustainable design measures, are well-integrated and will advance the applicable goals of the Special Midtown District, described in Section 81-00 (GENERAL PURPOSES).

Modifications in Conjunction with Additional Floor Area

The third special permit, pursuant to ZR § 81-642 allows modifications of the street wall, height and setback regulations, and mandatory plan elements of the Special Midtown District as related to additional floor area. This permit can only be granted in conjunction with the special permit pursuant to ZR § 81-641. In order to allow these modifications, the permit requires that the CPC find that the proposed modifications:

(1) to the mandatory district plan elements will result in a better site plan for the proposed development or enlargement which is harmonious with the mandatory district plan element strategy of the Special Midtown District, as set forth in Section 81-41 (General Provisions); and

(2) to the street wall or height and setback regulations will result in an improved distribution of bulk on the zoning lot which is harmonious with the height and setback goals of the

Special Midtown District, as set forth in Section 81-251 (Purpose of height and setback regulations).

PROJECT DESCRIPTION

The Department of City Planning proposes a text amendment to enable the development of new office space in the Grand Central Subdistrict and to facilitate improvements to the Grand Central Terminal pedestrian circulation network. SL Green proposes a new 30 FAR tower on the block immediately west of Grand Central that will utilize undeveloped floor area from the landmark Bowery Savings Bank building and will include a wide range of on- and off-site public realm improvements to generate a bonus of 12.37 FAR. The proposed public realm improvements would relieve congestion on the 4/5/6 subway line, would provide connections among the future LIRR concourse and the Metro North railroad and the subway system, would create a new Vanderbilt Avenue public plaza, and would create a new "Transit Hall" within the new building that could serve as a waiting area for Grand Central passengers.

Background

The development site and the Vanderbilt Corridor are within a C5-3 district within the Grand Central Subdistrict Core of the Special Midtown District. Established in 1982, the Special Midtown District lowered allowable densities in an effort to stabilize development around Grand Central Terminal and encourage larger developments in Times Square and other parts of Midtown. Adding to the Special Midtown District, the Grand Central Subdistrict was created in 1992 to allow the transfer of development rights from Grand Central Terminal and other landmarks to development sites in the area surrounding the station. The Grand Central Subdistrict consists of a core, which is bounded by Madison and Lexington Avenues, from East 41st to East 48th streets. The full Subdistrict extends beyond the core for an additional width of 125 feet (220 feet at 42nd Street) east of Lexington and west of Madison. Within the Grand Central Subdistrict, a 1.0 FAR transfer of air rights from New York City landmarks is allowed by City Planning Commission ("CPC") certification (ZR § 81-634). In the core area, a special permit (ZR § 81-635) provides a higher density of 21.6 FAR through the transfer of landmark air rights. The special permit additionally requires the provision of a pedestrian improvement, which must be negotiated by developers with the MTA. Only one building, 383 Madison Avenue, has taken advantage of this special permit.

2013 East Midtown Proposal

The area affected by the proposed actions was previously the subject of the proposed East Midtown Rezoning (N 130247 (A) ZRM et al). The proposal was intended to encourage new office development in the neighborhood in order to strengthen the area's role as a premier business district. The proposal would have modified zoning regulations for a 73-block area, which would have superseded the Grand Central Subdistrict. The proposal would have focused development around Grand Central Terminal. New developments that met certain lot size criteria in the area around the Terminal would have been eligible to achieve the highest permitted as-of-right density of 24.0 FAR. In addition, sites around the Terminal, including the Vanderbilt Corridor, would have been able to utilize a special permit for Superior Development in order to

achieve a maximum density of 30.0 FAR. The proposal would have created a mechanism to fund infrastructure improvements. In order to achieve the new, higher densities, developers would have needed to contribute to a District Improvement Fund. Development rights were essentially to have been sold by the City at a cost of $250 per square foot, a value arrived at through an appraisal contracted by the City. Finally, the proposal created a broader process for the transfer of landmark air rights.

There was widespread discussion at the time over whether the proposed mechanisms were the most appropriate for the area. While there was wide agreement that the neighborhood was in need of public realm improvements and new Class A office space, there was significant concern over the use of the District Improvement Bonus and Fund to achieve these goals. During the public review process, many raised concerns over the sale of air rights by the City, and whether the City was unfairly competing with landmarks for the sale of these air rights. Additionally, the money raised by the air rights would have been allocated to transportation and public realm projects, but at the time no transparent process had been set for the disbursement of that funding. Furthermore, the plan would have allowed new development in advance of any improvements funded in association with that development. Finally, concern was raised over the as of right nature of the new densities, and whether more public review should be required for large buildings. Though the City Planning Commission approved the project, it was withdrawn during City Council review.

Concurrent to this application, the East Midtown Steering Committee, co-chaired by the Borough President and Councilmember Daniel Garodnick, is reviewing potential zoning changes to the wider East Midtown neighborhood. That group has been meeting since September 2014 and is expected to release its recommendations this spring. The group is examining a wide range of issues including protecting landmarks, improving the above- and below-grade pedestrian network, urban design, appropriate density levels, and the implementation of its recommendations. While the actions being proposed in this application are not being reviewed by the Steering Committee, the Vanderbilt Corridor plays an important role in the public realm of the entire neighborhood, so the Steering Committee reviewing potential pedestrian and transportation projects in the corridor. Furthermore, the future zoning recommendations of that group could affect properties in the Vanderbilt Corridor.

Area Context

The Vanderbilt Corridor is located in the East Midtown area of Manhattan Community District 5. The neighborhood is one of the densest commercial districts in the city, centered on Grand Central Terminal. The five blocks of the Vanderbilt Corridor are bounded by Madison and Vanderbilt Avenues, directly west of Grand Central Terminal, from East 42nd Street to East 47th Street. Many of the buildings in the Corridor and along the east side of Vanderbilt Avenue were constructed as part of Terminal City following the construction of Grand Central Terminal in 1913. The construction of these buildings, and the emergence of the neighborhood as a premiere office district, was directly correlated to the expansion of the city's rail infrastructure in the late 19th Century. As Cornelius Vanderbilt's New York Central and Hudson Railroads grew, East 42nd Street became the gateway for the majority of the city's travelers. At the turn of the century, the advent of electrified rails and the needs of a rapidly growing city led to the

construction of today's Grand Central Terminal, a modern, multi-level transportation hub. Lowering the previously surface-level tracks below-grade opened up a vast swath of real estate above, between Lexington and Madison Avenues from 42nd to 50th Streets. The railroads sold the development rights to this area as a means of financing the construction of the Terminal. Because these blocks were developed as part of one large project, buildings in the area, with some exceptions, retain a level of consistency in building form that is rare in the city. The majority of the buildings along Vanderbilt Avenue have consistent water table and cornice heights, which directly relate to various elements of Grand Central Terminal. These buildings are typically 20 to 25 stories and built to the lot line without any setbacks.

The Met-Life Building (formerly known as the Pan Am Building) at 200 Park Avenue is a notable exception to this form. Completed in 1963, the 59-story office tower is the second largest office building in the city, with approximately 3.1 million square feet of commercial floor area. The building sits directly north of Grand Central Terminal and consists of an oblong octagonal tower above an eight-story base at the same height as the Terminal.

Transportation

Grand Central Terminal is one of the busiest rail facilities in the country and its subway station is the second most used in the city. Grand Central connects the district via Metro North Railroad to the city's northern suburbs as well as parts of Connecticut. The Metro North Railroad brings over 80,000 daily riders into Grand Central, and the subway station's ridership is twice that amount; on an average weekday in 2013, the Grand Central Subway Station was used by 153,861 riders.[3] The Lexington Avenue (4/5/6) line is the only line that operates over the entire length of the east side of Manhattan, and is consequently one of the most crowded in the City. The line carries over 1.3 million daily riders and operates significantly over capacity.[4]

Transit service to Grand Central is currently being expanded by two major public works projects: East Side Access and the Second Avenue Subway. The Long Island Railroad's ("LIRR") East Side Access project will connect Long Island Railroad commuters to Grand Central and will likely bring an additional 65,000 new riders into Grand Central during the weekday morning peak. Simultaneously, the Second Avenue Subway, currently under construction, will partially alleviate congestion along the Lexington Avenue subway line and will, as a result, provide East Midtown commuters with more transit options.

Grand Central Pedestrian Network

Grand Central Terminal and its associated subway stations form a sprawling underground network of passageways that extend over the entirety of the Vanderbilt Corridor and throughout much of the neighborhood. It is a complex below-grade pedestrian network consisting of platforms, mezzanine levels, and vertical circulation cores. However, the network's inefficiency results in sub-par operations and significant congestion. For example, platform crowding on the

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[3] MTA New York City Transit Ridership Data, 2013
[4] Second Avenue Subway FEIS, 2004.

Lexington Avenue lines increases the time that trains must stop at the station, creating a bottleneck that reduces the efficiency throughout the system. Several planned improvements to this network have been identified as mitigation for the LIRR East Side Access project and the No. 7 extension/Hudson Yards redevelopment project.

Area Landmarks

The area around Grand Central contains a number of Landmarks Preservation Commission ("LPC") designated landmarks, most notably the Terminal itself. Other nearby New York City landmarks include the Park Avenue Viaduct, the Bowery Savings Bank (110 East 42nd Street), the Chanin Building (122 East 42nd Street), the Socony-Mobil Building (150 East 42nd Street), the Chrysler Building (395 Lexington Avenue), and the Graybar Building (420 Lexington Avenue). Though all of these landmarks are within the Grand Central Subdistrict, which allows the transfer of unused floor area, only the Bowery Savings Bank and Grand Central Terminal have unused floor area, as the buildings were constructed prior to the existing zoning under regulations that allowed larger buildings. Some of these landmarks have FARs in the realm of those that would be allowed under this proposal. The Chanin Building and the Chrysler Building, for example, are constructed at 29.1 and 27.6 FAR, respectively. In addition to the designated landmarks, the Yale Club, the Roosevelt Hotel, and 52 Vanderbilt, located in the Vanderbilt Corridor, are considered eligible landmarks by the LPC.

Project Area and Project Site

The project area for the proposed zoning text amendment is the five blocks on the west side of Vanderbilt Avenue from East 42nd Street to East 47th Street. The project site for the proposed One Vanderbilt project is the southernmost of those five blocks, between East 42nd and East 43rd Streets. The five blocks affected by the proposed actions are rare in New York in their shape: almost perfect squares 200 feet long on each side. All five blocks sit 50 feet above the future concourse of East Side Access. The five blocks are described in more detail below:

Block 1277:[5] The southernmost block of the corridor, hereafter referred to as the project site, is the site of the proposed One Vanderbilt development. The block is located immediately to the west of Grand Central Terminal, and is bordered at its southern end by the below-grade Shuttle platform underneath East 42nd Street. The block is occupied by four low- and mid-rise buildings with retail on the ground floor and office space above. While all of the buildings on the block are over 80 years old, the Vanderbilt Avenue Building at 51 East 42nd Street, completed in 1913, is the most notable. Designed by the firm Warren & Wetmore, the same architects as Grand Central's façade, the building features a Beaux-Arts limestone lower façade with a cornice at the same level as the Terminal's. The building also features elaborate stone carvings and detailed cast-iron elements that evoke the detailing on Grand Central.

[5] While all of the blocks in the proposed Vanderbilt Corridor are complete blocks, surrounded by four streets, they share block numbers with the wider blocks to the west, between Madison and Fifth Avenues.

Block 1278: The second block of the proposed corridor is developed with one building, the Bank of America Plaza building. This block was originally home to the Biltmore Hotel, also designed by Warren & Wetmore, which was a designated landmark. Despite its landmark status, the building was stripped of its limestone, brick and terra-cotta façade in 1981 and re-clad as a glass curtain wall building. The building is 28 stories tall, and contains 874,734 gross square feet of floor area (approximately 20.2 FAR).

Block 1279: The third block of the corridor contains five commercial buildings and a ventilation building for the under-construction East Side Access project. The five commercial buildings were constructed between 1915 and 1926 and range in height from 13 to 22 stories. Historically notable on the block is the Yale Club at 50 Vanderbilt Avenue. The MTA has offices at 347 Madison Avenue, which are in the process of being vacated, and are the subject of a 2013 Request for Proposals ("RFP") for redevelopment.

Block 1281: The fourth block of the corridor contains one full-block building, the Roosevelt Hotel, which was completed in 1924. The 19-story hotel contains 1,015 rooms and ground-floor retail along each street frontage. The building is considered by the LPC to be a landmark-eligible building. The building is constructed with an FAR of 13.81.

Block 1282: The final block of the proposed corridor, between East 46th and East 47th Streets, is developed with a single building occupied by the office of J.P. Morgan Chase, which opened in 2002. The 47-story building, 383 Madison Avenue, was the only project to use the existing ZR § 81-635 special permit for transfer of landmark air rights.

Proposed Vanderbilt Place: The proposed city map amendment will affect an approximately 12,000 square foot portion of Vanderbilt Avenue between East 43rd Street and East 42nd Street. Vanderbilt Street is currently owned and managed by the New York City Department of Transportation. Under the proposed action, this portion will remain under DOT jurisdiction. Vanderbilt Avenue has a mapped width of 60 feet including sidewalks and provides one-way north-bound vehicular travel with one lane of Citi Bike parking and one lane of vehicle parking.

Proposed Project

SL Green is proposing a 68-story tower on the development site with 1,399,390 square feet of floor area. The tapered office tower would reach a roof height of 1,414 feet with a spire above. Along the base of the building, the massing steps back at the third floor. Above the base followed by a recess, the bulk of the tower above would be cantilevered over the three-story base at a height ranging from 60 to 107 feet. Along East 42nd Street this cantilevered bulk rises from west to east to provide views of the cornice of Grand Central. The tower's façades would be composed of floor to ceiling glass, accented by horizontal sections of terra-cotta between floors. The façade will be additionally articulated by projecting aluminum fins designed to cast shadows.

The ground floor level of the building would allow for sidewalk widenings along Madison Avenue and East 42nd Street. On top of this, the street wall would be set at an angle to East 42nd

Street to create an even wider sidewalk as the building approaches Grand Central. The southeast corner of the building at the base would be cut away to increase space for pedestrian circulation.

Ground Floor Uses

Along East 42nd Street the ground floor will contain retail use at the western portion of the site. Though it is not included in the application materials, the applicant proposes that the tenant of this space will be a bank. At the midblock will be a subway entrance with an escalator to the B2-level Shuttle platform, a stair to the B1 "Intermodal Connector" (to be described in more detail below), and an elevator that will access both levels. There is an existing subway entrance on this site which is being replaced and expanded as part of this proposal. The eastern portion of this frontage will contain two small retail spaces, one of which would connect to a larger space on the B1 level, the other of which would connect to a second floor space. It is proposed that one potential occupant of the lower-level space would be a lobby for a rooftop observation deck, which the applicant is considering including.

Along Madison Avenue, SL Green proposes a 32-foot wide central building lobby, flanked by retail spaces to the north and south. Fronting on the proposed Vanderbilt Avenue Public Place would be 100 feet of building lobby, though only 30 feet of that frontage is proposed as entryway. To the south of the lobby would be the retail facility proposed along East 42nd Street, with no entrance proposed onto the public space. To the north of the lobby the applicant proposes the Transit Hall, to be described in greater detail below, which would have entrances along East 43rd Street, rather than onto the public place. Also on East 43rd Street would be a midblock entrance to two truck elevators which would provide access to the below-grade loading area located on the B3 level. These loading docks would be accessed by a single curb cut of up to 30 feet in width. Adjacent to the loading areas, to the west, would be an entrance to the building's Dock Master Offices and Messenger Center. Finally, to the western edge of this frontage would be the aforementioned retail space, with entrances on Madison Avenue.

Proposed Public Amenities

SL Green proposes a package of on- and off-site improvements to the pedestrian circulation network. As proposed these improvements would generate a bonus of 12.37 FAR. The proposed on-site improvements are as follows:

On-Site:

1. A new subway entrance on East 42nd Street with escalator, elevator and stairways providing access to the shuttle subway station and providing below-grade connections through the Intermodal Connector to the 4, 5, 6, and 7 subway lines at the Grand Central Terminal concourse level and to the Long Island Rail Road at the East Side Access concourse level.
2. A new 4,000 square foot "Transit Hall," with entrances on East 43rd Street, providing stairway and elevator connections to the new Intermodal Connector. The space would include a train schedule information board, seating, and tall tables. While plans are not finalized, it is expected that the Transit Hall would provide a retail use such as a coffee

concession. Portions of the floor within the Transit Hall will be designed with glass plank to provide natural light to the publicly-accessible corridors below.

3. New elevator and escalator connections from East Side Access through the development site that will allow for connection from the East Side Access concourse to street level or the 4, 5, 6, 7, or Shuttle subway lines.
4. A new, "Intermodal Connector" on the B1 level providing connections between the LIRR, Metro-North, and subway lines.

Off-site:

1. Design and improvement of the Vanderbilt Avenue Public Place as a pedestrian plaza with public amenities such as seating and planting. A conceptual design for these improvements has been submitted as part of this application, but final design will be developed in consultation with the Department of Transportation and will be subject to approval by the Public Design Commission following the completion of ULURP.
2. A new stair in the cellar of the Pershing Square Building (located at the southeast corner of East 42nd Street and Park Avenue) that would connect the Grand Central subway station mezzanine to the 4/5/6 platform.
3. A new subway entrance with two new street-level subway stairs in the sidewalk at the southeast corner of East 42nd Street and Lexington Avenue that would connect to and open an existing below-grade passageway to the Grand Central subway mezzanine.
4. Modification of stairs and columns on the 4/5/6 subway platform to provide more pedestrian circulation space and improve flow.
5. Creation of 8,475 square feet of new and expanded Grand Central mezzanine areas in the cellar of the Grand Hyatt Hotel and the creation of two new stairs from one of the new mezzanine areas to the 4/5/6 platform.
6. Replacement and widening of an existing street-level subway entrance at the northwest corner of East 42nd Street and Lexington Avenue with wider stairs and an elevator.

Sustainable Design Measures

The proposed building includes sustainable design measures to reduce the energy use of the building. With these measures, the building will be 14.01 percent more efficient than a baseline building designed pursuant to the American Society of Heating, Refrigerating and Air Conditioning Engineers 90.1 ("ASHRAE 90.1), 2010, standard. The building would be designed to achieve a LEED Gold Certification under the LEED v4 for Core and Shell rating system.

Proposed Actions

DCP and the applicants propose a city map change, a text amendment, and three special permits, respectively, in order to facilitate the commercial development at One Vanderbilt.

City Map Change (C 140440 MMM)

DCP proposes to permanently close a portion of Vanderbilt Avenue to vehicular traffic and designate the area between East 42nd Street and East 43rd Street as a public place ("Vanderbilt

Place"). This action will allow for Vanderbilt Place to be improved as a pedestrian plaza under the DOT plaza program.

Zoning Text Amendment (N 150127 ZRM)

DCP proposes to modify ZR § 81-635 (Transfer of Development Rights by Special Permit) and create two new special permits, §§ 81-64 (Grand Central Public Realm Improvement Bonus) and 81-65 (Special Permit for Transient Hotels).

ZR § 81-635 would be modified to increase the maximum permitted on-site FAR in the Vanderbilt Corridor from 21.6 to 30.0. Sites surpassing the current 21.6 limit would be required to meet the findings in the Grand Central Public Realm Improvement Bonus, discussed below, regarding the design of the proposed building. In order to encourage landmark transfers within the Vanderbilt Corridor, the revised text would remove the existing requirement that each transfer proposal include a major improvement to the transit and public realm network. Similar to the ZR §74-79 special permit, the inclusion of such improvements would be at the CPC's discretion.

The new ZR§ 81-64 (special permit would allow density increases up to a maximum of 30.0 FAR through the provision of transit and public realm improvements in the Grand Central Subdistrict. The amount of floor area to be granted by the CPC would be determined based on the public benefit derived from the proposed improvements. The proposal would require construction of the improvements by the developer prior to the issuance of a temporary certificate of occupancy for the bonused floor area. For each type of improvement (on-site and off, above-grade and below) the special permit includes specific conditions and application requirements to allow the CPC to determine the scope of the proposed improvements. Prior to the grant of a special permit, the applicant would be required execute an agreement setting forth the obligations of the owner to: establish a process for design development and a preliminary construction schedule for the proposed improvements; construct the proposed improvements; establish a program for maintenance; and establish a schedule of hours for public access. These agreements would not be a part of the ULURP application and would therefore not be subject to public review.

In addition to findings related to the proposed improvements, the applicant would be required to meet findings related to the design of the building, including its ground floor, building massing, design, and sustainable design features.

A second, related special permit, ZR § 81-642, would allow modification of bulk and urban design requirements in order to allow the development of the proposed building.

Finally, the proposed text amendment would create a new special permit for transient hotels within the Vanderbilt Corridor, ZR § 81-65. Under the special permit, any new hotel in the Vanderbilt Corridor would be required to meet findings that the hotel is appropriate to the business uses in the area and includes services tailored to business travelers.

Special Permit for Transfer of Development Rights (C 150128 ZSM)

SL Green is applying for a special permit pursuant to ZR § 81-635 for the transfer of 114,050 square feet (approximately 2.63 FAR) of unused development rights from 110 East 42nd Street (the landmark Bowery Savings Bank building). In 2010 the applicants received approval from the Landmarks Preservation Commission for a restoration program and continuing maintenance program for the Bowery Savings Bank building. Under that agreement, the applicant agreed to perform restoration work on that building including façade patching, window restoration, replacement of the main entrance storefront, replication of various historic light fixtures and signs, and restoration of the East 42st Street garage entrance.

Special Permit for Grand Central Public Realm Improvement Bonus (C 150129 ZSM)

The second special permit SL Green is applying for is pursuant to ZR § 81-641. This special permit would allow the basic maximum floor area ratio (FAR) of 15 to be increased by up to 15 FAR, for a total permitted 30 FAR for the commercial building as long as the development provides on-site or off-site, above or below-grade improvements to the pedestrian or mass transit circulation network. The applicant is proposing a combination of improvements, described more fully in the proposed project section of this recommendation. As of right, the total permitted commercial floor area would be 649,695 square feet (15 FAR). The applicant is requesting an additional 535,644.75 square feet in floor area, or 12.37 FAR, for the Grand Central Public Realm Improvement Bonus. If granted, with the transfer of development rights from the Bowery Savings Bank Building, the total maximum permitted FAR for One Vanderbilt would be 30 FAR.

Special Permit for Modifications in Conjunction with Additional Floor Area (C 150130 ZSM)

Thirdly, SL Green is applying for a special permit pursuant to ZR § 81-642 to allow, in conjunction with the special permit pursuant to ZR § 81-641, modifications to height and setback requirements and to the mandatory district plan elements and Grand Central Subdistrict special regulations in order to accommodate any additional floor area granted in exchange for the provision of public realm improvements.

As proposed, the project does not comply with either the height and setback requirements of ZR § 81-26 (Height and Setback Regulations –Daylight Compensation) or ZR § 81-27 (Alternative Height and Setback Regulations – Daylight Evaluation), as modified by the subdistrict requirements of ZR § 81-622 (Special height and setback requirements). The areas of encroachment are shown in the Z-300 series of plans dated October 20, 2014 and submitted as part of the certification package.

The modifications to the mandatory district plan elements and subdistrict special regulations are focused on retail continuity, street wall continuity, pedestrian circulation, building entrances, and curb cut regulations. The applicant requests relief from the retail continuity requirements of ZR § 81-42 to allow storefronts to be more than 10 feet from the street line, to allow for different types of ground floor retail than what is otherwise permitted, to allow street frontage to be allocated for access to other retail spaces on the second floor and below-grade and to permit the lobby space,

entrance space and/or building entrances to exceed 40 feet of the total frontage. The applicant also requests relief from the street wall requirements of ZR § 81-43 and ZR § 81-621 to exceed the maximum street wall height without setback along all frontages and to modify the locational requirements of the street wall along the new Vanderbilt Place and East 42nd Street.

While no waivers are requested from the required amount of pedestrian circulation space, a waiver is needed to modify the locational and sidewalk widening requirements of ZR § 81-45 and ZR § 37-50, which require that a minimum of 50 percent of the circulation space should be along a wide street other than 42nd Street and that, where sidewalk widenings are permitted, they should have a width of no less than 5 feet and no more than 10 feet. Less than 50 percent of the required pedestrian circulation space is provided along Madison Avenue. No sidewalk widenings are permitted along East 42nd; a sidewalk widening from zero to 10 feet is provided along this street. In relation to the requirements of building entrances, the applicant requests a modification to ZR § 81-623 to allow for no through block connection between Vanderbilt and Madison Avenues and to allow the Madison Avenue and Vanderbilt Place entrance recesses of 5 feet instead of the minimum depth of 10 feet. Lastly, the applicant requests a waiver of the maximum width requirements of ZR § 81-624 to permit a curb cut width of 51 feet for two-way traffic instead of 25 feet in order to accommodate their loading berths.

The proposed commercial building at One Vanderbilt will conform to all other applicable regulations.

ANTICIPATED IMPACTS

A single Environmental Assessment Statement (EAS) for the all the related actions described above was completed in June 2014. The EAS found that the proposed development at One Vanderbilt and the sites in the Vanderbilt Corridor had the potential for impacts in a number of potential impact areas that would require further analysis in an Environmental Impact Statement (EIS). These categories included:

- land use, zoning and public policy
- socioeconomic conditions,
- open space,
- shadows,
- historic and cultural resources,
- urban design and visual resources,
- hazardous materials,
- water and sewer infrastructure, specifically wastewater and stormwater treatment and conveyance,
- transportation,
- air quality,
- greenhouse gas emissions,
- noise,
- neighborhood character, and
- construction impacts.

In addition, while the proposed project itself did not warrant analysis in the solid waste and sanitation and energy categories, they were analyzed as part of the potential impact from development of the aggregate sites along the Vanderbilt Corridor.

The Draft EIS (DEIS), issued on October 17, 2014, found that no significant adverse impacts were identified for all but two of the aforementioned categories, hazardous materials and transportation. For these two categories, any adverse impacts can be mitigated or were found to be unavoidable adverse impacts. Therefore, the DEIS stated that a public health assessment was not warranted as there was not any unmitigated significant adverse impact identified in the other CEQR analysis areas related to air quality, hazardous materials, or noise.

The assessment for hazardous materials found a potential for subsurface contamination related to on-site petroleum storage, historical railroad usage, and nearby off-site uses. These subsurface contaminates include asbestos, lead-based paint, and PCBs. An (E) Designation will be placed on the site, and a remedial action plan and associated construction health and safety plan will be prepared for implementation during construction.

An anticipated impact was found in the transportation category. Regarding traffic, it is anticipated that there would be the potential for significant adverse impacts at 14 intersections during the weekday AM peak hour, 6 intersections during the weekday midday peak hour, 15 intersections during the PM peak hour, and 2 intersections during the Saturday peak hour. All of the significant adverse traffic impacts, except those identified for the 42nd Street intersections with Third, Madison, Fifth, and Sixth Avenues during various peak periods, could be fully mitigated with standard mitigation measures, including signal timing changes and increasing visibility at intersections through design interventions.

Regarding the impact to transit, operations at two station elements would be expected to deteriorate to levels in excess of the CEQR impact threshold. However, these impacts, when viewed in the context of the transit station improvements as a whole that are part of the proposed One Vanderbilt development, were not considered significant. Otherwise, the proposed improvements would mitigate impacts that would be present even with the no-action scenario.

The last transportation sub-category of note for this proposal were the impacts to pedestrians. Significant adverse impacts were found within the pedestrian network at various times of day, with a peak of nine pedestrian elements (sidewalk, crosswalk, and corners) impacted during the weekday evening rush hour. Potential measures, including relocating sidewalk/corner obstructions, reconstructing an existing newsstand kiosk, extending existing curb lines to provide for additional corner reservoir space, and widening existing crosswalks, were identified to mitigate the projected pedestrian impacts.

However, the proposed mitigation measures for the traffic and pedestrian impacts will be subject to review and approval by DOT. In the event any measures are deemed infeasible by DOT and no other alternative mitigation measures can be identified by the time the FEIS is issued, those impacts would be unmitigated. These impacts would then be referred to as unavoidable adverse impacts outside the parameters of the environmental review.

It is also of note that there were found to be significant adverse impacts to the western windows of Grand Central Terminal, permanently affecting the original design intent to maintain an unobstructed source of sunlight into the Great Hall. However, since the five, clerestory lunette windows on the south side would continue to be unobstructed and the remaining concourse windows would still provide direct and indirect lighting to the interior, the overall impact was considered not significant. Any shadow impacts to the proposed public place were found to be negligible in consideration of the existing conditions of Midtown, and the space's design is proposed to account for the shade by providing shade-tolerant plantings and attempting to site seating in areas expected to receive any direct sunlight that may be available.

Construction of the proposed One Vanderbilt development, in and of itself, was found not to result in significant adverse construction impacts. However, construction mitigation will also be provided to avoid any inadvertent damage during the construction timeframe to the adjacent Grand Central Terminal, a city Individual Landmark and a landmark on the State and National Registers of Historic Places. Measures will also be taken to avoid inadvertent damage to the Pershing Square Building and the Socony-Mobil Building, both of which are city, state, and national landmark eligible.

COMMUNITY BOARD RECOMMENDATIONS

On December 11, 2014, Manhattan Community Board 5 ("CB5") adopted two resolutions by votes of 33 in the affirmative, 0 in the negative, 0 abstaining recommending denial of the application for a text amendment for the proposed Vanderbilt Corridor with conditions and denial of the application for the Special Permits for One Vanderbilt with conditions. On December 10, 2014, Manhattan Community Board 6 ("CB6") adopted two resolutions, identical to those passed by CB5, by a vote of 39 in favor, 0 opposed, and 1 abstaining. The resolutions passed by both Community Boards were developed by the Multi-Board Task Force on East Midtown, which was formed by members of multiple Community Boards during public discussion of the 2013 East Midtown proposal.

The Community Boards noted that many of their earlier objections have been addressed by the text amendment and special permit that is thereby created, which would subject new development within the Vanderbilt Corridor to public review and require any public improvements used to obtain the special permit to be completed prior to the completion of any added density.

However, the Community Boards object to the Vanderbilt Corridor being considered separately from East Midtown as a whole. In addition, the Community Boards raised concerns about the need for the proposed transit improvement FAR bonus to work in tandem with the purchase of development rights from landmarks, the potential "canyon effect" on the area if all developments were to achieve the maximum allowable FAR bonus, and the effects on area landmarks from the proposed text amendment and development which could be permitted thereby.

Based upon these concerns, the Community Boards recommended denial of the Vanderbilt Corridor text unless the following conditions were met:

1. The text amendment only apply to sites for which the City and MTA have a plan for public realm improvements;
2. The text amendment give guidance as to what types of improvements may be used to achieve what amount of FAR bonus;
3. The text amendment require any development granted a Public Realm Improvement bonus be designed to perform 30 percent better than ASHRAE 90.1, 2010;
4. The East Midtown Steering Committee fully consider the five blocks between 42nd and 47th Streets and Vanderbilt and Madison Avenues;
5. The text amendment require a letter from LPC supporting the harmonious relationship between any proposed development and the Grand Central Terminal;
6. The text amendment specify that the only sites potentially qualifying for the full 15 FAR bonus be those that (i) front on more than one wide street; (ii) overlook the Grand Central "air park" (iii) are adjacent to a subway station; and (iv) have access to the pedestrian circulation system of Terminal City.

The second resolution addressed the special permits for the transfer of development rights from a landmark building, the Grand Central Public Realm Improvement Bonus of 12.3 FAR and for the modification of regulations on streetwall, curb cuts, height and setback requirements and mandatory district plan elements. The Community Boards raised concerns about whether the current proposal optimized connectivity and pedestrian flow, whether the Public Plaza would be sufficiently open and appropriately maintained, whether the development achieved a sufficient degree of sustainability and the sufficiency the public realm improvements and the quantifiable nature of the bonus. The Community Boards voted to recommend denial of the special permits unless the following conditions were met:

1. The development was LEED v4 Certified Platinum; and
2. A major public space at street and concourses level connects with the main lobby of One Vanderbilt and connects the corner of Madison Avenue and 42nd Street and Grand Central's main concourse.

The Community Boards also issued several strong recommendations. These were:

1. That the subway entrance should not be on the sidewalk but rather within the building at the southeast corner of 42nd Street and Lexington Avenue;
2. That the Madison Avenue and East 42nd Street sidewalk be widened to at least 20 feet and that the East 43rd Street sidewalk be widened to at least 15 feet;
3. That the width of the office lobby on Vanderbilt Place be reduced and that pedestrian uses be considered in lieu of the Transit Hall;
4. That a Community Construction Task Force be created;
5. That DCP quantify the public realm improvement bonus;
6. That One Vanderbilt (i) provide the 4,200 square feet of mandatory, unbonused pedestrian circulation space required by the Special Midtown District; (ii) include significant improvement to the Terminal City pedestrian circulation system for the ability to transfer the landmark development rights remotely; (iii) not receive a bonus for those improvements to the subway station that constitute mitigation for East Side Access or the extension of the Number 7 line; and

7. That DCP explain why the regulation waivers would allow for a daylight score for One Vanderbilt of negative 62% rather than the Midtown standard score of 75%.

BOROUGH BOARD RECOMMENDATION

On January 15, 2015 the Manhattan Borough Board ("Borough Board") held a public hearing and vote on a resolution relating to the proposed actions. By a vote of 8 in the affirmative, 3 in the negative and 1 abstention (with one member who was present for the meeting but not for the vote on the resolution), the Borough Board recommended conditional disapproval of the actions relating to the One Vanderbilt Development, the text amendment and the City Map amendment, "unless a responsible conclusion is reached on issues of public access and public space relating to the Grand Central Terminal circulation network, the environmental sustainability requirements of the proposed zoning text for the Vanderbilt Corridor, and the language of the zoning text relating to, and the method for, achieving significant FAR bonuses."

BOROUGH PRESIDENT'S COMMENTS

The Department of City Planning is proposing a zoning text amendment that would allow limited development of new, high-density office space near Grand Central Terminal. The text amendment is based on a number of key premises. First, that the East Midtown neighborhood should be retained as a high-value office district because of its unparalleled transportation connections to the entire region. Second, that the aging building stock in the area is unsuitable to the types of firms that would be interested in locating in the neighborhood. And finally, that the existing zoning and the serious congestion of the above- and below-grade public realm are preventing the development of new office space. These principles are reasonable and uncontroversial. DCP has put forward a plan that would allow greater density in the immediate vicinity of mass transit access, but that would require significant improvements to the public realm, or the utilization of unused floor area from landmark buildings, in order to achieve this new density. Unlike the previous East Midtown plan, the proposed action is limited and narrowly targeted, and requires full public review. While at root this is a necessary and reasonable plan, for any action of this magnitude the exact language of the zoning text will determine its success. The proposed text amendment lays out the conditions and findings that must be met in order to achieve increased density, setting a precedent framework that will determine the future landscape of this neighborhood.

Purpose and Need

Grand Central Terminal is essentially the epicenter of the New York City metropolitan area, and it will become even more so when the Long Island Rail Road opens its East Side Access which will open the Terminal up to the almost three million residents of Suffolk and Nassau county, as well as parts of Queens that are poorly served by the subway. Class B and C office space is an important contributor to our region's economy: it provides space for new, innovative, and quickly growing firms that would not be able to afford to rent in brand new, Class A buildings. The area around Grand Central, though, is potentially the most valuable land in the country, and its tenant mix should reflect that. The Vanderbilt Corridor today is home to aging office stock that simply cannot be converted to attract the top, mature firms that need tall ceilings (to

accommodate telecommunications infrastructure), flexible layouts, and built-in, high-capacity internet connectivity. The existing zoning does not allow for the construction of new buildings that meet these needs in the Vanderbilt Corridor, and for this reason the City has put forward this proposal.

Not only does the existing zoning not encourage new development, it does not properly allow for this development to contribute to necessary infrastructure improvements. The existing subway bonus, which allows a 20 percent increase in floor area in exchange for subway improvements is, as its name suggests, narrowly targeted to subway stations and does not allow improvements to Grand Central or the Long Island Railroad. The Grand Central Subdistrict Core allows transfers of landmark air rights allowing buildings up to 21.6 FAR, yet while 1.5 million square feet of landmark development rights remain unsold, only one building has utilized this special permit since 1992. Finally, the underlying regulations of the Special Midtown District do not require, or in some cases even allow for, the type of at-grade pedestrian flow improvements that are necessary in such a congested area. While Mandatory District Plan Elements require some amount of space in new developments be devoted to pedestrian flow, they do not require the level of quality, or coordination with the broader public realm, that is necessary here.

First and foremost, this proposal creates a new mechanism to ameliorate some of the key infrastructure challenges in the area. The most significant of these today is the severe overcrowding of the Grand Central subway station. Platform congestion on the 4, 5, and 6 lines increases train dwell times at the station, slowing the entire line. Connections between the various lines and networks at Grand Central are convoluted and confusing; from many parts of the system connections to the street are lacking. While the job of improving Grand Central Terminal should fall to the MTA, the budget outlook of that Authority is dire. The MTA has an unfunded capital plan for the next five years, and even that includes only modest improvements to pedestrian flows here. Above ground, Madison and Lexington Avenues have sidewalks as narrow as 12 feet, which is nowhere near wide enough for the number of pedestrians in the area. These public realm challenges are not only a drag on the real estate market; they are a daily drag on the hundreds of thousands of commuters who work in the neighborhood.

FAR Bonus and Density

The proposed text amendment would allow buildings up to 30 FAR in the Vanderbilt Corridor. For the SL Green site in particular, there is a very good case to be made for this amount of density. The site sits on two wide streets, is surrounded by street on all four sides, and sits across from the permanently low-scale Grand Central. A 30 FAR building also fits in with the context of the neighborhood. Because of the square blocks in the Corridor, no 30 FAR building could have more than about 1.3 million square feet of floor area. Compared to the three million square foot Met-Life tower across the street, this is relatively small. Additionally, even many of the landmark buildings in the area are of similar sizes – the Chrysler Building and the Chanin Building, both of which are also located on two wide streets, are built at 27.6 and 29.1 FAR, respectively.

The conditions on the One Vanderbilt site are not shared equally by all of the other parcels in the Vanderbilt Corridor. While all sites sit above the future LIRR concourse, and all sites are in

close proximity to Grand Central, the additional open space of East 42nd Street is only adjacent to the southernmost block of the corridor. While development on any site in the Corridor would be subject to public review, the case has not been made that the same level of density is appropriate on all sites in the corridor. While it is certainly possible that an owner of one of the other sites in the corridor could put together a proposal for less density, it is the experience of the Borough President's office that in the vast majority of projects ULURP applicants seek the maximum density. Because of the high land value in the neighborhood it is hard to believe that anyone would seek anything but the maximum. The CPC should thus consider what the aggregate effect on the character of the Corridor would be with at least three 30 FAR buildings, and should carefully consider whether this density is appropriate on all sites.

Furthermore, the proposed project, including its density and its bulk and setback waivers, is appropriate because of its unique site conditions. In considering future applications in the Vanderbilt Corridor, the CPC should look at One Vanderbilt as unique. While these waivers and bonus may be appropriate on East 42nd Street, the same amount of improvements should not translate to an equal amount of bonus on a site that does not share the same innate public benefits.

Determining Bonus Size

While allowing bonuses of up to 15 FAR through the provision of public improvements, the proposed text does not provide a framework for how the public should equate the quality and quantity of the improvements with a specific FAR bonus. The proposed zoning text lays out high standards that any proposed improvement must meet. Above-grade improvements must provide generous space at a prominent location, and off-site improvements must provide for smooth circulation and comfortable places for resting. Below-grade, the improvements must create new connections, improve circulation, and significantly enhance the environment of transit facilities. The proposed text also lays out requirements for the ground floor of any new building. When it comes to determining the appropriate amount of FAR bonus, however, the text simply requires that the Commission find that "the public benefit derived from the proposed above or below-grade improvements to the pedestrian or mass transit circulation network merits the amount of additional floor area being granted." This does not give the CPC any parameters or factors to consider.

In public discussions about this proposal, Department of City Planning staff and the Chair of the CPC have reiterated the importance of maintaining real *discretion* when creating new discretionary actions. Because any number of things could change in the future, it would be foolish to create a special permit where a simple formula determined whether a set of improvements warrant additional floor area. This would unnecessarily hem the public in when reviewing the actions, and could serve to prevent improvements that are needed in the future because they are not currently known. While additional floor area can be said to have a quantifiable value, in dollars, public improvements can be much more abstract. Improved passenger flows and quality of public spaces cannot be put into dollars.

In SL Green's Statement of Findings, they seem to have similar trouble equating the benefit of the proposed improvements to any particular amount of floor area. When addressing this

particular finding, the applicant lists all of the proposed public realm improvements and how each one will benefit the public. In pulling it all together, however, there is no tie to the amount of floor area being granted. They conclude:

> "The proposed improvements to the above and below-grade circulation networks in and around Grand Central Terminal, in conjunction with the improved throughput on the 4/5/6 subway line that will result, will provide substantial public benefits and will enhance the user experience of the nearly half a million daily transit riders who use Grand Central Terminal.
>
> Accordingly, the public benefits derived from the proposed above and below-grade improvements merit the amount of additional floor area being granted to the Proposed Development."

As justification for a particular amount of floor area, the closest that the applicant can come is a list of improvements, and an unsubstantiated assertion that they merit the amount being granted. Perhaps the focus should be on qualitative measures and improvements, over hard quantities – x stairwells widened, x feet of hallways lengthened.

Despite the difficulty of quantifying improvements and equating them with floor area, that is what the commission must do. In evaluating the current proposal, the Borough President's office is judging the proposed improvements against the wider set of needed improvements, is looking at the number of people that will be affected by the improvements, and is judging the particular improvements against better versions of themselves. There are many ways that one could interpret this finding, however. Though the current administration is expecting a wide array of improvements in exchange for this density, there is nothing in the text to keep future administrations to the same high standard. For this reason, the text should be edited to include a set of factors that should be considered when making the decision about the grant of floor area. This would preserve the discretion of the CPC to evaluate the benefits of the proposed project, but would help to narrow the focus of their analysis to the quality and breadth of the improvements. The edited zoning text could be modeled on the existing subway bonus, which has the commission make the decision based on the extent to which the station is improved in terms of pedestrian flow and connectivity, as well as the quality of the improvements to the station's environment. In the case of this permit, the findings could also include the extent to which neighborhood-wide above-grade pedestrian congestion is reduced.

Ongoing Maintenance of Proposed Improvements

The proposed zoning text amendment is not structured to allow the public to consider ongoing maintenance when evaluating the benefit of the proposed public realm improvements. While most zoning bonuses involve public benefits on land controlled by the applicant, the proposed text amendment will allow off-site improvements to count toward a permanent floor area bonus. When evaluating the benefit to the public of the proposed project, the ongoing cost to the public of improvements to publicly controlled areas must be taken into account. The benefit to the public of a new subway escalator, for example, will be much greater for an escalator that is being maintained in perpetuity by the private sector. In some cases it is quite clear who will maintain

what: the mezzanine improvements on the 4/5/6, for example, will be maintained by the MTA after construction. Others, however, will depend on negotiations between the applicant and the MTA; the East 42nd Street subway entrance proposed by SL Green is within the base of the building, but then leads down a stairwell to what will become essentially an extension of Grand Central. Because the scope of the proposed improvement can and should change as a project progresses through public review, to negotiate all of these agreements prior to certification would be impossible. The zoning text as proposed would require agreements prior to the grant of a special permit. This should be amended, however, to require that at least the intentions of the applicant regarding maintenance be included as part of an application at the time of certification.

Sustainability

In addition to requiring significant public realm improvements in order to achieve higher density, the proposed ZR § 81-64 would require that the overall building design, including sustainable design features, is appropriate to the surrounding neighborhood. This proposal attempts to do that by including conditions and findings which intend for buildings to meet higher standards for efficiency and sustainable design than are required by the Building Code. As written however, the text really only requires buildings to be average. First, in order to be certified an application must include materials showing the degree to which the building's energy performance exceeds the 2011 New York City Energy Conservation Code ("ECC"). Since there is no minimum degree to which buildings must exceed the code included in the application, there is no reason to peg all future applications to the 2011 code. This should be amended to require applications to show the degree to which the proposed building exceeds the minimum requirements at the time of application, rather than the requirements of an out-of-date and less stringent code.

In addition to this requirement the proposal, as written, requires the commission to find that the building includes sustainable design measures that "(i) are in keeping with best practices in sustainable design; and (ii) will substantially reduce energy usage for the building, as compared to comparable buildings." Regarding the first of these findings, it is the understanding of the Borough President's office that the phrase "best practices" usually refers to a benchmark for an acceptable level of quality. In order for this finding to have real effect, the language should reflect its intent – higher quality, more innovative buildings than what would be built as-of-right. The second finding, as written, could be interpreted to require buildings to be the same as comparable buildings. If this finding is intended to require buildings to meet a higher level of sustainability than other Class-A office buildings, this should be amended to require buildings to reduce energy *to a greater degree* than comparable buildings.

Balancing Public Improvements and Landmark Transfers

The proposed text amendment represents an attempt to reconcile competing priorities. On the one hand, there are significant infrastructure needs in the area and the City can leverage new development to meet these needs. On the other hand, there is a large amount of unused floor area from landmark buildings available, and the Grand Central Subdistrict was created explicitly to sell this floor area to enable the preservation of Grand Central Terminal. While currently, landmarks in the Grand Central Subdistrict Core can sell air rights to receiving sites to achieve up to 21.6 FAR through special permit, this proposal would enable landmarks to sell

significantly more, allowing a receiving site to achieve up to 30 FAR. The proposal does, however, introduce competition between the City and landmark air rights holders that did not previously exist. Under existing zoning, development sites could achieve 18 FAR through the subway bonus but could not get to 21.6 without buying from a landmark. In the case of the current special permit application, SL Green is using a combination of a transfer of landmark development rights and the transit improvement bonus to reach the maximum FAR. In addition to the proposed ZR § 81-64 improvements, SL Green has entered in to a restrictive declaration for the perpetual maintenance of the landmark Bowery Savings Bank. The proposal is thus achieving both of the potentially competing goals of the Grand Central Subdistrict. It is conceivable that a future project could propose to increase floor area solely through the new ZR § 81-64 special permit. A way to ensure that all projects in the future balance the preservation needs of the area and the need for transit improvement would be to mandate that the ZR § 81-64 special permit could only be used in conjunction with the ZR § 81-635 special permit.

The current proposal, however, would use up all remaining floor area at the Bowery Savings Bank, leaving the fee owners of Grand Central Terminal as the only holders of landmark air rights in the Grand Central Subdistrict. If the City were to mandate that the two permits be used in conjunction at this point, therefore, it would create the unintended consequence of creating an air rights monopoly that could serve to deter development. As part of the East Midtown Steering Committee there are discussions on air rights transfer mechanisms for the wider East Midtown neighborhood. As part of this discussion the Steering Committee will consider whether these mechanisms should apply in the Vanderbilt Corridor and whether, at that time, the ZR § 81-64 special permit should be modified to mandate some portion of landmark air rights be used.

Future Projects in the Vanderbilt Corridor

The proposed project sits on two wide streets, is directly adjacent to a subway station and sits directly across from Grand Central. The appropriateness of higher density at this site is not at issue, other than the questions regarding the bonus structure itself. What is of potential concern is whether, if a similar level of improvements are proposed and development rights from a landmark are purchased, and the combination thereof is for an equivalent bonus, a 30 FAR building is appropriate density at sites that do not front on two wide streets and are not adjacent to a lower-scale landmark building. A broader catchment area is under consideration for the transfer of landmark development rights, potentially removing a balance in light and air that is achieved when a higher building goes up next to one that is inherently and permanently lower in scale.

In addition, there is some level of concern when evaluating the potential impact of this corridor as to whether the floor area bonus mechanisms would set an unintended precedent for development in the broader East Midtown neighborhood currently under study by the East Midtown Steering Committee. In addition, this new maximum of 30 FAR may work for the particular development proposal at One Vanderbilt, but questions have been raised concerning its appropriateness at the other eligible sites in the Vanderbilt Corridor. The DEIS states that the mechanism, new and expanded, are comparable to existing bonus mechanisms in the Zoning Resolution. The DEIS also states that the other sites that may take advantage of the additional bonus, in order to reach a maximum FAR of 30, would have to be analyzed on a site by site basis

through the special permit and associated environmental review. In the section on neighborhood character, the analysis states that there will be no significant adverse impact since the resulting conditions would be similar "to those seen in high activity urban neighborhoods that define the study area."

One Vanderbilt Proposal

SL Green is proposing a new office tower next to Grand Central Terminal that, while modern, is a fitting complement to Grand Central Terminal. The tower will be constructed with high quality materials, including glazed terra-cotta details that will evoke the Gustavino tile ceilings of the Terminal. At the base of the building the tower will peel away to showcase the cornice of the Terminal, which is currently blocked by the existing buildings on the One Vanderbilt site. Furthermore, the proposal will create a new public space from which residents, visitors, and passers-by can enjoy views of the Terminal and can experience the bustle of life in New York City. The improvements proposed by SL Green will dramatically improve conditions at the Grand Central subway station and will enable new connections between the LIRR and other modes of transit. It is not up to the CPC to decide whether the improvements are good, however, but whether the improvements are good enough to merit the additional floor area. While all of the improvements taken together are quite impressive, when examined individually there is real room for improvement.

Transit Hall

SL Green is proposing a new, 4,000 square foot space along East 43rd Street that will connect directly, via a single staircase, to the heart of Grand Central. The Transit Hall will have easy access to the platforms of both Metro North and the LIRR, making it an ideal location for a waiting area. As a waiting area, it needs to have enough amenities to keep a commuter comfortably there for up to an hour. This means it should have a concession, should have ample seating, and must have bathrooms. In addition, SL Green should ensure that the space is open and accessible to all New Yorkers by including Americans with Disabilities Act-friendly, easy to open doors and other features to make it truly accessible. In a letter to the Borough President, SL Green commits to at least seven benches to seat between 14 and 21 people and to provide a unisex restroom immediately under the Transit Hall.

The plans for this space as of now are undeveloped. The applicant has distributed renderings of the space, which show no seating or a concession. Although illustrative plans attached to the ULURP application do show these things, they stipulate that the plans are for approval of concept only, not design. In order to grant this special permit, this space must, at minimum, have a set concept and design principles. There must be sufficient protections in place to ensure that it remains a comfortable waiting area in perpetuity. The Department of Buildings ("DOB") typically polices privately owned public spaces, but in order to do this DOB needs approved plans showing the location of all the various elements. In discussions with SL Green the Borough President's office was reassured of their intentions for this space as a real amenity. Moving forward, the City Planning Commission must ensure that these intentions are honored with an approved design that reflects the discussions to date. This could be done by updating the approved plans, which will be subject to DOB oversight, to reflect a final design or by creating a

process by which the Chair of the CPC can certify that the final design reflects the intentions of the space as described in the ULURP application.

The proposed building will add new connections between many different below-grade spaces. What it does not do, however, is provide a connection from the mass transit network to the building for use by the future tenants of the building. Because of the wide network of underground spaces, this type of connection is common in the Grand Central Subdistrict. Direct connections to the building would serve to take pedestrians off of the crowded sidewalks of the area, aiding in reducing congestion in the neighborhood. An ideal location for this connection would be off of the Transit Hall, which is directly adjacent to the One Vanderbilt lobby. In discussions with the Borough President's office, SL Green has agreed to include this connection. The CPC should ensure that approved plans for the building include this connection, and prevent it from being removed in the future.

Finally, the proposed Transit Hall will be accessed from East 43rd Street. Coming from the west, pedestrians will pass the building's messenger center, dock master offices, and two loading docks before getting to the new public space. If the Transit Hall is to be a real amenity, the approach to it should not feel like walking down an alley. These back of the house spaces on East 43rd Street should be beautified to match the overall aesthetic of the building so that East 43rd Street feels like an active and attractive place. In discussions with the Borough President the applicant has agreed to use the highest quality materials on the loading docks and building maintenance spaces such that their design will match the overall building.

Vanderbilt Public Place

The proposed public space on Vanderbilt Avenue will add a new publicly controlled open space to a neighborhood that is starved for open space. It will help relieve congestion at the corner of East 42nd Street and Vanderbilt Avenue, a key access point to the terminal and one with significant pedestrian-vehicular conflict. It is not enough that the space is provided; the design must serve the employees of the new building, the commuters who stream into Grand Central, and neighborhood residents and employees. When open space is at a premium, and it is finally provided, we must ensure the highest value and utility of that space. However, we do not have a design to evaluate. A conceptual design was provided, but there is no guarantee that the final design will resemble this design in any way. Nor, at the time of certification, is a clear mechanism in place for the continued maintenance of this critical space. The challenges to presenting a final design at this time are real, so it is reasonable to wait for a future public process to decide this. At this time, however, we should ensure that the appropriate maintenance of this space is accounted for and that the design of the One Vanderbilt building will serve to activate this space to ensure its role as a real public amenity.

As proposed, the SL Green building will have only one door that exits to the public plaza: that of their office lobby. If this remains the only door, this space may function more as an entryway for SL Green's tenants than a space for the public. The Transit Hall, which is a space for the public, should interact better with the public plaza and should have a door directly onto it, in addition to one off of East 43rd Street. Not only would this help activate the public plaza, the proposed zoning text could be read to require it. In the proposed text, the findings for on-site

improvements to the pedestrian circulation network, which includes the Transit Hall, say that the spaces must "provide connections to pedestrian circulation spaces in the immediate vicinity." There is retail proposed at the southeast corner of the building that also will not open on to the plaza. The proposed zoning text requires that the ground floor of the building "facilitate fluid movements between the building and adjoining public spaces." This is an important finding, and one that will not be achieved unless the building connects to the plaza via exits other than the office lobby.

East 42nd Street Subway Entrance

In the center of the East 42nd Street ground floor will be a subway entrance that will connect via escalator to the Shuttle platform two levels down and via a stairway to the Intermodal Connector and Grand Central. There is an existing subway entrance at this location, so when evaluating the benefits of this improvement it is important that the CPC consider this as a *widening* of an existing entrance, rather than the provision of a new entrance. This expanded entrance will provide the most direct connection to the LIRR concourse from East 42nd Street and will be the south-westernmost entrance to Grand Central terminal. As such, it should be as prominent and spacious as possible.

Immediately to the east of this entrance the applicant proposes two retail spaces: one with a stairwell down to the B1 level, and one with a staircase up to the second floor. Both of these spaces are small, and will serve mostly as a vestibule to the retail above and below. The proposed zoning text requires retail uses adjacent to above-grade, on-site improvements. The goal of this requirement is to ensure active uses around the new on-site improvements. The retail spaces as proposed, however, do not accomplish this goal. First, the CPC should amend this finding to require active uses. Second, SL Green should adjust these spaces to better interact with the subway entrance and to better contribute to a lively streetscape. An ideal solution would be to combine all of these spaces to create a generous, publicly accessible space. Visitors could enter the southeast corner of the building and from there could access the Shuttle platform, the B1 Intermodal Connector, the B1 retail space, or the second floor retail.

As a result of discussions with the Borough President, the applicant has submitted an alternate application that will enable them to adjust the mix of uses on this corner of the building. City Planning has also committed to recommending that the requirement for retail be modified to active uses within the text to provide flexibility and ensure a lively and vibrant streetscape along East 42nd Street and Vanderbilt Place. The applicant has agreed to combine the two retail spaces into one, which will have an entrance onto the Vanderbilt Public Place and a staircase to a larger retail space on the second floor. Further, the applicant has agreed to reduce the linear frontage of the retail space, where it meets the subway entrance, by 24 feet. The Borough President believes that this agreement by the applicant and the opportunity it presents should be used to accommodate a wider, more prominent subway entrance. The CPC and the City Council should further consider whether this reduction will allow adjustments to the design for a more open layout of this entrance, and whether the staircase in the subway entrance can be widened.

Waiver of District Plan Elements

The Special Midtown District requires that all new buildings of a certain size contain public amenities. Of note, these District Plan Elements would require 3,000 square feet of pedestrian circulation space on this site, and would require off-street access to a mass transit facility. The SL Green application and the associated text amendment would allow these elements, which would normally be required, to count towards a floor area bonus. As proposed, however, these elements will be included in a form that is of a much higher quality than would be achieved with the requirement. The zoning text enables these requirements to be waived so that all of the public circulation space can be viewed as a whole. In consideration of whether the proposed improvements merit the additional floor area, the CPC should keep in mind that some amount of transit connection and ground-level public space would have been a part of an as-of-right building. The proposed building includes sidewalk widenings on Madison Avenue and East 42nd Street. On Madison Avenue, the area of widened sidewalk will not be open to the sky, as required by the Mandatory District Plan Elements. The overhang over this portion of sidewalk, however, will not occur until a height of 60 feet and will likely not be noticeable to pedestrians or negatively impact the pedestrian realm. Furthermore, the Special Midtown District requires a through-block connection for buildings with lobby entrances on opposite frontages. As proposed, a connection would not be available through the SL Green lobby and building core. It is not clear in this case that this connection would be beneficial to the public. It is difficult to imagine the need to pass from the midblock on Madison Avenue to the midblock on Vanderbilt Avenue when 42nd and 43rd streets are less than 100 feet away. Given the number of connections that are being provided though this building on the lower levels, the Borough President feels that this waiver is appropriate.

Sustainable Design Elements

The applicant proposes to increase the energy efficiency of this building by 14 percent over a baseline building, based on the 2010 standard of measurement. While this is an improvement, it is unclear that this is an improvement worthy of a building of this caliber, or whether this meets the finding that buildings must substantially reduce energy use over comparable buildings. The standards for energy efficiency get more stringent every few years as technology improves and the cost of these new technologies fall. The New York City Energy Conservation Code mandates the use of the ASHRAE 90.1-2007 standard to develop a baseline building for energy use comparison. By the time construction of the building is expected to begin, the ECC will have been updated to mandate the ASHRAE 90.1-2010 standard, which is 18.9 percent more efficient than a building based on the 2007 standard. By the time construction on this building is completed in 2020, therefore, there is a significant chance that the building's 14 percent improvement over the 2010 standard will be closer to a baseline building than to an efficient one.

Though the findings for the proposed special permit require the applicant to show reduced energy use over comparable buildings, the applicant's Statement of Findings compares energy use to a baseline building. In order to effectively evaluate the efficiency of this building, the applicant should provide comparisons to other Class A office buildings that are currently under construction. The CPC should evaluate whether this finding has been met based on improvement over those other buildings. In a letter to the Borough President, the applicant commits to

continue to explore new and additional methods of achieving increased efficiency and to use commercially reasonable efforts to incorporate new technologies to continue to maximize One Vanderbilt's energy efficiency and sustainability. Based on the sustainable measures incorporated in other SL Green buildings, the Borough President feels that this commitment is real, and looks forward to continuing to work with the applicant to achieve this goal.

Access to Light and Air

In order to accommodate all of the bonus floor area into this small lot, the applicant is seeking significant waivers to the height and setback requirements of the Special Midtown District. These waivers occur on almost every floor and on all four sides of the building. Daylight scoring for One Vanderbilt has an average score of -62.10, with scores ranging from –32.98 along the 42nd Street frontage and a score of -94.37 along the Vanderbilt frontage. While these numbers seem abstract, when the building is constructed they will be readily apparent: for someone standing on the Vanderbilt Public Place, the building will almost entirely fill the sky. In some circles this would be considered abysmal and unreasonable on its face. However, in consideration of the daylight scores, the CPC has always had the discretion to determine if the encroachment or degradation of daylight would be acceptable in the evaluation of a benefit to the general public. While that public benefit was traditionally landmark preservation, there is nothing in the zoning text to prevent the CPC from weighing the value of transit improvements over landmark preservation, nor to prevent the CPC from determining that any loss in one benefit trumps the gains in another.

Special Permit for Transfer of Development Rights

The proposed transfer of unused floor area from the Bowery Savings Bank will enable the perpetual preservation of that landmark and is in keeping with both the goals of the Grand Central Subdistrict and the new Vanderbilt Corridor proposal. A restoration plan for that building has been approved by the LPC, as has a plan for continued maintenance. While there has been some criticism of the proposed text amendment for failing to balance the goals of preservation and improvement of the public realm, the 115,000 square feet of landmark floor area being transferred to One Vanderbilt shows that such balance is possible within the framework of this proposal.

City Map Amendment

The proposed city map amendment to close a portion of Vanderbilt Avenue between East 42nd Street and East 43rd Street, changing its designation from street to "public place" is appropriate. This change will close this portion to vehicular traffic and allow for its permanent improvement as a pedestrian plaza. Given Vanderbilt Place's prominent location adjacent to Grand Central Terminal and its proximity to multiple existing and proposed transit entrances, the addition of approximately 12,000 square feet into the public pedestrian realm is a real and tangible benefit as long as it is well designed and maintained. The application for this action promises a public space that would provide significant benefits to workers and visitors of the surrounding area.

Conclusion

Much time has been spent describing the outdated and crumbling nature of both the existing office buildings in this district and the infrastructure that serves them. I do not disagree with this premise. There is need for new, state-of-the-art buildings if this district is to maintain its vitality and significance. However, I strongly believe that a number of buildings in the broader area are eligible for and deserving of landmark designation. Within the Vanderbilt Corridor, I believe that the Roosevelt Hotel and the Yale Club are worthy of such consideration. This proposal creates new opportunities for the redevelopment of those sites, and the CPC should seriously consider the real possibility of the destruction of these landmarks as a consequence of this proposal. I do have confidence, however, that any proposal that would harm these two landmarks would have the full review of the public, and I will use my role in the ULURP process to fight for their preservation. Additionally, the built context of Vanderbilt Avenue is important. The buildings standing there today were the result of a form of comprehensive planning that is rare in the history of New York. These buildings speak to each other and to the development history of this neighborhood as one of the first examples of development based around, and supportive of, mass transit. Any new building in this corridor should fit within the built context of these blocks and should relate harmoniously to the Terminal.

With the incorporation of the changes discussed above, the Vanderbilt Corridor text amendment and related map amendment will produce real benefits to the citizens of New York and will be in keeping with the longstanding goals of the Grand Central Subdistrict. The proposal from SL Green will dramatically improve platform and mezzanine conditions on the 4/5/6 subway line. In fact, the adjustments to the mezzanine will increase the size of Grand Central's subway mezzanine by 38 percent. One Vanderbilt's unique location will allow for new underground corridors that will be fully integrated into Grand Central Terminal. Finally, the proposal will open up new pedestrian-accessible space that will relieve congestion in this busy neighborhood.

BOROUGH PRESIDENT'S RECOMMENDATION

As a result of ongoing discussions, which began following the two Community Board recommendations in December, the Department of City Planning and SL Green sent the Borough President letters committing to adjustments of the proposal.

In a letter from Edith Hsu-Chen, Director of the Manhattan Office, dated January 28, 2015, the Department of City Planning committed to advising the City Planning Commission to make adjustments to the method for determining the Grand Central Public Realm Improvement bonus size, language clarifying the standards for evaluating sustainability, and application requirements relating to ongoing maintenance of proposed improvements.

In a letter from Marc Holliday, Chief Executive Officer of SL Green, dated January 28, 2015, SL Green committed to adjustments to their proposal to ensure maximum public benefit. The applicant committed to working out a final agreement for the maintenance of Vanderbilt Place, and agreed to seed a fund for ongoing capital improvement. They agreed to provide a bathroom at the Transit Hall, to provide at least seven benches within that space, and to continue to refine their design of the space and to work with the Community Boards and Borough President's Office to do so. They have agreed to adjust the retail spaces on East 42nd Street to be combined into a single space that would be reduced in size by 24 linear feet, adjacent to the subway entrance. The retail space would further have an entrance onto the Vanderbilt plaza. Finally, the applicant agreed to beautify the East 43rd Street frontage to minimize the impact of the loading docks on the character of the neighborhood.

Based on these commitments from the applicant the Borough President believes that the proposal will be beneficial to the citizens of Manhattan and entire New York region.

Therefore, the Manhattan Borough President recommends approval of ULURP Application Nos. C 140440 MMM, N 150127 ZRM, C 150128 ZSM, C 150129 ZSM, and C 150130 (A) ZSM provided that:

1. **SL Green** honor its stated commitment to:
    a. Consolidation and reduction of retail frontage at Vanderbilt Avenue and East 42nd Street;
    b. Providing for ongoing maintenance of the Vanderbilt Public Place;
    c. Construct and ADA-compliant unisex restroom beneath the Transit Hall
    d. Work with the Department of City Planning, Community Boards 5 and 6, and the Borough President to finalize interior design of the Transit Hall and to enshrine a completed design in the special permit drawings or a future public process;
    e. Install an entrance from the retail space at East 42nd Street and Vanderbilt Avenue onto the Vanderbilt plaza and an entrance from the Transit Hall to the One Vanderbilt lobby;
    f. Continue to improve the energy efficiency of the proposed building as technology improves;
    g. Use every effort to preserve the decorative façade elements of 51 East 42nd Street and to provide for their future display; and

h. Use materials and details on the East 43rd Street façade of the building at grade that are consistent with the overall aesthetic of One Vanderbilt;

2. **The City Planning Commission**, on the recommendation of staff, modify the proposed text amendment to reflect more consistently and clearly the goals of the proposed action, as outlined in the January 28 letter; and
3. **The City Planning Commission** also, in exercising its discretionary approval, approve plans memorializing all key entrances connecting the plaza, transit hall, lobby, and retail use so that building connects to the plaza via exits other than the office lobby and so that the locations of such are not subject to change.

In addition to the above, there are a number of aspects of the proposed actions that the Borough President feels warrant further attention:

1. **The City Planning Commission** should consider whether the findings of the Grand Central Public Realm Improvement Bonus relating to sustainability have been met by the SL Green proposal; and
2. **The City Planning Commission and the City Council** should use the reduction in retail frontage on East 42nd Street to provide for a wider and more open subway entrance at this location;
3. **The City Planning Commission** should consider any recommendations of the East Midtown Steering Committee concerning the use of a public realm improvement bonus in conjunction with the use of landmark development rights to balance the need for transit improvements and historic preservation.
4. **The City Planning Commission** should consider whether plans for the Transit Hall should be revised to include a door directly on to the Vanderbilt Public Place.

Gale A. Brewer

Gale A. Brewer
Borough President

Green 317 Madison LLC
c/o SL Green Realty Corp.
420 Lexington Avenue, 19th Floor
New York, NY 10170

January 28, 2015

Honorable Gale A. Brewer
Manhattan Borough President
One Centre Street, 19th Floor
New York, NY 10007

Re: One Vanderbilt
ULURP Nos. 150128 ZSM, 150129 ZSM, 150130 ZSM, 150130(A) ZSM

Dear Madame Borough President:

Thank you for your thoughtful consideration of our special permit applications for the One Vanderbilt project. From our numerous meetings with you and your staff we have received a number of suggestions to improve the proposed development. We have carefully considered these suggestions, and, in response, we are prepared to make the following commitments and modifications:

1. We commit to reach an agreement with the Grand Central Partnership to undertake the long-term maintenance of Vanderbilt Plaza, including provision for capital repairs and replacements. SL Green will also commit to provide $500,000 to a fund which will be established to assure the long-term capital needs of Vanderbilt Plaza.

2. We will construct and maintain an ADA-compliant unisex restroom for use by the public on the B1 level, below the Transit Hall, within the footprint of One Vanderbilt. Together with the additional new restrooms being constructed by the MTA within Grand Central Terminal underneath 335 Madison, these improvements will provide convenient facilities for commuters and other users of the Terminal and the Transit Hall. Further, we will ensure that all public spaces are accessible for people with disabilities.

3. As we progress the interior design of the Transit Hall, we will share our plans with Community Board 5 and the Borough President for review and feedback. We will also work with the Department of City Planning to either update or finalize the special permit drawings to reflect the completed design or include in the project approvals a requirement for a CPC Chairperson certification process with respect to the design of the Transit Hall. Additionally, we commit that the Transit Hall will contain at least seven benches seating 14 to 21 people, which we believe will make the transit Hall more useful and convenient for the public. We will maintain the Transit Hall for the life of the project.

4. We will install an entrance from the retail space at the corner of East 42nd Street and Vanderbilt Avenue directly onto the new Vanderbilt Plaza, which will further activate the plaza. We will also install a direct connection from the Transit Hall into the lobby of One Vanderbilt. These additional connections will help to activate the ground floor of the building and Vanderbilt Plaza. These connections will be open to the public, but we will reserve the right to close them if security matters make that necessary.

5. We will modify the design of the ground floor of One Vanderbilt in order to reduce the retail/amenity space linear frontage east of the MTA Access space on East 42nd Street by 24 feet.

6. As described in detail to your staff, we have made every effort to achieve the maximum energy efficiency and sustainability reasonably permitted by current technology. However, technology changes quickly and we commit to continue to explore new and additional methods of achieving increased efficiency and we will used commercially reasonable efforts to incorporate new technologies to continue to maximize One Vanderbilt's energy efficiency and sustainability.

7. Although the original decorative façade features of 51 East 42nd Street have had extensive exposure to the elements, and, we have been advised by our construction team that their condition may not permit their removal from the building intact and suitable for public display, we will use great care and effort to preserve these features when the building is demolished.

8. We commit to the use of materials and details on the 43rd Street façade of the building at grade that are consistent with the overall aesthetic and quality of One Vanderbilt, including but not limited to the loading dock doors.

These commitments will be included in a restrictive declaration which will be recorded against the development site and will bind successive owners and mortgagees of the property.

We believe these modifications to the design and operation of the project are responsive to the concerns that you and your staff have expressed to us and will improve the quality of the development and the public benefits. We thank you for the assistance you and your staff have provided as we move through the public review process.

Sincerely,

Marc Holliday

DEPARTMENT OF CITY PLANNING
CITY OF NEW YORK
Manhattan Office

January 28, 2015

The Honorable Gale A. Brewer
Borough President, Borough of Manhattan
One Center Street, 19th Floor North
New York, NY 10007

RE: Vanderbilt Corridor

Dear Borough President Brewer,

Thank you for your ongoing discussion with our Chairman and for staff-to-staff dialogue on the Vanderbilt Corridor proposal. This zoning text amendment and map change will facilitate commercial development along Madison and Vanderbilt Avenues in Manhattan, improve pedestrian circulation within Grand Central Terminal and its vicinity, and allow greater opportunity for area landmarks to transfer their unused development rights. We appreciate your focus on this critically important proposal to ensure the long-term strength of the area around Grand Central as a world-class business district, dense job center, and transit center for the city of New York.

We understand that in your review of the application, you have made specific recommendations to clarify and improve the text as proposed. We have considered your comments. During the City Planning Commission's upcoming review of the text amendment, the Department staff will recommend to the Commission the following:

- The Grand Central Public Realm Improvement Bonus should be modified to better clarify how the determination of the bonus floor area permitted via the special permit mechanism should be made. We will recommend the text be modified to make clear that additional floor area be granted as a result of consideration of the at-grade and below-grade improvements only, and that additional floor area should not be granted through the findings relating to the building's design and sustainability features. In addition, per your suggestions, we will recommend modifications to the findings for above-grade improvements to include consideration of their improvement to pedestrian circulation in the area, and on-site spaces provide or be surrounded by active uses.

- Regarding sustainability, we will recommend that the findings be modified so that buildings would be required to meet or exceed the best practices in sustainable design and clarify how buildings demonstrate their reduced energy use compared to comparable buildings. We will further recommend that the text be modified to require application materials that demonstrate energy use compared with the then-current New York City Energy Conservation Code.

- On the issue of maintenance of the improvements, the Department agrees that it is in the public's interest for the applicant to identify the expected maintenance plan for

improvements associated with the special permit as part of the public review of future proposals. We will recommend that additional application materials be required to describe the expected maintenance plan for the improvements.

We believe these recommendations to the City Planning Commission, made in response to your input, will improve the Vanderbilt Corridor proposal. Thank you for the thoughtful input you have provided us and others as our proposal moves through the public review process.

Sincerely,

Edith Hsu-Chen
Director, Manhattan
NYC Department of City Planning

Manhattan Community Board Five

Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109
New York, NY 10123-2199
212.465.0907 f-212.465.1628

Wally Rubin, District Manager

December 12, 2014

Hon. Carl Weisbrod
Chair of the City Planning Commission
22 Reade Street
New York, NY 10007

Re: Resolution on Zoning Text Changes Sought by the Department of City Planning for the Vanderbilt Corridor

Dear Chair Weisbrod:

At the monthly meeting of Community Board Five on Thursday, December 11, 2014, the Board passed the following resolution with a vote of 33 in favor, 0 opposed, 1abstaining:

WHEREAS, The Department of City Planning (DCP) seeks to rezone a five block area bordered by Vanderbilt and Madison Avenues and 42nd and 47th Streets; and

WHEREAS, DCP seeks to amend (application N 150127 ZRM) sections of the zoning resolution for the Special Midtown District to facilitate commercial development, pedestrian circulation and allow greater opportunities for area landmarks to transfer their unused development rights; and

WHEREAS, DCP seeks a City Map change (application 140440 MMM) to transform the block of Vanderbilt Avenue between East 42nd and East 43rd Streets into a Public Place; and

WHEREAS, The goal of the proposed zoning changes is to strengthen East Midtown's global competitiveness in the 21st Century; and

WHEREAS, An additional goal of the proposed Vanderbilt Corridor is to improve pedestrian circulation and access to transit, including East Side Access; the Vanderbilt Corridor would be located above the future concourse of the Long Island Rail Road, which will be 50 feet below the buildings on the west side of Vanderbilt Avenue; and

WHEREAS, CB5 and CB6 agree that these parcels between Vanderbilt and Madison should be examined and the goal of reinvigorating the area around Grand Central Terminal is necessary and worthy; and

WHEREAS, This proposal will have significant transit, planning, and economic impacts that may set a precedent beyond this defined area; and

WHEREAS, Under the new proposal, DCP mandates that any new development would be subject to a special permit with full public review, and stipulates that public improvements must precede the completion of added density with no Temporary Certificate of Occupancy granted before public improvements are completed, and

that responsibility for public improvements are now the required domain of the developer, with no monetary transaction between a developer the City and the MTA; and

WHEREAS, Under this new application, many of the previous objections have been addressed in that there are specified public realm improvements, and all development is under a Special Permit with full public review; and

WHEREAS, While we are appreciative of the ongoing East Midtown visioning process and the Steering Committee that was created under the leadership of Borough President Gale Brewer and Councilmember Dan Garodnick, we believe the planning of the Vanderbilt Corridor should be a part of the Steering Committee conversation; and

WHEREAS, A compelling case has not been made for separating out the entire five blocks of the Vanderbilt Corridor from the review of the greater East Midtown area; and

WHEREAS, **In the Vanderbilt Corridor**, we propose the following:

A. Infrastructure and the Public Realm

As whatever agreements are established between SL Green and the City at One Vanderbilt will set a precedent for all future agreements in the Corridor and East Midtown, a comprehensive plan identifying all the infrastructure and public space needs in the area is essential prior to the completion of ULURP;

B. Sustainability and the Environment

Any development facilitated through the proposed discretionary special permits must be designed to perform to 30 percent better than ASHRAE 90.1, 2010 and as determined by the methodology prescribed in the most current New York City Energy Conservation Code (NYCECC).

C. Daylighting

We are concerned that the requested modifications to the Special Midtown District Height and Setback regulations (Daylight Compensation and Daylight Evaluation) are excessive, radically lowering daylight levels in Midtown to pre-1916 pre-zoning daylight levels (Daylight Evaluation score is negative 62% [-62%] v. 75% of the sky left open); that this reduction in daylight is not adequately addressed by either DCP or the DEIS; and that the magnitude of reduction in daylight will set a precedent for future development in East Midtown;

D. Preservation

LPC must determine which sites in the Corridor and in the Greater East Midtown area are considered historic resources and worthy of designation, and those that are deemed landmark-worthy should be calendared prior to the completion of ULURP, and we further request that any new buildings proposed in the Corridor, whether development rights are purchased or not, be reviewed with respect to their compatibility/harmonious relationship to Grand Central Terminal;

E. FAR Bonus Size

We are concerned that the criteria for granting of the special permit for a Grand Central Public Realm Bonus (GCPRB) of up to 15 FAR is undefined unlike, for example, what is required for a Covered Pedestrian Space and that there must be more specific design guidelines; and

WHEREAS, Vanderbilt Avenue is considerably narrower than Madison Avenue and the intersecting side streets, we are deeply concerned about the "canyon effect" if a series of 30 FAR buildings were to be permitted along the Vanderbilt Corridor, which, other than at 42nd Street, front on only one wide street and we are also concerned what effect such a canyon of 30 FAR buildings will have as it relates to environmental concerns not only at the Corridor but in the greater midtown area; and

WHEREAS, Additionally, the Vanderbilt Corridor, as proposed could have a detrimental effect on surrounding historic and visual resources for the following reasons:

- the massive FAR bonus for transit improvements is far above comparable precedents and could eliminate the need for applicants to purchase development rights from existing landmarks, thus possibly vacating a key mechanism of the landmarks law. FAR bonus from transit improvements must work in tandem with transfers of development rights rather than compete against each other; and
- if a 30 FAR can be reached without transfer of development rights, we are concerned about the mechanism under which the existing development rights will be transferred as well as the sites where they can be transferred; and
- in the "worst-case" scenario, all five blocks being developed to the maximum possible 30.0 FAR would result in development that is not harmonious or contextual to the adjacent Grand Central Terminal; and
- in the "worst-case" scenario, development of the Vanderbilt Corridor would cast substantial shadows on a number of sunlight-sensitive historic resources, including the landmarked Bryant Park and the New York Public Library (cf. DEIS, Chapter 5, pages 7, 8, 21, 22); and
- in the "worst-case" scenario, the landmarked Chrysler Building, when considered a visual resource, would be negatively impacted by new buildings that would essentially screen it from many vantage points on the skyline; and
- The Yale Club, Roosevelt Hotel and 52 Vanderbilt are located in the Vanderbilt Corridor and are listed in the DEIS as eligible historic resources, according to LPC criteria as well as the criteria of the State and National Register of Historic Places. Unless reviewed and designated by LPC, all three buildings are at heightened risk of being demolished; and

WHEREAS, We are concerned that public space currently required but unbonused by the Special Midtown District could be credited toward the Grand Central Public Realm Improvement Bonus; and

WHEREAS, Given the efforts to look at East Midtown comprehensively, we will not consider any new proposed rezoning of a similar small scale within the East Midtown Study Area; and

WHEREAS, We are also concerned that the requirement for pedestrian circulation space pursuant to the existing 81-625, Transfer of Development Rights by Special Permit, could be modified and result in a decreased public benefit if not carefully considered as part of an overall development plan; therefore be it

RESOLVED, Manhattan Community Boards Five and Six **recommend denial** of the Department of City Planning's application N 150127 ZRM **unless** the following conditions are met:

1. The text amendment is limited to sites for which the City and MTA have a coordinated plan for improvements to the public realm; and
2. The text amendment provides guidelines for what type of improvements may merit a given FAR percentage increase for the affected zoning lots; and
3. The text amendment requires that any building granted a Grand Central Public Realm Improvement Bonus be designed to perform 30 percent better than ASHRAE 90.1, 2010 and as determined by the

methodology prescribed in the most up-to-date New York City Energy Conservation Code (NYCECC); and

4. The East Midtown Steering Committee must fully consider the five blocks between 42nd and 47th streets and Vanderbilt and Madison avenues in their decision making; and
5. The text amendment be specific in requiring LPC to issue a letter in support of the harmonious relationship to the Grand Central Terminal for any proposed building; and
6. The text amendment specify that a site
    i. fronting on more than one wide street;
    ii. overlooking the Grand Central "air park";
    iii. adjacent to a subway station;
    iv. with access to the pedestrian circulation system of Terminal City and other sites;

could potentially merit the full 15 FAR bonus pursuant to the proposed GCPRB, but sites not meeting these criteria would not qualify; and be it further

RESOLVED, These conditions are necessary to recommend approval and therefore unless and until these conditions are met, we recommend denial at this time.

Thank you for the opportunity to comment on this matter.

Sincerely,

Vikki Barbero
Chair

Eric Stern
Chair, Land Use, Housing and Zoning Committee

Manhattan Community Board Five

Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109
New York, NY 10123-2199
212.465.0907 f-212.465.1628

Wally Rubin, District Manager

December 12, 2014

Hon. Carl Weisbrod
Chair of the City Planning Commission
22 Reade Street
New York, NY 10007

Re: Resolution on Special Permits Sought by Green 317 Madison, LLC for One Vanderbilt

Dear Chair Weisbrod:

At the monthly meeting of Community Board Five on Thursday, December 11, 2014, the Board passed the following resolution with a vote of 33 in favor, 0 opposed, 1abstaining:

WHEREAS, Green 317 Madison, LLC seeks a special permit (application C 150128 ZSM) to transfer development rights from a landmark building to facilitate construction of an approximately 1.3 million SF mixed-use development called One Vanderbilt between 42nd and 43rd Streets, and Madison and Vanderbilt Avenues; and

WHEREAS, Green 317 Madison, LLC seeks a special permit pursuant to the proposed 81-641 of the Zoning Resolution (application C 150129 ZSM) for a Grand Central Public Realm Improvement Bonus of 12.3 FAR to facilitate a 30 FAR development at One Vanderbilt; and

WHEREAS, Green 317 Madison, LLC seeks a special permit pursuant to the proposed 81-642 of the Zoning Resolution (application C 150130 ZSM) for modification of regulations with respect to street wall, curb cut, height and setback and mandatory district plan elements, and relief from daylighting; and

WHEREAS, Unlike on corridor parcels not fronting 42nd Street, we believe there may be circumstances under which a building on this site might reasonably justify an allowable 30 FAR; and

WHEREAS, **Regarding One Vanderbilt**, we continue to have areas of concern:

A. <u>Infrastructure and Public Realm:</u>

While the proposed off-site public realm improvements include:

1) the creation of a Public Place on Vanderbilt between 42nd and 43rd to be used as a pedestrian plaza;

2) a new stair in the cellar of the Pershing Square Building (southeast corner of 42nd and Park) that would connect the Grand Central-42nd Street subway station mezzanine to the 4, 5 and 6 subway platform;

3) a new subway entrance with two new street-level subway stairs on the sidewalk at the southeast corner of 42nd and Lexington that would connect to and open an existing 4,100 square foot below-grade passageway;

4) modification of columns on the Grand Central – 42nd Street mezzanine to provide more pedestrian circulation space and improve pedestrian flow;

5) 8,475 square feet of an expanded Grand Central – 42nd Street station mezzanine in the cellar of the Grand Hyatt Hotel and the creation of two new stairs from one of the new mezzanine areas to the 4, 5, and 6 subway platform;

6) replacement and widening of an existing street-level subway entrance at the northwest corner of 42nd and Lexington with wider stairs and an elevator;

we are concerned that two off-site improvements (the stair between the mezzanine and platform at the Pershing Square Building and the two stairs at the north end of the platform and the enlargement of the mezzanine there) were identified mitigations for the Flushing line extension and East Side Access and were to be paid for through the capital programs of the MTA and/or the City; and

there are no sidewalk subway entrances on 42nd street from Third Avenue to Madison Avenue, but under this application one is proposed on the southeast corner of 42nd Street and Lexington Avenue; and

we are concerned that nothing in this proposal would improve the connectivity between the 7 Line and the Lexington Lines; and

we continue to have questions and concerns about the nature and maintenance of the Public Place on Vanderbilt between 42nd and 43rd:

- this is a narrow block that will need to have passageway for emergency vehicles, which will severely limit the scope of public amenities (seating, plantings, etc.);
- currently essential emergency and police vehicles are parked in the proposed Public Place and we are concerned as to where new locations will be found;
- we would like to know who will be responsible for the maintenance of this Public Place, and what mechanism will be instituted to guarantee that it will be free of commercial events, concessions and sub-concessions, as well as intrusions from food carts, costume characters and other unintended consequences, that will hamper the flow of pedestrians and negate the intended passive recreational use of this Public Place; and

while the proposed on-site public realm improvements include:

1) a new ground-level subway entrance on East 42nd Street with escalator, elevator and stairways providing access to the Shuttle subway station and providing below-grade connections through the Intermodal Connector to the Nos. 4, 5, 6, and 7 Subway lines at the Grand Central Terminal concourse level and to the Long Island Rail Road at the East Side Access concourse level;

2) a new ground-level Transit Hall (approximately 4,000 square feet) with entrances at East 43rd Street, providing stairway and elevator connections to the new below-grade corridor, with connections to East Side Access, the Shuttle, Grand Central Terminal, and the 4, 5, 6, and 7 subway lines;

3) new elevator and escalator connections from East Side Access through the Development Site that will allow for connection from the East Side Access concourse to street level or the 4, 5, 6, 7, or Shuttle subway lines without the need to traverse the Main Concourse of Grand Central Terminal;

4) the new day-lit, below-grade Intermodal Connector (10,100 square feet) providing connections between Long Island Rail Road (East Side Access), Metro-North Rail Road (Grand Central Terminal), and the 4, 5, 6, 7 and Shuttle subway lines;

we are also concerned about the lack of sidewalk widening on a heavily trafficked East 43rd Street, which leads directly to GCT;

further, the proposed office building lobby dominates and privatizes, along the marginal Transit Hall, almost the entire Vanderbilt Avenue frontage;

we are concerned that the proposed Transit Hall (which should have included seating and public restrooms) at Vanderbilt and 43rd is not optimally located to provide connectivity for passengers to and from the West Side, and propose an entrance hall at Madison and 42nd as well as a B2 level connection from East Side Access to NYC Transit at 42nd and Vanderbilt; and

we believe that the requirements of the Special Midtown District for through-block access to the lobby should be maintained; and

we take note that with the entire site to be excavated, this is a once in a lifetime opportunity to find solutions that will best serve the public at this dense and vital crossroads; and

B. Sustainability and the Environment

While the Applicant has committed to construct a LEED v4 Certified Gold building, only the highest level of sustainability is acceptable if the goal, as stated, is to keep East Midtown as the premier business district; therefore, the Applicant must commit to a LEED v4 Certified Platinum building which will be designed to perform 30 percent better than ASHRAE 90.1, 2010; and

The proposed building lobby should publicly display a comprehensive building water usage and energy performance dashboard showing where and how energy and water is continuously being conserved; and

We are concerned that the requested modifications to the Special Midtown District Height and Setback regulations (Daylight Compensation and Daylight Evaluation) are excessive, radically lowering daylight levels in Midtown to pre-1916 pre-zoning daylight levels (Daylight Evaluation score is negative 62 % v. 75 % of the sky left open); this reduction in daylight is not adequately addressed by either DCP or the DEIS; and the magnitude of the reduction in daylight will set a precedent for future development in Vanderbilt Corridor and East Midtown; and

C. FAR Bonus Size

As with the rest of the Vanderbilt Corridor, any increase in FAR granted by a special permit needs to ensure that public realm improvements, and improvements to the transit network surrounding the site, do more than mitigate existing system deficiencies , but rather look forward to the public needs in the decades to come; and

The Department of City Planning needs to provide a quantifiable measure of how the 12.3 FAR public realm improvement bonus was earned; and

WHEREAS, We praise the Applicant for taking Community Board Five and Six's concerns regarding the harmoniousness of their proposed building with Grand Central Terminal into account and for attempting to resolve them by revising the design, the specific concerns raised by the proposed building's asymmetrical façade, use of glass and cacophonous base have not been alleviated; and

WHEREAS, The Applicant must create a Community Construction Task Force (CCTF) to keep the community stakeholders fully informed and consulted on all aspects of the development and sequencing of changes to the immediate vicinity; and

WHEREAS, This CCTF would meet before the onset of demolition, then hold regular meetings weekly at the outset, then monthly or once a quarter; therefore be it

RESOLVED, Manhattan Community Boards Five and Six **recommend denial** of the C 150128 ZSM, C 150129 ZSM and C 150130 ZSM special permits **unless** the following conditions are met:

1. The development will be LEED v4 Certified Platinum; and
2. A major public space is created at street and concourse level, through or adjacent to and connecting with the main lobby of One Vanderbilt, and connecting the corner of Madison Avenue and 42 Street and the main concourse of Grand Central; and be it further

RESOLVED, While the following recommendations are **not conditions** for our approval, we strongly recommend:

1. Placement of the subway entrance should be within the building at the Southeast corner of 42nd and Lexington and not on the sidewalk; and
2. Further widening to the extent necessary so that a minimum sidewalk width of 20 feet is achieved for Madison Avenue and East 42nd Street; and widening East 43rd Street to a minimum of 15 feet is achieved; and
3. Reduce the width of the office lobby on the Public Place and consider pedestrian uses in lieu of the Transit Hall; and
4. Creation of a Community Construction Task Force; and
5. The Department of City Planning provide a quantifiable measure of how the 12.3 FAR public realm improvement bonus was earned; and
6. One Vanderbilt should:

   (i) Provide the required 4,200 square feet of mandatory, unbonused pedestrian circulation space required by the Special Midtown District;

   (ii) Include a significant improvement to the Terminal City pedestrian circulation system for the privilege of transferring the development rights of the Bowery Savings Bank remotely;

   (iii) Not receive a bonus for improvements to the subway station that are mitigations for East Side Access or the extension of the 7 line; and
7. The Department of City Planning provide a rationale for what amounts to a waiver of the Height and Setback/Daylight regulations which, for example, have resulted in a daylight score for One Vanderbilt of negative 62% (Daylight Evaluation) rather than the Midtown standard of 75% of the sky left open; and be it further

RESOLVED, The **conditions** listed above are necessary to recommend approval and therefore unless and until these conditions are met, we recommend denial at this time.

Thank you for the opportunity to comment on this matter.

Sincerely,

Vikki Barbero
Chair

Eric Stern
Chair, Land Use, Housing and Zoning Committee

SANDRO SHERROD
CHAIR

VICE-CHAIRS
RICHARD EGGERS, 1ST
CLAUDE L. WINFIELD, 2ND

DAN MINER
DISTRICT MANAGER

BEATRICE DISMAN, TREASURER
CHARLES BUCHWALD, ASST. TREASURER

AARON HUMPHREY
SECRETARY
KATHY THOMPSON
ASST. SECRETARY

THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD SIX
866 UNITED NATIONS PLAZA, SUITE 308
NEW YORK, NY 10017

VIA E-MAILL: CalendarOffice@planning.nyc.gov

December 29, 2014

Mr. Carl Weisbrod
Chairman
New York City Planning Commission
22 Reade Street
New York, NY 10007

RE: Zoning Text Changes Sought by the Department of City Planning for the Vanderbilt Corridor

Dear Chairman Weisbrod:

At the December 10th Full Board meeting of Community Board 6, the Board adopted the following resolution:

WHEREAS, The Department of City Planning (DCP) seeks to rezone a five block area bordered by Vanderbilt and Madison Avenues and 42nd and 47th Streets; and

WHEREAS, DCP seeks to amend (application N 150127 ZRM) sections of the zoning resolution for the Special Midtown District to facilitate commercial development, pedestrian circulation and allow greater opportunities for area landmarks to transfer their unused development rights; and

WHEREAS, DCP seeks a City Map change (application 140440 MMM) to transform the block of Vanderbilt Avenue between East 42nd and East 43rd Streets into a Public Place; and

WHEREAS, The goal of the proposed zoning changes is to strengthen East Midtown's global competitiveness in the 21st Century; and

WHEREAS, An additional goal of the proposed Vanderbilt Corridor is to improve pedestrian circulation and access to transit, including East Side Access; the Vanderbilt Corridor would be located above the future concourse of the Long Island Rail Road, which will be 50 feet below the buildings on the west side of Vanderbilt Avenue; and

WHEREAS, CB5 and CB6 agree that these parcels between Vanderbilt and Madison should be examined and the goal of reinvigorating the area around Grand Central Terminal is necessary and worthy; and

WHEREAS, This proposal will have significant transit, planning, and economic impacts that may set a precedent beyond this defined area; and

WHEREAS, Under the new proposal, DCP mandates that any new development would be subject to a special permit with full public review, and stipulates that public improvements must precede the completion of added density with no Temporary Certificate of Occupancy granted before public improvements are completed, and that responsibility for public improvements are now the required domain of the developer, with no monetary transaction between a developer the City and the MTA; and

WHEREAS, Under this new application, many of the previous objections have been addressed in that there are specified public realm improvements, and all development is under a Special Permit with full public review; and

WHEREAS, While we are appreciative of the ongoing East Midtown visioning process and the Steering Committee that was created under the leadership of Borough President Gale Brewer and Councilmember Dan Garodnick, we believe the planning of the Vanderbilt Corridor should be a part of the Steering Committee conversation; and

WHEREAS, A compelling case has not been made for separating out the entire five blocks of the Vanderbilt Corridor from the review of the greater East Midtown area; and

WHEREAS, In the Vanderbilt Corridor, we propose the following:

A. Infrastructure and the Public Realm

As whatever agreements are established between SL Green and the City at One Vanderbilt will set a precedent for all future agreements in the Corridor and East Midtown, a comprehensive plan identifying all the infrastructure and public space needs in the area is essential prior to the completion of ULURP;

B. Sustainability and the Environment

Any development facilitated through the proposed discretionary special permits must be designed to perform to 30 percent better than ASHRAE 90.1, 2010 and as determined by the methodology prescribed in the most current New York City Energy Conservation Code (NYCECC).

C. Daylighting

We are concerned that the requested modifications to the Special Midtown District Height and Setback regulations (Daylight Compensation and Daylight Evaluation) are excessive, radically lowering daylight levels in Midtown to pre-1916 pre-zoning daylight levels (Daylight Evaluation score is negative 62% [-62%] v. 75% of the sky left open); that this reduction in daylight is not adequately addressed by either DCP or the DEIS; and that the magnitude of reduction in daylight will set a precedent for future development in East Midtown;

D. Preservation

LPC must determine which sites in the Corridor and in the Greater East Midtown area are considered historic resources and worthy of designation, and those that are deemed landmark-worthy should be calendared prior to the completion of ULURP, and we further request that any new buildings proposed in the Corridor, whether development rights are purchased or not, be reviewed with respect to their compatibility/harmonious relationship to Grand Central Terminal;

E. FAR Bonus Size

We are concerned that the criteria for granting of the special permit for a Grand Central Public Realm Bonus (GCPRB) of up to 15 FAR is undefined unlike, for example, what is required for a Covered Pedestrian Space and that there must be more specific design guidelines; and

WHEREAS, Vanderbilt Avenue is considerably narrower than Madison Avenue and the intersecting side streets, we are deeply concerned about the "canyon effect" if a series of 30 FAR buildings were to be permitted along the Vanderbilt Corridor, which, other than at 42nd Street, front on only one wide street and we are also concerned what effect such a canyon of 30 FAR buildings will have as it relates to environmental concerns not only at the Corridor but in the greater midtown area; and

WHEREAS, Additionally, the Vanderbilt Corridor, as proposed could have a detrimental effect on surrounding historic and visual resources for the following reasons:

- the massive FAR bonus for transit improvements is far above comparable precedents and could

eliminate the need for applicants to purchase development rights from existing landmarks, thus possibly vacating a key mechanism of the landmarks law. FAR bonus from transit improvements must work in tandem with transfers of development rights rather than compete against each other; and

- if a 30 FAR can be reached without transfer of development rights, we are concerned about the mechanism under which the existing development rights will be transferred as well as the sites where they can be transferred; and
- in the "worst-case" scenario, all five blocks being developed to the maximum possible 30.0 FAR would result in development that is not harmonious or contextual to the adjacent Grand Central Terminal; and
- in the "worst-case" scenario, development of the Vanderbilt Corridor would cast substantial shadows on a number of sunlight-sensitive historic resources, including the landmarked Bryant Park and the New York Public Library (cf. DEIS, Chapter 5, pages 7, 8, 21, 22); and
- in the "worst-case" scenario, the landmarked Chrysler Building, when considered a visual resource, would be negatively impacted by new buildings that would essentially screen it from many vantage points on the skyline; and
- The Yale Club, Roosevelt Hotel and 52 Vanderbilt are located in the Vanderbilt Corridor and are listed in the DEIS as eligible historic resources, according to LPC criteria as well as the criteria of the State and National Register of Historic Places. Unless reviewed and designated by LPC, all three buildings are at heightened risk of being demolished; and

WHEREAS, We are concerned that public space currently required but unbonused by the Special Midtown District could be credited toward the Grand Central Public Realm Improvement Bonus; and

WHEREAS, Given the efforts to look at East Midtown comprehensively, we will not consider any new proposed rezoning of a similar small scale within the East Midtown Study Area; and

WHEREAS, We are also concerned that the requirement for pedestrian circulation space pursuant to the existing 81-625, Transfer of Development Rights by Special Permit, could be modified and result in a decreased public benefit if not carefully considered as part of an overall development plan; therefore be it

RESOLVED, Manhattan Community Boards Five and Six **recommend denial** of the Department of City Planning's application N 150127 ZRM **unless** the following conditions are met:

1. The text amendment is limited to sites for which the City and MTA have a coordinated plan for improvements to the public realm; and
2. The text amendment provides guidelines for what type of improvements may merit a given FAR percentage increase for the affected zoning lots; and
3. The text amendment requires that any building granted a Grand Central Public Realm Improvement Bonus be designed to perform 30 percent better than ASHRAE 90.1, 2010 and as determined by the methodology prescribed in the most up-to-date New York City Energy Conservation Code (NYCECC); and
4. The East Midtown Steering Committee must fully consider the five blocks between 42nd and 47th streets and Vanderbilt and Madison avenues in their decision making; and
5. The text amendment be specific in requiring LPC to issue a letter in support of the harmonious relationship to the Grand Central Terminal for any proposed building; and
6. The text amendment specify that a site
   i. fronting on more than one wide street;
   ii. overlooking the Grand Central "air park";
   iii. adjacent to a subway station;
   iv. with access to the pedestrian circulation system of Terminal City and other sites;

   could potentially merit the full 15 FAR bonus pursuant to the proposed GCPRB, but sites not meeting these criteria would not qualify; and be it further

RESOLVED, These conditions are necessary to recommend approval and therefore unless and until these conditions are met, we recommend denial at this time.

VOTE: 39 In Favor; 0 Opposed; 1 Abstain; 0 Not Entitled

Yours Truly,

Dan Miner
District Manager

Cc:
Honorable Gale Brewer
Honorable Brad Hoylman
Honorable Liz Krueger
Honorable Dan Quart
Honorable Dan Garodnick
Dominick Answini, DCP
Frank Ruchala, DCP
Edith Hsu-Chen, DCP Applicant
Sandro Sherrod
Terrence O'Neal, FAIA

SANDRO SHERROD
CHAIR

VICE-CHAIRS
RICHARD EGGERS, 1ST
CLAUDE L. WINFIELD, 2ND

DAN MINER
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CHARLES BUCHWALD, ASST. TREASURER

AARON HUMPHREY
SECRETARY
KATHY THOMPSON
ASST. SECRETARY

THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD SIX
866 UNITED NATIONS PLAZA, SUITE 308
NEW YORK, NY 10017

VIA E-MAILL: CalendarOffice@planning.nyc.gov

December 29, 2014

Mr. Carl Weisbrod
Chairman
New York City Planning Commission
22 Reade Street
New York, NY 10007

RE: Special Permits Sought by Green 317 Madison, LLC for One Vanderbilt

Dear Chairman Weisbrod:

At the December 10th Full Board meeting of Community Board 6, the Board adopted the following resolution:

WHEREAS, Green 317 Madison, LLC seeks a special permit (application C 150128 ZSM) to transfer development rights from a landmark building to facilitate construction of an approximately 1.3 million SF mixed-use development called One Vanderbilt between 42nd and 43rd Streets, and Madison and Vanderbilt Avenues; and

WHEREAS, Green 317 Madison, LLC seeks a special permit pursuant to the proposed 81-641 of the Zoning Resolution (application C 150129 ZSM) for a Grand Central Public Realm Improvement Bonus of 12.3 FAR to facilitate a 30 FAR development at One Vanderbilt; and

WHEREAS, Green 317 Madison, LLC seeks a special permit pursuant to the proposed 81-642 of the Zoning Resolution (application C 150130 ZSM) for modification of regulations with respect to street wall, curb cut, height and setback and mandatory district plan elements, and relief from daylighting; and

WHEREAS, Unlike on corridor parcels not fronting 42nd Street, we believe there may be circumstances under which a building on this site might reasonably justify an allowable 30 FAR; and

WHEREAS, Regarding One Vanderbilt, we continue to have areas of concern:

A. Infrastructure and Public Realm:

While the proposed off-site public realm improvements include:

1) the creation of a Public Place on Vanderbilt between 42nd and 43rd to be used as a pedestrian plaza;
2) a new stair in the cellar of the Pershing Square Building (southeast corner of 42nd and Park) that would connect the Grand Central-42nd Street subway station mezzanine to the 4, 5 and 6 subway platform;

3) a new subway entrance with two new street-level subway stairs on the sidewalk at the southeast corner of 42nd and Lexington that would connect to and open an existing 4,100 square foot below-grade passageway;
4) modification of columns on the Grand Central – 42nd Street mezzanine to provide more pedestrian circulation space and improve pedestrian flow;

-1-

5) 8,475 square feet of an expanded Grand Central – 42nd Street station mezzanine in the cellar of the Grand Hyatt Hotel and the creation of two new stairs from one of the new mezzanine areas to the 4, 5, and 6 subway platform;
6) replacement and widening of an existing street-level subway entrance at the northwest corner of 42nd and Lexington with wider stairs and an elevator;

we are concerned that two off-site improvements (the stair between the mezzanine and platform at the Pershing Square Building and the two stairs at the north end of the platform and the enlargement of the mezzanine there) were identified mitigations for the Flushing line extension and East Side Access and were to be paid for through the capital programs of the MTA and/or the City; and

there are no sidewalk subway entrances on 42nd street from Third Avenue to Madison Avenue, but under this application one is proposed on the southeast corner of 42nd Street and Lexington Avenue; and
we are concerned that nothing in this proposal would improve the connectivity between the 7 Line and the Lexington Lines; and
we continue to have questions and concerns about the nature and maintenance of the Public Place on Vanderbilt between 42nd and 43rd:

- this is a narrow block that will need to have passageway for emergency vehicles, which will severely limit the scope of public amenities (seating, plantings, etc.);
- currently essential emergency and police vehicles are parked in the proposed Public Place and we are concerned as to where new locations will be found;
- we would like to know who will be responsible for the maintenance of this Public Place, and what mechanism will be instituted to guarantee that it will be free of commercial events, concessions and sub-concessions, as well as intrusions from food carts, costume characters and other unintended consequences, that will hamper the flow of pedestrians and negate the intended passive recreational use of this Public Place; and

while the proposed on-site public realm improvements include:
1) a new ground-level subway entrance on East 42nd Street with escalator, elevator and stairways providing access to the Shuttle subway station and providing below-grade connections through the Intermodal Connector to the Nos. 4, 5, 6, and 7 Subway lines at the Grand Central Terminal concourse level and to the Long Island Rail Road at the East Side Access concourse level;
2) a new ground-level Transit Hall (approximately 4,000 square feet) with entrances at East 43rd Street, providing stairway and elevator connections to the new below-grade corridor, with connections to East Side Access, the Shuttle, Grand Central Terminal, and the 4, 5, 6, and 7 subway lines;
3) new elevator and escalator connections from East Side Access through the Development Site that will allow for connection from the East Side Access concourse to street level or the 4, 5, 6, 7, or Shuttle subway lines without the need to traverse the Main Concourse of Grand Central Terminal;

4) the new day-lit, below-grade Intermodal Connector (10,100 square feet) providing connections between Long Island Rail Road (East Side Access), Metro-North Rail Road (Grand Central Terminal), and the 4, 5, 6, 7 and Shuttle subway lines;

we are also concerned about the lack of sidewalk widening on a heavily trafficked East 43rd Street, which leads directly to GCT;
further, the proposed office building lobby dominates and privatizes, along the marginal Transit Hall, almost the entire Vanderbilt Avenue frontage;
we are concerned that the proposed Transit Hall (which should have included seating and public restrooms) at Vanderbilt and 43rd is not optimally located to provide connectivity for passengers to and from the West Side, and propose an entrance hall at Madison and 42nd as well as a B2 level connection from East Side Access to NYC Transit at 42nd and Vanderbilt; and
we believe that the requirements of the Special Midtown District for through-block access to the lobby should be maintained; and
we take note that with the entire site to be excavated, this is a once in a lifetime opportunity to find solutions that will best serve the public at this dense and vital crossroads; and

B. Sustainability and the Environment

While the Applicant has committed to construct a LEED v4 Certified Gold building, only the highest level of sustainability is acceptable if the goal, as stated, is to keep East Midtown as the premier business district; therefore, the Applicant must commit to a LEED v4 Certified Platinum building which will be designed to perform 30 percent better than ASHRAE 90.1, 2010; and
The proposed building lobby should publicly display a comprehensive building water usage and energy performance dashboard showing where and how energy and water is continuously being conserved; and
We are concerned that the requested modifications to the Special Midtown District Height and Setback regulations (Daylight Compensation and Daylight Evaluation) are excessive, radically lowering daylight levels in Midtown to pre-1916 pre-zoning daylight levels (Daylight Evaluation score is negative 62 % v. 75 % of the sky left open); this reduction in daylight is not adequately addressed by either DCP or the DEIS; and the magnitude of the reduction in daylight will set a precedent for future development in Vanderbilt Corridor and East Midtown; and

C. FAR Bonus Size

As with the rest of the Vanderbilt Corridor, any increase in FAR granted by a special permit needs to ensure that public realm improvements, and improvements to the transit network surrounding the site, do more than mitigate existing system deficiencies , but rather look forward to the public needs in the decades to come; and
The Department of City Planning needs to provide a quantifiable measure of how the 12.3 FAR public realm improvement bonus was earned; and

WHEREAS, We praise the Applicant for taking Community Board Five and Six's concerns regarding the harmoniousness of their proposed building with Grand Central Terminal into account and for attempting to resolve them by revising the design, the specific concerns raised by the proposed building's asymmetrical façade, use of glass and cacophonous base have not been alleviated; and

WHEREAS, The Applicant must create a Community Construction Task Force (CCTF) to keep the community stakeholders fully informed and consulted on all aspects of the development and sequencing of changes to the immediate vicinity; and

WHEREAS, This CCTF would meet before the onset of demolition, then hold regular meetings weekly at the outset, then monthly or once a quarter; therefore be it

RESOLVED, Manhattan Community Boards Five and Six **recommend denial** of the C 150128 ZSM, C 150129 ZSM and C 150130 ZSM special permits **unless** the following conditions are met:

1. The development will be LEED v4 Certified Platinum; and

2. A major public space is created at street and concourse level, through or adjacent to and connecting with the main lobby of One Vanderbilt, and connecting the corner of Madison Avenue and 42 Street and the main concourse of Grand Central; and be it further

RESOLVED, While the following recommendations are **not conditions** for our approval, we strongly recommend:

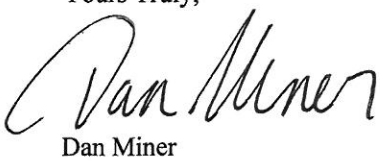
1. Placement of the subway entrance should be within the building at the Southeast corner of 42nd and Lexington and not on the sidewalk; and
2. Further widening to the extent necessary so that a minimum sidewalk width of 20 feet is achieved for Madison Avenue and East 42nd Street; and widening East 43rd Street to a minimum of 15 feet is achieved; and
3. Reduce the width of the office lobby on the Public Place and consider pedestrian uses in lieu of the Transit Hall; and
4. Creation of a Community Construction Task Force; and
5. The Department of City Planning provide a quantifiable measure of how the 12.3 FAR public realm improvement bonus was earned; and
6. One Vanderbilt should:

   (i) Provide the required 4,200 square feet of mandatory, unbonused pedestrian circulation space required by the Special Midtown District;
   (ii) Include a significant improvement to the Terminal City pedestrian circulation system for the privilege of transferring the development rights of the Bowery Savings Bank remotely;
   (iii) Not receive a bonus for improvements to the subway station that are mitigations for East Side Access or the extension of the 7 line; and
7. The Department of City Planning provide a rationale for what amounts to a waiver of the Height and Setback/Daylight regulations which, for example, have resulted in a daylight score for One Vanderbilt of negative 62% (Daylight Evaluation) rather than the Midtown standard of 75% of the sky left open; and be it further

RESOLVED, the **conditions** listed above are necessary to recommend approval and therefore unless and until these conditions are met, we recommend denial at this time.

VOTE: 39 In Favor; 0 Opposed; 1 Abstain; 0 Not Entitled

Yours Truly,



Dan Miner
District Manager

Cc:
Honorable Gale Brewer
Honorable Brad Hoylman
Honorable Liz Krueger
Honorable Dan Quart
Honorable Dan Garodnick
Dominick Answini, DCP
Frank Ruchala, DCP
Stephen Lefkowtiz, Applicant
Sandro Sherrod
Terrence O'Neal, FAIA

TASK FORCE ON EAST MIDTOWN

MANHATTAN COMMUNITY BOARDS
FIVE & SIX

Vikki Barbero, *Chair, Community Board Five*

Sandro Sherrod, *Chair, Community Board Six*

TESTIMONY BY LOLA FINKELSTEIN, CHAIR OF THE MULTI-BOARD TASK FORCE ON EAST MIDTOWN, AND VIKKI BARBERO, CHAIR OF COMMUNITY BOARD FIVE, AT THE PUBLIC HEARING OF THE DEPT OF CITY PLANNING, FEBRUARY 4th, 2015

We want to thank Chair Weisbrod and the Commission for giving us the opportunity to speak before you today. We realize that you have read the resolutions of the Multi-Board Task Force on East Midtown, so we don't need to reiterate them point by point. We want to thank, as well, Borough President Brewer for listening to us and working to move SL Green to adopt a more practical, open, public –spirited approach to the ground level of their building, though there is more work to be done, we believe, to truly achieve that goal.

It is said that it is so difficult to do the work that is needed to improve the subway below Grand Central Terminal precisely because it is below Grand Central Terminal and, thankfully, that great landmark is not going anywhere. But we have before us a once in a lifetime opportunity to make the right decisions at the One Vanderbilt site, as that block will be entirely uprooted. All of us have the responsibility to make sure the opportunity is seized so that, when the work is completed, the infrastructural needs and the needs of the vast traveling public at this busiest of intersections - which will shortly become busier than ever before – are fully accommodated. This is, after all, the singular role and ultimate test of government.

We come here today, as well, to reemphasize our concerns about the Vanderbilt Corridor. We appreciate that on 42nd Street, with the right considerations pertaining to daylight and sustainability, along with the aforementioned public improvements at and below grade, a 30 FAR building makes sense. We have seen how the Bank of America building works well - on 42nd Street and adjacent to Bryant Park (though it must be noted that even the Bank of America building is NOT 30 FAR).

However, we cannot see any way a series of 30 FAR buildings north of One Vanderbilt, adjacent to no wide streets nor a vast expanse of greenery, will ever be acceptable public policy. Such a conglomeration of towers, no matter what the public amenities, cannot help but create a deadening canyon effect up Madison that we will regret evermore. A generation from now, gazing at an unbroken series of 30 FAR buildings spanning five blocks, the public will surely stop and wonder, "what were they thinking?"

Now, we know that Chair Weisbrod and others will quickly say that each of these proposed projects will be required to go through a full public review process. But as sure as we know that the MTA is short half its capital budget, to the tune of $15 billion dollars, and therefore unable to pay for the desperately needed capital projects already in the pipeline (hence the deal with SL Green), we all know that the pressure to use private developers to pay for long-overdue improvements will only grow and ultimately overshadow – pun intended – the public's right to a decent amount of light and air. We have no doubt that, if given the allowance to ask for up to 30 FAR, every developer in the Corridor will ask for the full floor area ratio and the pressure to approve these oversized towers, given the right package of improvements, will prove overwhelming. This ULURP is government's only opportunity to decide what is right and in the public interest for the corridor as a whole and we are convinced that an unbroken string of the tallest towers in the world is not the correct answer.

We implore the Commission to sidestep this inevitability while it is still possible and lower the allowable FAR for the corridor.

We thank you for your time.

MANHATTAN BOROUGH BOARD

RESOLUTION

RECOMMENDING CONDITIONAL DISAPPROVAL OF THE APPLICATION FOR ACTIONS RELATING TO THE ONE VANDERBILT DEVELOPMENT (C 150128 ZSM, C150129 ZSM and C 150130 ZSM), THE PROPOSED TEXT AMENDMENT CREATING A VANDERBILT CORRIDOR (N 150127 ZRM) AND A CITY MAP AMENDMENT (C 140440 MMM) TO DESIGNATE THE BLOCK OF VANDERBILT AVENUE BETWEEN EAST 42nd STREET AND EAST 43rd STREET A PUBLIC PLACE, UNLESS UNRESOLVED ISSUES ARE ADDRESSED

WHEREAS, The Department of City Planning (DCP) seeks a text amendment to the Zoning Resolution (N 150127 ZRM) to facilitate commercial development and pedestrian circulation and to allow greater opportunities for area landmarks to transfer unused development rights; and

WHEREAS, the proposed text amendment would create a five block Vanderbilt Corridor within the Grand Central Subdistrict of the Special Midtown District in which a new Special Permit for Grand Central Public Realm Improvement Bonus (Section 81-64) will be available that will allow buildings to achieve a floor area ratio (FAR) of 30.0 through the completion of significant improvements to the pedestrian or mass transit circulation network; and

WHEREAS, the proposed text amendment would also allow landmarks within the Grand Central Subdistrict to transfer unused development rights to receiving sites in the Vanderbilt Corridor to achieve an FAR on the receiving sites of up to 30.0; and

WHEREAS, the proposed text amendment would create a new special permit for transient hotels within the Vanderbilt Corridor to encourage the development of business oriented new hotels; and

WHEREAS, DCP seeks a City Map Amendment (C 140440 MMM) to designate the block of Vanderbilt Avenue between East 42nd and East 43rd Streets a Public Place; and

WHEREAS, Green 317 Madison, LLC seeks a special permit (C 150128 ZSM) to transfer development rights from a landmark building in order to facilitate construction of an approximately 1.3 million square foot mixed-use development called One Vanderbilt between East 42nd and East 43rd Streets, and Madison and Vanderbilt Avenues; and

WHEREAS, Green 317 Madison, LLC seeks a special permit pursuant to the proposed Section 81-641 of the Zoning Resolution (C 150129 ZSM) for a Grand Central Public Realm Improvement Bonus of 12.3 FAR; and

WHEREAS, Green 317 Madison, LLC seeks a special permit pursuant to the proposed Section 81-642 of the Zoning Resolution (C 150130 ZSM) for modification of street wall, curb cut, height and setback, and mandatory district plan element regulations; and

WHEREAS, the proposed off-site improvements include:

1. The creation of a Public Place on Vanderbilt Avenue to be used as a pedestrian plaza;
2. A new stair in the cellar of the Pershing Square Building that would connect the Grand Central subway station mezzanine with the Lexington Avenue line platform; and
3. A new subway entrance with two new street-level subway stairs on the sidewalk at the southeast corner of East 42nd Street and Lexington Avenue that would connect to and open an existing 4,100 square foot below-grade passageway; and
4. Modification of columns in the Grand Central subway mezzanine to provide more pedestrian circulation space and improve pedestrian flow; and
5. 8,475 square feet of expanded Grand Central subway mezzanine space in the cellar of the Grand Hyatt Hotel and the creation of two new stairs from the new mezzanine area to the platform; and
6. Replacement and widening of an existing street-level subway entrance at the northwest corner of Lexington Avenue and East 42nd Street; and

WHEREAS, the proposed on-site improvements would include:

1. A new subway entrance on East 42nd Street with escalator, elevator and stairways providing access to the shuttle subway station and providing below-grade connections through the Intermodal Connector to the 4, 5, 6, and 7 subway lines at the Grand Central Terminal concourse level and to the Long Island Rail Road at the East Side Access concourse level; and
2. a new 4,000 square foot "Transit Hall," with entrances at East 43rd Street, providing stairway and elevator connections to the new Intermodal Connector, with connections to East Side Access, the shuttle, Grand Central Terminal, and the 4, 5, 6, and 7 subway lines; and
3. new elevator and escalator connections from East Side Access through the development site that will allow for connection from the East Side Access concourse to street level or the 4, 5, 6, 7, or Shuttle subway lines; and

WHEREAS, the proposed Vanderbilt Corridor is located above the future concourse of the Long Island Railroad's East Side Access, which will be 50 feet below the buildings on the west side of Vanderbilt Avenue; and

WHEREAS, the Yale Club, the Roosevelt Hotel, and 52 Vanderbilt are located in the Vanderbilt Corridor, are considered eligible landmarks by the Landmark Preservation Commission (LPC), and would be put at greater risk of redevelopment by the proposed actions; and

WHEREAS, the proposed Public Place on Vanderbilt Avenue will generate bonus floor area for the One Vanderbilt development, but the scope of improvements to the space will not be determined until after approval of this application, nor has the applicant provided for the ongoing maintenance of this space; and

WHEREAS, more than half of the proposed One Vanderbilt's frontage on the proposed Vanderbilt Avenue Public Place will be taken up by a private office lobby; and

WHEREAS, concurrent with this application the East Midtown Steering Committee, co-chaired by Councilmember Dan Garodnick and Borough President Gale Brewer, is evaluating potential zoning changes and other planning issues in the wider East Midtown neighborhood; and

WHEREAS, Community Boards 5 and 6 approved resolutions recommending denial with conditions of all actions unless:

1. The text amendment is limited to sites for which the City and the MTA have a coordinated plan for improvements to the public realm; and
2. The text amendment provides guidelines for what type of improvements may merit a given FAR increase; and
3. The text amendment requires that any building granted a Grand Central Public Realm Improvement Bonus be designed to perform 30 percent better than ASHRAE 90.1, 2010; and
4. The East Midtown Steering Committee fully consider the five blocks between East 42nd and East 47th Street and Vanderbilt and Madison Avenues; and
5. The text amendment require the LPC to issue a letter in support of the harmonious relationship to the Grand Central Terminal for any proposed building; and
6. The text amendment be altered such that only sites fronting on two wide streets, overlooking Grand Central Terminal, adjacent to a subway station and with access to the Grand Central Terminal circulation system could merit the full 15 FAR bonus; and
7. The One Vanderbilt project achieve a LEED v4 Platinum certification; and
8. A major public space is created at street and concourse level, through or adjacent to and connecting with the main lobby of One Vanderbilt, and connecting the corner of Madison Avenue and East 42nd Street and the main concourse of Grand Central; and

WHEREAS, the two affected Community Boards additionally questioned many elements of the proposal including subway entrance placement, sidewalk widths, and the size of the proposed office lobbies;

THEREFORE, the Manhattan Borough Board recommends disapproval of ULURP numbers C 150128 ZSM, C150129 ZSM and C 150130 ZSM (One Vanderbilt Development), N 150127 ZRM (text amendment) and C 140440 MMM (City Map amendment) unless a responsible conclusion is reached on issues of public access and public space relating to the Grand Central Terminal circulation network, the environmental sustainability requirements of the proposed zoning text for the Vanderbilt Corridor, and the language of the zoning text relating to, and the method for, achieving significant FAR bonuses.

Gale A. Brewer

Manhattan Borough President
Chair of the Manhattan Borough Board

Good morning and thank you to the East Midtown Rezoning Task Force for giving me the opportunity to speak. I'm Robert Billingsley, Vice Chairman of DTZ and speaking for our client the owner of 250 Park Avenue which is bordered by Vanderbilt Avenue between 46th and 47th streets just outside the proposed Vanderbilt Corridor rezoning.

We commend the DOP and Council Member Garodnick for making the rezoning of East Midtown a priority and strongly agree with the intentions to encourage new office development with Grand Central Terminal as a hub, to enhance the transportation infrastructure and to improve the appearance of Vanderbilt Avenue for all New Yorkers. While we support the vision, we do so with a caveat – that our building be granted the same zoning as its sister buildings in the Vanderbilt Corridor. This would unlock the potential of the north end of Vanderbilt Avenue as One Vanderbilt is unlocking the potential of the south end of Vanderbilt.

In many respects, 250 Park Avenue is the poster child for the rezoning within its close proximity to Grand Central Terminal and age 90+ years; a similar vintage to other buildings on Vanderbilt Avenue. We have spent tremendous capital attempting to modernize 250 Park but the building remains constrained by its 1923 infrastructure featuring:

- Too many columns
- Too few windows
- Too low slab heights

All of which make us less efficient than buildings built in the 1970s, let alone newer structures.

However, from a historic perspective, 250 has been dramatically altered over 90 years. The ground floor façade, terraces and roof are dramatically altered from their original state, virtually all of the original masonry and brickwork has been replaced and the lobby is on at least its fourth rendition.

Aside from building age and geographic location there are issues concerning mass transit, and the street scape appearance which intrinsically link 250 to the Vanderbilt Corridor and clearly distinguish it from other midtown buildings.

Regarding Mass Transit - we sit atop tracks 35 and 36 of Metro North and Eastside Access. All of DOP's plans demonstrate this unique transit feature which ties us to Grand Central and Vanderbilt Avenue and distinguishes 250 from the rest of Midtown. In a development scenario, their features could also provide a unique value to future improvements in mass transportation.

Concerning Street Scape - we applaud the proposed plaza between One Vanderbilt and Grand Central Terminal which will act as a catalyst to improve the appearance of Vanderbilt Avenue. But while the DOP's plan is improving the appearance of the south end of Vanderbilt

Avenue, it is consigning the north end of Vanderbilt Avenue to remain a drab alley because we can only enhance the appearance of the Vanderbilt block front between 46th and 47th Streets via new development which would relocate the existing electrical vaults and building plant presently on Vanderbilt Avenue.

Is 250 Park to remain this Great Wall blocking off Vanderbilt Avenue from Park Avenue, leaving this section of Vanderbilt Avenue to remain as a pedestrian purgatory? Or is it to become invigorating new architecture, linking Park Avenue to Vanderbilt, enhancing pedestrian experience and becoming the northern hub of an exciting band of new architecture surrounding Grand Central Station Terminal.

Let me end by once again congratulating all the parties for moving forward on East Midtown, it is an important project. It is our hope that as you determine your position on the Vanderbilt and Midtown

rezoning, that the East Midtown Steering Committee will recommend that 250 Park Avenue site be rezoned so that appropriate, fair and contextual zoning can be commonplace on all sites along Vanderbilt Avenue.

TESTIMONY
OF DAVID BRAUSE OF BRAUSE REALTY INC.
ON THE PROPOSED VANDERBILE CORRIDOR TEXT AMENDMENT

MY NAME IS DAVID BRAUSE OF BRAUSE REALTY. I AM THE PRESIDENT OF BRAUSE REALTY INC AND THE OWNER OF 52 VANDERBILT AVENUE. I AM PLEASED TO BE HERE TODAY TO HAVE THE CHANCE TO EXPRESS MY SUPPORT FOR THE PROPOSED VANDERBILT CORRIDOR TEXT AMENDMENT.

REPRESENTING A 90-YEAR OLD, THIRD GENERATION FAMILY REAL ESTATE BUSINESS, BRAUSE REALTY HAS OWNED 52 VANDERBILT AVENUE SINCE 1978, HAVING BOUGHT THE BUILDING OUT OF THE BANKRUPTCY OF THE PENN CENTRAL RAILROAD. 52 VANDERBILT IS A 21-STORY BOUTIQUE OFFICE BUILDING WHICH SERVES A VARIETY OF TENANTS IN THE TECHNOLOGY, MEDIA, AND FINANCIAL INDUSTRIES. THE DIRECT CONNECTION FROM OUR BUILDING TO GRAND CENTRAL TERMINAL IS A MAJOR BENEFIT TO OUR TENANTS, WHO COMMUTE TO THE BUILDING USING THE COMMUTER TRAINS AND SUBWAYS.

WE STRONGLY SUPPORT THE VANDERBILT AVENUE CORRIDOR UPGRADE PROPOSED HERE TODAY. THE EAST MIDTOWN BUSINESS DISTRICT IS CRITICAL TO THE CITY'S TAX BASE AND ECONOMY. IT IS THE CITY'S MOST PROMINENT COMMERCIAL DISTRICT AND REGIONAL TRANSIT HUB WITH APPROXIMATELY 70 MILLION SQUARE FEET OF OFFICE SPACE SURROUNDING GRAND CENTRAL TERMINAL.

HOWEVER, TO REGAIN ITS POSITION AS A PREEMINENT GLOBAL BUSINESS DISTRICT, THE CITY NEEDS TO ADDRESS THE PROBLEM OF ITS AGING OFFICE BUILDINGS AND INSUFFICIENT OFFICE DEVELOPMENT. THE UPCOMING LIRR CONNECTION TO GRAND CENTRAL TERMINAL WILL ONLY INCREASE OFFICE DEMAND IN THE DISTRICT AND WORSEN TRAFFIC AND CONGESTION.

FOR YEARS VANDERBILT AVENUE HAS HAD LITTLE RETAIL ACTIVITY, ESPECIALLY AT NIGHTS AND WEEKENDS. OUR RESTAURANT TENANTS WERE SOME OF THE ONLY BUSINESSES OPEN AT THOSE TIMES. THIS PROPOSAL WILL CERTAINLY INCREASE THE ACTIVITY ALONG VANDERBILT AVENUE, ESPECIALLY AS THE STREETSCAPE IMPROVES WITH NEW LIGHTING, PEDESTRIAN FRIENDLY AREAS, AND MORE RETAIL SPACES IN THE NEW BUILDINGS, SUCH AS SL GREEN'S ONE VANDERBILT.

THE GRAND CENTRAL TERMINAL SUBWAY STATION IS EXTREMELY CONGESTED, THE STAIRWAYS AND ESCALATORS ARE TOO NARROW FOR EFFICIENT AND SAFE PASSAGE, AND WITH THE ADDITION OF LIRR COMMUTERS, THE PROBLEMS WILL ONLY WORSEN OVER THE NEXT FEW YEARS.

THIS AMENDMENT WILL PROVIDE NEW OFFICE BUILDINGS WITH MODERN SPACES FOR EXACTLY THE TYPES OF TECH, MEDIA AND FINANCIAL TENANTS THAT SHOULD BE LOCATED NEXT TO SUCH AN IMPORTANT TRANSPORTATION HUB.

THE MONEY INVESTED IN THE NECESSARY INFRASTRUCTURE IMPROVEMENTS WILL HELP TRANSIT CONNECTIONS, PEDESTRIAN FLOW, AND INCREASE OPEN SPACE IN THE AREA, ALL OF WHICH WILL CONTRIBUTE TO A MUCH IMPROVED CENTRAL BUSINESS DISTRICT AREA AROUND GRAND CENTRAL TERMINAL.

I URGE YOU TO VOTE TO APPROVE THE VANDERBILT AVENUE CORRIDOR AMENDMENT AS SOON AS POSSIBLE, TO ALLOW US TO BEGIN IMPROVING OUR NEIGHBORHOOD QUICKLY.

THANK YOU.

STATEMENT ON BEHALF OF THE TRUSTEES OF ST. PATRICK'S CATHEDRAL CONCERNING VANDERBILT CORRIDOR ZONING PROPOSAL

ULURP NOS. N 140440 MMM, N 150127 ZRM / CEQR NO. 14DCP188M

Good morning Chair Weisbrod and Commissioners. I am David Brown, the Director of Real Estate for the Archdiocese of New York. This statement is submitted on behalf of the Trustees of St. Patrick's Cathedral in support of the proposed zoning amendments for the Vanderbilt Corridor and the proposed special permits for the One Vanderbilt development.

St. Patrick's Cathedral, known to New Yorkers as "St. Pat's", is the spiritual home to millions, including the 2.6 million Catholics residing in the Archdiocese of New York. St. Patrick's is not just a church, it is an icon for the Catholic faith, beloved and recognized by people throughout the world, enjoyed by over 5.5 million visitors annually. St. Patrick's received landmark designation in 1966.

As one of the oldest structures in East Midtown, St. Patrick's has seen well over a century of change in this neighborhood. Continued revitalization is critical if the area is to prosper. The proposed Vanderbilt Corridor zoning would appropriately allow for increased density near transit hubs. And the potential benefits to transit infrastructure resulting from this proposal are demonstrated by the wide array of improvements proposed, particularly the changes to the Grand Central subway station, as part of the One Vanderbilt project.

The Vanderbilt Corridor proposal is the first step in carrying out a broader update to the zoning for East Midtown which the City has pledged to undertake. We urge the completion of this effort and believe it will lead to much-needed investment in East Midtown.

The larger rezoning planned for East Midtown should follow the lead of the Vanderbilt Corridor and expand opportunities for the transfer of development rights from landmarked properties. With over 1,300 individually designated landmarks, and thousands more covered by historic districts, the City has reached a point where the emphasis must be on maintaining these buildings. Absent the ability to transfer unused development rights, it is very difficult to fund the upkeep of landmark structures as is required under the Landmarks Law, and is particularly difficult in the case of landmarks owned by religious owners. For example, the current program to fully restore the Cathedral to ensure that it endures for future generations is estimated to cost in excess of $175 million. The available zoning tools do not provide any opportunities for transfer of the unused development rights from this property, and an expansion of transfer opportunities is critical to enable owners of landmarked properties to properly maintain their buildings.

The Vanderbilt Corridor rezoning and the One Vanderbilt project are important initiatives for the City. We support these proposals and urge the City Planning Commission to vote in favor of their adoption.

Testimony of Nancy Aber Goshow, AIA LEED AP to NYC DCP 4 February 2015
Member of CB5 and the Multi-Board Task Force on East Midtown Rezoning for Vanderbilt Corridor and One Vanderbilt

I am a member of CB5, Land-use & Zoning Committee and Transportation and Environment Committee, the Multi-Board Task Force of CB5 and 6, a licensed Architect and a LEED Accredited Professional.

I would like to speak about the importance of excellence in all facets of design; particularly, in this case, for excellence in sustainable design.

This building, to be designed by one the great architectural firms in NYC, KPF, will set a standard for all new buildings in the Vanderbilt Corridor and elsewhere in NYC.

The environmental standards must be high, for the livability and workability of the future of our city is at stake.

In return for the request by SL Green and the Department of City Planning for 30 FAR, can we ask for anything less than excellence in sustainable and environmental design? We have to insist on sustainable design excellence here and now. Why?

Efforts to reduce emissions through top-down global agreements have been stymied by political disagreements and until these differences are resolved, meaningful changes will have to come from the bottom up, with local leaders setting worthy examples. NYC has been lucky to have two mayors in a row to acknowledge both the facts and the fearsomeness of confronting climate change and set goals in motion.

We all support Mayor De Blasio's Green House Gas emission reduction goal of 80% reduction by 2050. We are proud that NYC, the largest city to accept this 80 by 50 challenge, will be a leader in word and deed for the development of a 21st Century, world class City.

Our Borough President, Gale Brewer, Community Boards 5 and 6 and many others support these worthy goals. But none of us wants to stifle development.

You see, I think our problem is that we like to talk the sustainability talk without actually making our demands explicit for adherence to a specific doable, recognizable standard, thus leaving decisions up to the developer who will often claim – with admittedly some justification – that the high standards of sustainable design and construction excellence cannot be economically achieved.

That is precisely what we have been told here, granted that they have indeed been seeking worthy sustainable strategies, but just not committing to the highest standard of excellence many of us think should be required.

What then, is the right and balanced approach? Can excellence in sustainable design be part of the equation? Can we insist on the development of truly high performance buildings? I think we can and we must!

If so, is there a recognized standard of excellence that has been widely regarded as the standard in the industry? The answer is clear: The standard of excellence is LEED v4 Platinum for Core and Shell. So if we have a recognized standard of excellence, LEED v4 Platinum for Core and Shell; have we a right to insist that it be adopted here? I think the answer is yes.

LEED is a flexible standard. There are many ways to achieve its goals. For example, if a sustainable strategy like geo-thermal heating and cooling is not practical, perhaps the building envelope can be designed to be more energy efficient. It is admittedly a very tough standard; it must be so for the sake of our future.

So I would ask that the LEED v4 Platinum for Core and Shell standard of excellence be considered as the standard by which we evaluate this building and in fact all future buildings of this type, especially in this special Vanderbilt Corridor district of Manhattan.

Let us raise the standard high for our health and that of our children and our children's children.

THE CITY CLUB OF NEW YORK

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CHAIRPERSON

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Michael S. Gruen
Jeffrey Kroessler
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John Pettit West, III
J. Mike Zee

Board/Officers

Ross Sandler, Chair
Michael S. Gruen, Pres.
E. Gail Suchman, Treas.
Stuart Pertz, Sec'y
Stanley Turkel, Hon. Chair

February 13, 2015

Hon. Carl Weisbrod
Chairman
NYC Planning Commission
22 Reade Street
New York, NY 10007

Vanderbilt Corridor Rezoning; One Vanderbilt Ave.
(Cal. Nos. 22-27)

Dear Chairman Weisbrod:

The following expands upon my comments at the public hearing on February 4 concerning the proposed Vanderbilt Corridor rezoning.

In response to my testimony you raised the question whether Nollan and Dolan[1] apply to the proposed zoning or the special permit for One Vanderbilt because, as you said, the owner applying for a special permit under the proposed new zoning enters into any arrangement for an FAR bonus consensually. My brief response was that Koontz[1] has entered into the Nollan/Dolan sequence and removes any possible doubt; the Supreme Court does intend to subject all forms of exactions in the land use regulation field, including purportedly consensual exactions, to the Nollan/Dolan tests.

Those conclusions are explained in detail as follows:

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Nollan and Dolan Cases

In Nollan, the Supreme Court ruled that, although government may exact concessions from an owner as a condition of granting permission for land use, the exaction must substantially advance a legitimate governmental purpose that specifically relates to the permit the owner seeks. The Court termed this "essential nexus." Thus, the Nollans sought permission to rebuild and expand their beach-front house in a manner that would cut off view from the highway located on the upland side of the Nollans' property. The Coastal Commission consented, but only on condition that the Nollans grant an easement for the public to pass laterally along the beach in front of Nollans' house. The agency reasoned that this would make up for the loss of view from the highway. The Court ruled that a nexus was lacking because allowing people already on the beach to traverse the portion of the beach in front of the Nollans' house does nothing to improve the view from the highway. In other words, the exaction must serve substantially the same purpose as denial of the permit would serve.

In Dolan, the Court addressed a situation where the required nexus exists, but the exaction is disproportionate to the effect of the owner's proposed imposition on the public. The Court acknowledged that additional traffic to be generated by expansion of Dollan's hardware store may justify requiring her to allow use of a passageway along her property for pedestrian and bicyclist use, and that her paving her parking lot and thus increasing run-off into an adjacent creek and the prospect of overflow may justify requiring her to forego any construction within the floodplain. But conditioning approval of the expansion project on her granting title to the floodplain and passageway to the City was overkill. So, the Court, drawing from State decisions in the exactions field, pronounced a new test of "rough proportionality" requiring that the exaction go no further than what is approximately necessary to overcome the burden the owner will impose on the public by performing the work contemplated under the requested permit.

In reaching the "rough proportionality" formula, the Court considered formulas used by several states, some of which it considered too lenient, some too rigid, and some more or less just right. Significantly, one of the cases came from New York's Court of Appeals[3] and was deemed too lenient by the Supreme Court as it required no more than a rational justification for the government's exaction. It must be assumed that New York's former lenient standard no longer applies and is replaced in New York by the Dolan test.

Koontz' Clarification

Koontz declares that the holdings of Nollan and Dolan may not be limited to their particular facts. Their tests are intended to be broadly applied. The regulatory agency in Koontz argued that its denial of a wetlands building permit was discretionary and absolute. True, it had suggested to the applicant that he could make a deal by either substantially reducing the size of his project or offering to perform remedial work on wetlands belonging to the agency and located several miles away, or offering to perform work of similar value at another of the wetlands agency's sites to be mutually agreed upon. The choice, the agency implied, was

entirely up to the applicant to make of his own free will. More explicitly, the agency claimed that Nollan and Dolan applied to conditions subsequent or limitations incorporated into a granted permit, whereas its action involved a condition precedent to its taking discretionary action (i.e. we will only grant the permit if you comply with the suggestion we have made).

The bottom line is that the Court rejected the agency's position and ruled that the Nollan and Dolan tests apply generally to land use regulation. How it got there is revealing. The very first sentence of the opinion sets the tone: Nollan and Dolan, the Court wrote, "provide important protection against the misuse of the power of land-use regulation." (133 S.Ct. at 2591). Later, the Court explains,

> Our decisions in those cases [Nollan and Dolan] reflect . . . that land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine [stating that government may not attach unwarranted conditions to the exercise of constitutional rights] prohibits because the government often has broad discretion to deny a permit that is worth far more than property it would like to take. By conditioning a building permit on the owner's deeding over a public right-of-way, for example, the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation. See [Dolan, 512 U.S. at 384; and Nollan, 483 U.S. at 831]. So long as the building permit is more valuable than any just compensation the owner could hope to receive for the right-of-way, the owner is likely to accede to the government's demand, no matter how unreasonable. Extortionate demands of this sort frustrate the Fifth Amendment right to just compensation, and the unconstitutional conditions doctrine prohibits them.

(133 S. Ct. at 2594-95).

Obviously, the Court perceives a problem going far beyond the unique facts of any particular case: government exercising its authority to regulate land use is commonly in a position to exact conditions that go beyond the valid scope of its constitutional authority. The possible variations in methodology for doing so are almost unlimited. Thus, the rules are intentionally general: there must be "essential nexus" and there must be "rough proportionality" no matter what the structure of the conditions imposed.

No Exception for "Consensual" Agreements

Furthermore, the Court is explicit about allegedly consensual agreements. As it states in the indented quotation above, "By conditioning a building permit on the owner's deeding over a public right-of-way, for example, the government can pressure an owner into *voluntarily* giving up property for which the Fifth Amendment would otherwise require just compensation." That sentence could easily have been written without the word, "voluntarily." Use of the word clearly connotes a recognition that what seems on the surface to be voluntary conduct is often the

response to an offer that cannot be refused because of imbalance of power. Thus, an efficient and effective judicial system does not ponder in the particular situation whether government in some way actually pressured the landowner, nor even whether officials acted in good faith with no intention but to serve the public interest. Rather, it asks whether the end result meets the nexus and proportionality tests.

Thus, the Court dismisses the Water District's argument in Koontz that it did nothing more than offer Koontz a free choice – that he did not have to make any contribution to improve the District's lands elsewhere; he was free to accept a permit to build on just one acre of his own property, though he sought permission to build on 3.7 acres. The Court saw it as potentially imposing an unconstitutional condition. The District would give Koontz the permit he wanted, but only if he in effect paid for it. Such a condition would be permissible only if it satisfied the nexus and proportionality tests. (133 S.Ct. at 2598). The choice described by the Court is eerily similar to a choice offered to (a) build to 30 FAR (and receive incidental benefits such as a waiver of sky exposure rules) and make contributions to the public realm in a negotiated quantity, or (b) build considerably less as of right.

Enforceability by Public

One might ask, who is harmed if the owner actually accepts one of the offered choices and even expresses pleasure in doing so? Does anyone have recourse?

We submit that the public is an interested party and has recourse. The very premise of the proposed Vanderbilt rezoning is that, when availed of, it will result in greater burdens in terms of density, use of transportation facilities, generation of traffic, and similar impacts which need to be mitigated by contributions to the public realm in the form of improvements to the pedestrian circulation system and the transportation infrastructure. Thus, it is presumed that the public suffers from construction under the new zoning. The public also suffers if, notwithstanding good intentions, a commission which should be devoted, independently and neutrally, to planning the City's urban environment, and mediating conflicting land use issues through a comprehensive plan and regulatory regime, might actually, even subconsciously, be engaged in large scale fund raising on behalf of other agencies.

The law in fact fully recognizes that the zoning power is limited to lawful goals and means. See Sunrise Check Cashing v. Town of Hempstead, 20 N.Y.3d 481 (2013). For one thing, it may not sell zoning rights, whether directly or under the guise of exactions. See Municipal Art Society of New York v. City of New York, 137 Misc.2d 832, 522 N.Y.S.2d 800 (Sup. Ct. N.Y. Co. 1987). And a challenge to any such law or transaction may be brought by a private party in the interest of the public. See Id.

In Closing

You probably have on file the City Club's more detailed analysis of the applicable law which it prepared in connection with the East Midtown rezoning proposal that was withdrawn at the end of 2013. (See: http://cityclubny.org/wp-content/uploads/2013/08/Position-statement-8-

19-19-FNL.pdf). If you or any of the Commissioners would like a copy of that, I would be pleased to provide it.

I, and other members of the City Club, would also be happy to meet with you and others at the Commission to explain our position further.

Could you please arrange for distribution of the enclosed copies of this letter to the other Commissioners and relevant staff. Thank you very much.

Sincerely yours,

Michael Gruen

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[1] Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141 (1987); Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309 (1994).

[2] Koontz v. St. Johns River Water Management District, 133 S.Ct. 2586 (2013).

[3] Jenad, Inc. v. Village of Scarsdale, 18 N.Y.2d 78 (1968).

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THE CITY CLUB OF NEW YORK

Fighting vigorously for the urban environment and responsible government

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February 13, 2015

Hon. Carl Weisbrod
Chairman
NYC Planning Commission
22 Reade Street
New York, NY 10007

Vanderbilt Corridor Rezoning; One Vanderbilt Ave.
(Cal. Nos. 22-27)

Dear Chairman Weisbrod:

I am enclosing a report of the City Club concerning the proposed Vanderbilt Corridor rezoning, together with 19 additional copies for circulation to other Commissioners and staff.

We would be pleased to meet with you and others to discuss this further.

Sincerely yours,

Michael Gruen

249 West 34th St., #402, New York, NY 10001 • (212) 643-7050, Fx: (212) 643-7051 info@cityclubny.org

THE CITY CLUB OF NEW YORK

Fighting vigorously for the urban environment and responsible government

Report of the City Club of New York
Concerning Vanderbilt Corridor
February 13, 2015

Introduction and Summary

The proposal by the New York City Department of City Planning to rezone the Vanderbilt Corridor adjacent to Grand Central Terminal would take zoning in an unfortunate direction, using it as an inadequate substitute for a plan and exceeding the City's statutory authority. A better path would be to first complete a plan for the area and treat zoning as only one part of the regulatory regime employed in its realization.

A plan for the neighborhood should take into account:

- The **relationship among CBDs** in the city and the region as it relates to projected office space demand.
- The integration and improvement of **the public realm** so as to better connect transit, buildings, public space, and pedestrian circulation.
- **Future transportation improvements** that might support East Midtown, including a rail connection between Grand Central and Penn Station, the Second Avenue subway, light rail or bus rapid transit on 42nd Street, and rail access to the airports.

Such a plan might result in:

- An **operating group** to coordinate the operation and maintenance of the public realm in the neighborhood, especially the pedestrian circulation system linking buildings, transit, and streets.
- A **tax increment district** that would capture a portion of the increase in property value resulting from the completion of East Side Access in order to fund capital investment within the district. This would not be a surcharge on real estate taxes but a segregation of part of the increase in property value.
- An **urban design plan** that addresses the shared pedestrian circulation system with an understanding that better connectivity, more retail frontage, enhanced maintenance, and light, air, and circulation improvements benefit the entire neighborhood.

A plan for East Midtown would not only provide a solid foundation for the area's future development, but it would also avoid the various shortcomings of the City's current rezoning proposal. These include the following:

Sky Exposure:
The failing sky exposure score of One Vanderbilt (-62, when a passing score is +75) is a major concern. Without seeing serious alternatives it is difficult to understand to what degree the failing scores are the result of fitting too much FAR into the building envelope. But as it stands, the current proposal undermines the access to light and air in streets, plazas, and adjacent buildings that longstanding height and setback rules aimed to protect.

The history and purpose of the existing sky exposure regulations, the egregiously failing score for One Vanderbilt, and the impacts on streets and other buildings are not addressed in the ULURP application or in the Draft EIS. This would appear to be a failure to disclose potentially significant impacts.

Conflict of Interest:
The City's role as a seller and regulator of development rights creates an incentive for pricing these rights below their market value and for misusing zoning as a revenue generator, instead of as a tool in the implementation of comprehensive plans. This incentive draws the City away from its rightful role of balancing private interests and maximizing public benefit.

Negative Impact on Landmarks Preservation:
The proposed zoning substitutes the City as source of development rights in lieu of owners of nearby landmarks. In doing so, it undermines the constitutional basis for the City's Preservation law, since the ruling in the key case adjudicating the law's constitutionality based its determination in part on the extent to which transferable development rights mitigated the burden imposed by the government on the owners of landmarks.

Limitations of Incentive Zoning:
Because it constitutes a form of exaction, the public benefit required in exchange for an FAR bonus must relate proportionally to the new development resulting from the bonus. Instead of basing the size of the bonus and the public benefit on this principle, the proposed plan bases it on confidential case-by-case negotiations with individual landowners, thereby rendering the plan vulnerable to the characterization of unauthorized contract zoning.

Mitigation of East Side Access:
A portion of the Public Realm Improvement bonus to be earned by One Vanderbilt is for improvements to the Lexington Avenue subway station that were identified as mitigation for the extension of the #7 and for East Side Access. Shifting this responsibility to One Vanderbilt relieves the City and MTA of an approximately $42 million obligation and imposes approximately 2.5 FAR of density on the neighborhood without a compensating amenity.

THE CITY CLUB OF NEW YORK

Fighting vigorously for the urban environment and responsible government

Report of the City Club of New York
Concerning Vanderbilt Corridor
February 13, 2015

Main Text

A Better Path for East Midtown

This paper argues that the proposal by the New York City Department of City Planning to rezone the Vanderbilt Corridor adjacent to Grand Central Terminal misuses the power of the municipality to zone property. It differs from the proposal[1] in the previous administration to rezone East Midtown in that a developer must build an improvement to the public realm rather than just write a check to receive bonus floor area. Still, it is zoning-for-dollars and it would take zoning in a wrong direction. How might we do better?

Zoning is but one of many tools available to shape the future of our city. Others include designating landmarks, building infrastructure, providing tax incentives, urban design guidelines, and more. The effectiveness of these tools depends on the appropriateness of their application and the quality of the well considered plan they seek to implement.

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[1] The City's proposal in 2013 to rezone East Midtown introduced a District Improvement Bonus (DIB) and a District Improvement Fund (DIF). To receive a DIB a development would pay to the DIF a set amount of dollars per square foot of zoning floor area. The DIF would then use the funds it received to build improvements to the public realm. The City Club characterized this approach as "zoning-for-dollars" (See City Club position statement at: http://cityclubny.org/wp-content/uploads/2013/08/Position-statement-8-19-19-FNL.pdf) and noted, among other things:

- that the zoning was not based on a well considered plan relating the additional floor area to public realm improvements,
- the lack of a requirement for proximity between the public benefit of the improvements to the public realm and the public disbenefit of the increased density of the bonus floor area,
- a potential lack of proportionality between the improvements to the public realm and the increases in density,
- a conflict between the City's interest in determining appropriate densities and in using increased density to fund improvements to the public realm in place of ordinary funding sources, and
- a competition between the DIF and other public goods, particularly the transfer of unused development rights from Grand Central Terminal.

In the case of East Midtown the thesis proposed here is that there should be a Terminal City Design and Finance District for the area near Grand Central Terminal and that such a district could serve as a model for similar districts at Penn Station and Long Island City and, in a diminutive form, at local transit hubs.

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The Role of Zoning: *History as context – first resolution 1916, current resolution 1961, Midtown District 1982, Grand Central Subdistrict 1992.* (page 2)

The Future of Zoning: *Transit access – trends from ministerial to discretionary and from on-site to off-site, Vanderbilt Corridor proposed 2014, treat like sites alike.* (page 5)

The Example – One Vanderbilt: *30 FAR by landmark TDR (Transfer of Development Rights) and PRI (Public Realm Improvement) bonus, part of bonus for #7 and ESA mitigation, City's conflict of interest, modification of MiD (Special Midtown District) requirements, failing sky exposure score.* (page 7)

Terminal City and Battery Park City as Exemplars: *Large planned sites, coordination and funding of public and private realms.* (page 9)

Terminal City's Future: *East Side Access and real estate investment, well considered plan, public realm funding, making a plan.* (page 9)

Terminal City Design and Finance District: *Operating Group, Tax Increment Finance, Urban Design Plan.* (page 12)

A Model for Other Transit Hubs: *Penn Station, Long Island City.* (page 14)

A Better Path: *Use best tools to regulate, fund, and operate improvements based on a well considered plan.* (page 14)

The Role of Zoning: New York City established the nation's first zoning resolution in 1916, amended it comprehensively in 1961, added the Special Midtown District in 1982, and added the Grand Central Subdistrict in 1992. This history provides a context in which to judge the current proposals.

New York State's Land Use Enabling Acts grant local government the power to regulate and restrict, for the purpose of promoting the health, safety, morals, or the general welfare of the community, the size of buildings and other structures, the percentage of lot that may be occupied, the size of open spaces, the density of population, and the location and use of buildings, structures and land. They do not provide for the sale of development rights

The 1916 resolution mainly addressed (i) incompatible uses and (ii) obstruction of light and air. The proverbial incompatible use is a glue factory (which then

involved rendering dead animals) next to your home. In New York City it was garment factories near the stores on Fifth Avenue. Light and air was a reaction to the Equitable Building, which occupied its entire site in Lower Manhattan to a height of 41 stories and blocked light and air to the adjacent streets and buildings and the Woolworth Building was a model for the new rules.

The 1961 amendment of the zoning resolution revised the rules protecting light and air to encourage towers in plazas – the Seagram Building was much admired as a model of the international school of modern architecture (this was zoning based on a plan, or at least a style). It also added density controls based on floor area ratio (FAR), the ratio between the floor area in the building and the area of its lot. And to encourage plazas it introduced incentive zoning that allowed additional FAR in return for the density ameliorating amenity of a plaza.[2]

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2 Incentive zoning is a system in which a zoning incentive or bonus is granted in exchange for a community benefit. The bonus consists of an adjustment to a zoning ordinance provision; and the amenity can consist of open space, affordable housing, elder care, day care, or other physical, social, or cultural benefit that accrues to the community, or of cash to be used to provide that amenity. This zoning scheme must operate in compliance with the City's comprehensive plan and be implemented as an amendment to local zoning law. Incentive zoning provisions must specify, among other elements, the incentives that may be granted, the community benefit that may be accepted from the applicant, and the criteria for approval.

Incentive zoning is premised on a mitigating rationale. The city is in effect saying that the public is willing to endure the burden of additional density in exchange for a public amenity. Absent this rationale, the program would become a sale of development rights and exceed the scope of the City's police power. The practice of specifying zoning's bonus-to-amenity formula provides a safeguard against treating the program as zoning-for-dollars. Arriving at a formula in advance implies a public benefit analysis, instead of the market calculus that would characterize an outright sale of development rights.

Because incentive zoning conditions development rights on a form of payment, it constitutes an exaction. Courts' treatment of exactions has involved a special application of the doctrine that protects the constitutional right to just compensation for property taken by the government. This application arises from a sense that land use permit applicants are especially vulnerable to abuse because the government has broad discretion in denying permits whose market value may far exceed the fee that the government would like to take. Accordingly, courts have held that exactions must be subjected to a dual-nexus test that evaluates whether the exaction is reasonably related and proportional to the burdens imposed by the contemplated development. This test protects applicants against extortionate abuse of governmental discretion in the approval process. The most recent Supreme Court ruling on the matter (Koontz) holds that exactions must abide by the dual nexus test regardless of whether a permit is approved or denied and regardless of whether the exaction is physical or monetary.

In other words, the cost of a zoning bonus permit cannot exceed the cost of the impacts directly attributed to new development. If the city exacts property (in any form) as a condition of building, then that condition must pass the dual-nexus test. The voluntariness of the exchange -- the fact that the developer strikes the deal willingly -- does not matter. The point of the dual-nexus test is to restrict the government's ability to demand more than what it can reasonably link to negative externalities of the new development in question. This requirement conforms to the broader principle that land use controls must have a fair and rational basis related to the dispensation of the city's police power. The governmental sale of development rights at market rate for whatever reason will always raise a red flag.

Continuing with the historical highlights, in 1982 the Special Midtown District (MiD) was added to the zoning resolution. This action recognized that East Midtown was fully developed in respect to its transportation infrastructure and the availability of development sites and, therefore, encouraged development to shift west where there was more subway capacity and more readily developable sites. This led to major investment west of Sixth Avenue, including Times Square and, eventually, Hudson Yards.

MiD also established pedestrian circulation requirements for the privilege of building in Midtown and new height and setback rules to provide more architecturally flexible envelopes for new buildings that would continue to protect light and air to streets and plazas and to adjacent buildings and to do so in a quantitative way that would allow one to measure the degree of any modification or variance.

A motivation of MiD was the loss of daylighting in Midtown, similar to the effect of the Equitable Building on the 1916 zoning, and the concern that the loss was associated with discretionary zoning seeking other public goods. Therefore, MiD made many of the negotiated improvements requirements and established daylighting regulations to flexibly produce buildings that would provide at least the minimum expectation of sky exposure in streets and public spaces.

The Grand Central Subdistrict was added to MiD in 1992 primarily to provide for the transfer of unused development rights from Grand Central Terminal. The ability to realize the value of the unused development rights was a consideration in the Supreme Court's decision to uphold the landmarks law protecting Grand Central. The transfers were originally intended to take place under section 74-79 of the Zoning Resolution through a chain of ownership; the subdistrict allowed transfers without a chain of common ownership.[3]

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3 The proposed zoning of the Vanderbilt Corridor in effect substitutes the City as a source of purchasable air rights in lieu of owners of nearby designated landmarks. It thereby upsets a carefully constructed element of the City's statutory landmarks preservation scheme under which owners of landmarked structures are not deprived of their development rights because they are permitted to convey them to other nearby properties.

This arrangement was endorsed by the Supreme Court in the key case, Penn Central Transp. Corp. v. City of New York, buttressing historic preservation law throughout the country. Penn Central is particularly important in New York City, because it directly construed and sustained the constitutionality of this City's Preservation Law so that our Law has the continuing imprimatur of the Court.

The Supreme Court rested its ruling upholding the Landmarks Commission's denial of a permit to build a tower atop the Terminal in part on the fact that the owner retained the air rights and could sell them for development elsewhere. The Court viewed this as a practical factor diminishing the

The Future of Zoning: In support of public transit the zoning resolution has incorporated several provisions:

- The Special Transit Land Use District (Section 95-00), mapped at existing and proposed subway stations, requires developments to offer easements for access to those stations.
- A requirement in some locations to relocate a subway stair from the sidewalk into an adjacent new or enlarged building (Section 37-40).
- The special permit for subway station improvement bonus (Section 74-634) allowing a bonus of not more than 20% for developments or enlargements adjacent to listed stations.

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economic impact of regulation and thereby protecting the regulation against the charge that prohibiting the tower constituted a taking requiring compensation. (438 U.S. 104 at 135-138).

The transferability of development rights also played a role in the Court's conclusion that New York's law was not designed to impose on private owners burdens that are uniquely governmental in nature. This is an aspect of "the character of the governmental action", one of the three famous "factors" the Court pointed to as influential elements for assessment of regulatory takings cases. In this weighing process, a challenged regulation gains when it is more in the nature of an adjustment of competing private interests (typical of zoning) rather than a means of performing governmental functions as a direct taking would be. (See 438 U.S. 104 at 124-128, 135 (1978)). Thus the Court appears to have been swayed by its recognition that the City's Landmarks Law does not work by acquiring historic properties, but rather by "providing services, standards, controls, and incentives that will encourage preservation by private owners and users. While the law does place special restrictions on landmark properties as a necessary feature to the attainment of its larger objectives, the major theme of the law is to ensure the owners of providing services, standards, controls, and incentives that will encourage preservation by private owners and users. While the law does place special restrictions on landmark properties as a necessary feature to the attainment of its larger objectives, the major theme of the law is to ensure the owners of any such properties both a 'reasonable return' on their investments and maximum latitude to use their parcels for purposes not inconsistent with the preservation goals." (438 U.S. at 109, including notes 6 and 7).

The Supreme Court took the development rights transfer provisions at face value: in the Court's view these rights gave landmark owners reasonable assurance that their development rights retained significant value. One, therefore, has to ask, what would the Court's view be in the next case if it turns out that such rights actually have little to no value because the City has taken to selling zoning rights itself as a direct competitor against owners of transferable development rights?

A related issue is public support for the law. It seems reasonable to assume that a major portion of property owners whose property is subject to landmark protection, or may be in the future, accept whatever burdens that imposes because there are benefits that go with it, including the prestige (which may be reflected in market price) conferred by official recognition of the importance of a building, the mutual benefit of preservation of all buildings in an historic district, and, most significantly here, the opportunity to transfer development rights. Again, what happens to the public faith in these benefits if the City feels free to erase the practical ability to sell development rights?

These show two trends: from on-site to off-site improvements -- from making an access easement available through providing an entrance on-site to performing or paying for work in a subway station – and from ministerial to discretionary approval.

This is a worrisome trend in that zoning functions best when it regulates what happens on a site – providing an easement for access to a subway station or requiring a subway entrance be moved from the adjacent sidewalk onto the site. These sections of the zoning resolution provide considerable specificity as to the size and design of the facility, administrative relief for impractical situations, and no bonus floor area – what is provided reflects the privilege of being located adjacent to the transit station. The property owner, the City/MTA, and the community each know what is required and the process is largely as-of-right.

The special permit for improving a subway station is different. It requires work to be done off of the site, on the MTA's property, it requires a scope of work and a compensating bonus to be negotiated between the property owner and the City/MTA, and it requires a public review. The public review is needed because there are not clear standards in the zoning for the types and amounts of improvements that would generate a public benefit equal to the amount of bonus floor area being granted.

Similarly the proposed zoning for the Vanderbilt Corridor moves from the predictability of well defined, largely as-of-right, on-site requirements to the unpredictability of ill defined, largely discretionary provisions of special permits in which the transfer of landmark development rights, the provision of on-site and off-site improvements to the public realm, and the modification of many of the requirements of MiD are negotiated between the developer and the City/MTA.

Furthermore, although the Vanderbilt Corridor is presented as a special district it is more like a package of special permits which only apply to sites in the five blocks of the corridor.

If the Vanderbilt Corridor were a legitimate special district it would have a unifying theme or plan. For example, its rational might be to provide better access to the Long Island Rail Road concourse that is being built below Vanderbilt Avenue. If so one would expect the district to encompass all sites that might be able to provide access to the concourse and one would expect a plan describing the improvements. However, the five blocks of the corridor are not coincident with the concourse, which extends north to between 48 and 49 Streets while the Corridor stops at 47 Street, and there is no plan for improvements to the public realm that would serve East Side Access.

On the other hand, special permits are designed to treat like sites in a like way. For example, in the Vanderbilt Corridor sites in each of the five blocks may increase their FAR to as much as 15.0. However, these blocks are not alike.

Each block differs in the number of characteristics which might justify greater density. Only One Vanderbilt (i) has frontage on more than one wide street, (ii) overlooks the "air park" above Grand Central, (iii) can connect to the Terminal City pedestrian circulation system, and (iv) is adjacent to a subway station. As a special district one might expect a range of maximum FARs related to the number of density justifying characteristics of the site or as a package of special permits one might expect only sites with all four characteristics to qualify.

Such loosely structured regulation encourages unintended consequences[4]. The Vanderbilt Corridor should either be made into a real special district with a detailed plan that addresses the individuality of the five blocks or it should be recast as a package of special permits for which only sites with the density justifying characteristics of One Vanderbilt would qualify.

The Example – One Vanderbilt: The proposed Vanderbilt Corridor zoning does three things:

- It allows development rights from a landmark site to increase the FAR of the receiving site from 15.0 to 30.0 rather than the maximum of 21.6 currently allowed in the Grand Central Subdistrict.
- It allows a bonus for improvements to the public realm to increase the FAR of the benefiting site from 15.0 to 30.0.
- It permits many of the requirements of the MiD to be modified, including (i) required pedestrian circulation space, (ii) the required significant improvement to the Grand Central pedestrian circulation system to transfer development rights, and (iii) sky exposure requirements.

One Vanderbilt proposes to increase its FAR from 15.0 to approximately 17.7 by transferring unused development rights from the Bowery Savings Bank, to increase its FAR from approximately 17.7 to 30.0 through a Public Realm Improvement bonus, and to have numerous modifications of the MiD requirements, including forgiving the requirement for a significant improvement to the public circulation system of Grand Central for the privilege of a remote transfer of development rights, and to allow a <u>negative</u> 62 sky exposure score rather than a <u>positive</u> 75 minimum passing score.

Furthermore, approximately 2.5 FAR of the Public Realm Improvement bonus is for investments in the Lexington Avenue subway station that are already promised to be provided by the MTA and the City as mitigation for the East Side Access and #7 extension projects, respectively. This relieves the MTA and the City of approximately $42.5 million in obligations while burdening the community with 2.5 FAR of building bulk without compensating density ameliorating amenities.

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4 For example, because there is no plan for public realm improvements associated with the MTA site (west half of the block bounded by Madison and Vanderbilt Avenues and 44 and 45 Streets) the developer might obtain a 15.0 FAR PRI bonus by paying for cost overruns in East Side Access rather than providing new density ameliorating amenities.

The use of incentive zoning in the absence of a broader plan can create a conflict of interest for the City.[5] In the present case, it puts the City in a position of both regulator and beneficiary in the market for development rights. This creates an incentive for the formulation of bad land use policy. It undermines public confidence in land use regulation by casting government as a self-interested marketer[6] rather than as a disinterested arbiter seeking a balance among interests.

The egregiously failing **sky exposure** score of One Vanderbilt should also be a serious concern[7]. It is a return to the lack of daylight of unregulated buildings before the 1916 zoning and negotiated buildings before the establishment of MiD in 1981. Perhaps a third of a century of well-regulated daylight has made us forgetful.

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5 First, incentive zoning can lead to the misuse of zoning as a revenue generator, in violation of its rightful function as a tool for the implementation of well considered plans. Absent such a plan, development controls become a commodified public good (similar to proposals for the sale or commercial use of parks, libraries, and historic landmarks) that can be sold to meet funding needs. This bases land use decisions not on a planning rationale, but on the extent to which new development may generate funds to assist the municipal treasury.

Second, incentive zoning distorts the market for transferable development rights (TDR), the main mechanism by which landmark owners are compensated for the cost of abiding by landmark regulation. Currently, TDRs can be purchased within the Grand Central Subdistrict, subject to a special permit approval, in order to increase the maximum allowable FAR from 15 to 21.6 FAR or subject to an administrative approval for an increase of 1.0 FAR. Under the proposed zoning development rights can be negotiated at CPC's discretion, subject to City Council approval, in exchange for improvements to the public realm. The introduction of this new mechanism for obtaining a density bonus to go up to 30 FAR would decrease the value of existing TDRs and also place the City in the role of both regulator of and participant in the market for development rights, operating as both a seller and as an arbiter of special permits. The City's interest in funding infrastructure improvements would create an incentive to undersell the market for landmark development rights, thereby frustrating the very reason for the creation of the Grand Central Subdistrict in the first place.

6 Note that the property owned by the MTA on the east side of Madison Avenue between 44 and 45 Streets, which it plans to sell, is made considerably more valuable by the Vanderbilt Corridor upzoning.

7 Relief from the sky exposure regulations and One Vanderbilt's poor scores do not appear to be discussed in the Draft EIS. There is an extensive chapter on shadows; however in a densely built area such as Midtown Manhattan new shadows, even from a very large building tend to get lost among the existing shadows and a significant negative impact is difficult to find. There is also an extensive chapter on urban design and visual resources; however it tends to be a qualitative tour of the neighborhood rather than a quantitative analysis of the impacts of the proposed building on its surrounding. The sky exposure regulations lend themselves to a quanitative analysis of the reduction in the exposure of streets and other public spaces to the sky dome and of the degree to which the profile of the building occludes views along the streets. Such an analysis would be helpful in understanding the impacts of One Vanderbilt's poor sky exposure scores.

Furthermore, without a better understanding of the kinds of office space needed in the Terminal City area it is difficult to judge whether the shape of One Vanderbilt has to do with needed floor sizes and shapes or with exterior aesthetics. Also, without seeing serious alternatives it is difficult to understand to what degree the failing scores are the result of fitting too much FAR into the envelope.

In addition the steeper, more nearly vertical, envelope constrains views along streets. This reduces the visibility of buildings further down the street, for example the Chrysler Building viewed from the west along 42 or 43 Streets.

In any event, a failing score of minus 62, compared to a minimum passing score of plus 75 should be shocking, and reason to do better.

Terminal City and Battery Park City as Exemplars: Both Terminal City and Battery Park City are examples of the better path that is being advocated here. Both were based on well-considered plans, used a variety of regulatory and funding tools to implement the plan, and were seen as successes.

Both divided a large site into blocks and lots, funded and built streets and other infrastructure, disposed of the lots to various developers to insert individual buildings into the new urban fabric, and provided guidance as to the appearance and interrelationship of the buildings. In both cases the developers were responsible for building what was on their sites and the New York Central Railroad or the Battery Park City Authority were responsible for building what was off of the developer's sites.

At the start of the Twentieth Century electrification made possible the redesign of Grand Central Terminal, excavating for two levels of train yards and platforms below street level. To help pay for electrification of the trains and for the new terminal the area above the train yards was leased for the development of hotels, office buildings, and apartment buildings. To make these buildings possible the New York Central held a competition for the design of Grand Central, prepared and revised plans for the area, built the infrastructure of streets and utilities, and coordinated the design of terminal and buildings.

Similarly, Battery Park City pursued a series of plans until it had one that worked well and had the flexibility to adjust to changing circumstances. The plan, at its most basic level, divided the site into blocks, streets, and parks and these were established on the City Map. A special zoning district was prepared that regulated the uses, bulk, and parking on the various blocks. Urban design controls were developed for each neighborhood. These established detailed guidelines for the buildings and their relationship to the street, including lobby entrances, parking entrances, and retail frontage. The Battery Park City Authority sold bonds to pay for creating the land, building streets and other

infrastructure, and building the parks. Revenue from the buildings pays down the bonds and pays for the operation of the parks and other public areas of the site.

Terminal City's Future: Terminal City occupied the space above the tracks and platforms of Grand Central Terminal, which was built between 1903 and 1913, and was a successfully completed project when the Waldorf-Astoria and the New York Central Building were completed in 1929 and the Chrysler Building in 1930. Since then buildings have been remodeled and replaced and the terminal has evolved from inter-city rail to commuter rail. Also, the New York Central Railroad has divested its interests, removing its guiding hand.

Terminal City seems poised for a new generation. The MTA is building East Side Access to bring the Long Island Rail Road to Grand Central and the City is contemplating a change in its public policy that would encourage substantial redevelopment in East Midtown, starting with One Vanderbilt.

If the new Terminal City is to be seen as successful it needs to be based on a well considered plan that:

- Places it in the context of the region's transportation system and business centers,
- Contains a vision for growth that builds on the existing physical and cultural investments,
- Has a detailed plan for the complex public realm that intertwines buildings, streets, and transit, and
- Evolves a new guiding hand to coordinate and manage change.

Terminal City also needs a plan to fund the improvements to the public realm and transit infrastructure that are needed to integrate East Side Access, solve existing congestion problems, and accommodate the increased density that is being considered.

A plan usually addresses a perceived problem or problems and it is true that the answer one gets usually depends on the questions one asks. Therefore, it is important to start making a plan by being clear as to one's objectives – one's vision.

It is easy to agree to the goal of maintaining East Midtown as the city's and the nation's, perhaps the world's premier business address and it is sensible to cluster any new office buildings at Grand Central, where they are most convenient to Metro-North and, soon, the LIRR (and perhaps in the future Amtrak) and where their influence is least disruptive to the residential neighborhoods to the east, southeast, and north.

It is also reasonable to believe that the best business district in East Midtown would have a rich mix of uses, retain the best of its existing historic fabric, incorporate some memorable new buildings, and, most importantly, have a

significantly improved public realm, including access to the area and circulation within it.

However, what is East Midtown's problem? If the problem is how best to maintain the attractiveness of East Midtown such that tenants will prefer to be there, what makes East Midtown attractive?

The essence of the attractiveness of the Grand Central area is access -- both to the place and to and among the activities and people nearby. Local circulation depends on the quality and connectedness of the public realm. Access to the place depends on trains, and has since 1856 when New York City's Common Council banned steam locomotives from south of 42 Street.

This is a convenient neighborhood. There are excellent urban residential neighborhoods to the east, north, and southeast and nearby residential suburbs served by Metro-North (and in the future LIRR and in your dreams NJ Transit). There are cultural, retail, dining, entertainment, and service offerings in abundance. The rest of the midtown business district, and the theater district, is a short walk west, Lower Manhattan is close, and Long Island City, Downtown Brooklyn, and even Jersey City, Hoboken, and Newark are not far. There are three nearby airports and Pennsylvania Station linking New York to the Washington-Boston megalopolis and to the rest of the nation and the world.

Today Grand Central is served by Metro-North, by the 4, 5, and 6 trains of the Lexington Avenue IRT subway, by the 7 train of the Flushing IRT subway, and by the Times Square shuttle. Soon it will also be served by LIRR trains via the East Side Access project and eventually it will be served by the Second Avenue subway as it wends its way slowly south. There is, however, one more improvement needed to better connect Grand Central to the region and bring it into step with other world class cities -- a direct rail connection between Grand Central and Penn station. This would allow NJ Transit trains to bring passengers directly from New Jersey to Grand Central and Metro-North passengers to travel directly to Penn Station and it would allow Amtrak to serve the east side of Manhattan. (It would also be good to have direct rail access to the airports.)

Making a plan might reasonably involve:

- A study of the markets for central business districts to understand the relationships among the several business districts in the region and their supporting hinterlands.
- A study to compare available built space in East Midtown with market demand and public policy to maintain a rich mix of users.
- Consideration of the transportation improvements that would support East Midtown, including a rail connection between Grand Central and Penn Station, the Second Avenue subway, light rail and public open space on 42 Street (Vision 42), and rail access to the airports.

- An analysis of how to integrate and improve the public realm so as to better connect transit, buildings, public space, and pedestrian circulation.
- Consideration of how to enhance an area's rootedness. (A palimpsest is a page that has been erased and reused but on which the older information is still discernable. The richest built environments are often palimpsests in that the inquiring eye can see their history.)

Terminal City Design and Finance District: The District would combine three components:

- A cooperative organization to operate the public realm so as to realize its potential synergies,
- A tax increment district to help pay to build those improvements to the public realm that are not on private property, and
- An urban design plan for the public realm, in both public and private property.

The **operating group** would need to represent all property owners in Terminal City, including the City of New York and the MTA, and the community, including local elected officials. Perhaps it could be an offshoot of the Grand Central Partnership. Membership might be proportional to the amounts of the public realm controlled by each property owner.

The primary role of the operating group would be to coordinate the operation and maintenance of the public realm of Terminal City, especially the pedestrian circulation system linking buildings, transit, and streets. It would provide the guiding hand originally provided for Terminal City by the New York Central and currently provided for Battery Park City by the Battery Park City Authority.

The **tax increment district**[8] would capture a portion of the increase in property value resulting from the completion of East Side Access. This would not be a surcharge on real estate taxes but a segregation of part of the natural increase. That portion would be calculated to allow funding of improvements to the publicly owned portion of the public realm – particularly those that would more graciously

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8 Tax increment financing (TIF) is a financing mechanism that links new private and public development to infrastructure needs. It works by designating a geographically delineated TIF district for a set period of time. During this period, property taxes resulting from the increase in the assessed value of district properties are dedicated to funding improvements within the district. The City may issue revenue bonds backed by this expected revenue stream in order to pay upfront for infrastructure improvements. These bonds are not secured by the "faith and credit" of the city or state and do not count against the former's debt limit. It should be noted, however, that under current legislation the State intends TIFs as a tool to eliminate "blight" in areas where it "cannot be accomplished through private investment alone." While municipalities have been given broad discretion in satisfying these conditions, a project in the heart of the country's largest CBD perhaps pushes beyond the lax boundaries of these legislative constraints and might need modified enabling legislation.

integrate the LIRR with the rest of Terminal City. The use of tax increment funds would be limited to capital investments and not allowed for operating costs.

Some tax increment finance districts, including the simulacrum at Hudson Yards, have difficulty because the increment is based on the value of new development, rather than the land value, and the new buildings do not always happen as quickly as projected.[9] This suggests two lines of inquiry:

- For the properties in the Terminal City area is the appropriate portion of the total property assessment in the land portion of the assessment[10], and
- Would the increment of increase of the land portion of the assessments pay for the needed improvements to better integrate the LIRR into Terminal City?

Basic to the Terminal City Design and Finance District would be an updated **urban design plan** for the area. This could start with the attitude that all of the buildings in Terminal City share a special pedestrian circulation system that benefits the participants synergistically – that better connectivity, more retail frontage, enhanced maintenance, and light, air, and circulation improvements benefit all.

Because Terminal City is largely an existing built environment there is a question of how to enhance the participation of existing buildings in improving the system. One approach would be to identify improvements in existing buildings and to allow a floor area bonus that may be used on site, if practicable, or transferred to another site, similar to a transfer of unused development rights from a landmark. An existing building might provide a new access to the Terminal City pedestrian circulation system or light and air to the system through a skylight in a plaza; the urban design plan would identify the bonus floor area the improvement would

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9 Real estate tax assessments have two parts: a land portion and a building portion. The land portion is based on the location of the site, its serviceability for probable uses, and the scarcity or abundance of similar sites; the building portion is based on the improvements that are made on the site. Infrastructure investments, such as a new road or a sewer system, can increase the value of the land. When these are provided by others, such as the municipality, rather than the property owner, the increase in property value might be referred to as the "unearned increment." Improvements to the site, such as a new building, can increase the building portion of the assessment. Such improvements are typically by the property owner and might be considered the "earned increment".

The earned increment typically represents a denser use that needs more services from the municipality. The real estate taxes from that increase in assessed value should go to the municipality's general fund to pay for those services. However, the unearned increment does not represent an increased demand for municipal services. It results from a capital improvement and the real estate taxes from that increase in assessed value should go to retire the cost of that investment. This is the rationale for a tax increment finance district: the increased land assessment resulting from a public investment should be used to help fund that investment.

10 One would expect the value of the land assessment to be consistent for similarly situated properties; however, in the Vanderbilt Corridor they range between 14 and 34 million dollars per acre, with a median near 20 million dollars.

earn; and the property owner would be able to use the floor area or sell it to a developer of another site in the district.

Similar to Battery Park City the updated urban design plan would identify and coordinate the features of the public realm on public and private property, establish tools such as zoning and urban design guidelines to regulate change on private property, and establish a master plan for improvements on public property.

A Model for Other Transit Hubs: A Terminal City Design and Finance District could serve as a model for other locations where the City seeks to encourage transit-oriented development based on a significant increase in transit accessibility supporting increased density. The most obvious current candidates are the Penn Station[11] area and Long Island City[12].

Applications on a smaller scale might include opportunities such as the extension of the Second Avenue subway to the Metro North Station on 125 Street.

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11 The major transit improvement being planned for Penn Station is Gateway, a pair of new tracks in tunnels under the Hudson River, effectively doubling the rail capacity between New Jersey and Penn Station. Clearly this is a neighborhood in need of a plan.

An important consideration is the future of Madison Square Garden. Should it remain where it is – very convenient to transit but constraining improvements to pedestrian circulation and to light and air and orientation. Or should it move elsewhere to allow a more gracious Penn Station to emerge.

What is the vision for the future of the Penn Station area in the context of the city and the region? What should be the extent of the Penn Station terminal city? What should be the plan for the public realm? What improvements should be capital cost of Gateway and Moynihan Station and what should be funded through a tax increment district?

12 A component of the East Side Access project is a new rail station in Long Island City. When a significant number of the LIRR trains that use the main line through Long Island City to Penn Station are routed to Grand Central there will be room to stop trains at a station to be located on the main line near Queens Plaza. This will not only allow more convenient LIRR service to Long Island City but also allow New Jersey trains that now are parked in the Sunnyside Yards during the day to make their last revenue stop in the morning and their first revenue stop in the evening in Long Island City. When some Metro-North trains are routed through Sunnyside to Penn Station (Penn Station Access Study) they might also stop in Long Island City. Even Amtrak would be able to stop in Long Island City.

Although the cost of the new station is modest, and is part of the East Side Access project, the increase in train service is phenomenal and the increase in property value should be proportional.

It has been City policy for some time to encourage the growth of Long Island City as the city's fourth central business district. Now would be the time to confirm that the new rail station is going to be built and to plan for the growth it should generate in Long Island City.

A Better Path: Consider:

- Zoning is but one tool available in a regulatory regime to guide the future of our built environment; however, it is the tool most readily available to the Department of City Planning and so it has tended to be employed even when it is not the ideal choice.
- Zoning is not the same as planning, and the zoning resolution is not the de facto plan for the city. However, much of the zoning resolution is based on at least partial plans and urban designs for aspects or areas of the city. A good example of zoning based on a well-considered plan is the Special Battery Park City District (Section 84-00 of the Zoning Resolution).
- Zoning is intended to regulate what is built so as to protect the public welfare; it is not intended to generate funds to supplement the municipal budget.

The better path starts with as good and complete a plan as possible for the area being dealt with and by accepting that zoning is only one part of the regulatory regime employed to realize the plan.

Urban change based on well considered plans and using the most appropriate tools to regulate, fund, and operate improvements provides a better path for East Midtown as well as other parts of our city. Let's start by shrinking the Vanderbilt Corridor rezoning so as to cause the least damage and by crafting a consensual plan to guide the evolution of Terminal City and provide a model for some of the city's other growth areas.

City Planning Commission Hearing
February 4, 2015
Vanderbilt Corridor Rezoning
Statement of Michael Gruen

My name is Michael Gruen. I am President of the City Club of New York. You may recall that the City Club opposed the East Midtown Rezoning proposal in the form considered last year because of its constitutional infirmity under the Supreme Court's Nollan, Dolan and Koontz cases.[1]

The current proposal for Vanderbilt Corridor is under study by the City Club but its directors have not yet passed on recommendations to be submitted to them very soon. So I will limit myself to posing questions for your consideration.

First: Does the current Vanderbilt proposal overcome the constitutional infirmities of the earlier East Midtown proposal? Doesn't it still fail the Nollan/Dolan tests because it trades on market value rather than on the public burdens created by a developer's construction of additional FAR? How does it meet the proportionality test if the owner is required to contribute substantially to public improvements that are necessitated not by the relatively few visitors to say, One Vanderbilt, but by the needs of tens of thousands of people travelling hourly through this major transportation hub to reach entirely different destinations?

Second: Has sufficient attention been paid to view corridors? Try standing on 43rd Street near Fifth Avenue, as I did on a recent evening, and looking East to take in one of the most magnificent views in Manhattan: the Chrysler Building fully lit and viewed through an intervening dark chasm. Then ask yourselves how new buildings on Vanderbilt, substantially unhampered by sky exposure plane rules, will affect that view, and, no doubt, other equally stunning views.

Third: What is the impact on the Landmarks Law if the transferrable development rights that come with designation can lose their value overnight when the City decides to upzone and sell the newly created FAR in competition with owners of landmarks? This is not just a problem for a particular owner, but a problem of public policy and defense of the Landmarks Law. That Law's constitutionality was sustained by the leading Penn Central case,[2] in which the Supreme Court relied considerably on the availability of TDRs. Might the Supreme Court today view the Landmarks Law differently if the City expresses its willingness to wipe out the value of TDRs? And, even if not, consider the position of the many owners who have consented to Landmark designation on the assumption that they will retain valuable air rights.

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[1] Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141 (1987); Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309 (1994); Koontz v. St. Johns River Water Management District, 133 S.Ct. 2586 (2013).

[2] Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124, 98 S.Ct. 2646 (1978).

Fourth: The Vanderbilt proposal contemplates that there will be a new proposal for East Midtown, which will affect what happens on Vanderbilt Avenue. Perhaps it will even fill in such gaps in planning as attention to urban design, preservation of the significant landmark quality buildings along Vanderbilt, and preservation of view corridors. But too late to have much effect as to permits already granted when a new East Midtown rezoning is adopted. Shouldn't the planning come first, and not in isolated segments?

In sum, is this proposal part of a carefully considered plan? Or is it being rushed through to satisfy the interests of particular owners in the area, and to generate revenue rather than pursue the goal of outstanding land use planning?

INSTITUTE FOR RATIONAL URBAN MOBILITY, INC.

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President

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Statement at February 4, 2015 NYCDCP Hearing on Vanderbilt Corridor Rezoning

The Commission should reject the Vanderbilt Corridor Rezoning Proposal, and instead develop a *comprehensive street use plan* and a *regional rail plan* for Midtown Manhattan. Then rezoning should be considered.

The Institute for Rational Urban Mobility, Inc. (IRUM) is a NYC-based non-profit concerned with reducing motor vehicular congestion and improving the livability of dense urban places.

IRUM urges the Commission to reject the current Vanderbilt Corridor Rezoning Proposal. While the proposal begins to focus on many critical issues that the Commission should be addressing to preserve East Midtown as the nation's premiere business district, these issues are complex and affect many individuals and organizations. Major zoning changes should be considered at the end of a comprehensive planning process after a thoughtful analysis. The Commission has not made the case for rushing this rezoning to approval. Few indicators suggest that East Midtown property owners are facing economic hardships. In fact these properties are growing in value.

This not an excuse for inaction but a *call to arms* for the Commission to address key problems that affect the long term viability of the core of the City as a global business center. Focusing on transport issues, it is clear that adding new office space in a very dense area where sidewalks are already overwhelmed with pedestrians, and subways are filled to the brim, requires more herculean efforts than those proposed in the rezoning plan.

Needed is a *comprehensive street use plan* for Midtown Manhattan that rationally allocates street space, the city's most valuable real estate, among competing users – pedestrians, bus riders, cyclists, truckers making deliveries, motorists and taxi passengers. IRUM's proposed grid of modern surface light rail lines set in auto-free streets – starting with IRUM's vision42 proposal for an auto-free light rail boulevard on 42nd Street - should certainly be considered in the development of this plan. Had the Midtown Community Boards' request for such a street use plan made in December 2009 been heeded, the city would be well on its way to having an acceptable public realm plan for this crowded area.

Also needed is, a comprehensive *regional rail plan*, focusing on Midtown Manhattan, developed by the City in cooperation with its partners in the regional planning community. Remaking the region's disconnected commuter rail lines into a regional rail system with frequent service, integrated fares and through running would shift passengers from overcrowded subways to speedier regional rail lines. A key element of such a plan, developed in the planning process for new passenger rail capacity under the Hudson River, would connect Penn Station with Grand Central Terminal, permitting West of Hudson residents to more easily reach East Midtown, the nation's largest concentration of office space, while offering residents from the northern suburbs an opportunity to gain better access to growing developments in West Midtown.

The Commission must think more comprehensively about planning if NYC is to meet the challenge of its growing competitors abroad.

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Caroline G. Harris

February 13, 2015

Via Email
Carl Weisbrod, Chairman
New York City Planning Commission
22 Reade Street
New York, NY 10007

Robert Dobruskin, AICP, Director
Environmental Assessment and Review Division
New York City Department of City Planning
22 Reade Street, Room 4E
New York, NY 10007

Re: Vanderbilt Rezoning Proposal and Draft Environmental Impact Statement

Dear Chairman Weisbrod and Mr. Dobruskin:

We represent the Roosevelt Hotel located at 45 East 45th Street, New York, NY (Block 1281, Lot 21). It is within the area of the proposed Vanderbilt Rezoning.

The Roosevelt Hotel supports the proposed rezoning that offers the possibility to increase the Floor Area available to be developed at their property to 21.6 and 30 FAR through the proposed Grand Central Public Realm Improvement Special Permit and the Landmark Transfer Special Permit. It also supports the opportunity to select between the two special permits or combine them.

It does not believe that if all of the development sites were constructed to the maximum FAR, it would create a dark canyon along Vanderbilt Avenue. Rather, the potential series of tall buildings will be of superlative architectural merit, standing to the west of the much smaller landmarked Grand Central Terminal.

The Roosevelt Hotel strenuously objects to the proposed special permit for transient hotels (Section 81-65). The Roosevelt Hotel is approximately 577,000 square feet – approximately 13.32 FAR in an as-of-right 15 FAR district on a lot with an area of over 43,000 square feet. It is a full service, 1,015 room hotel that includes an extensive collection of amenities – restaurants, business center, 30,000 square feet of meeting space including 2 ballrooms and 23 meeting rooms. It also is a union hotel. In short, the Roosevelt Hotel already meets the standards set forth in the proposed transient hotel special permit.

There is no evidence in the record or the DEIS that there is a risk of the Roosevelt Hotel becoming a limited service hotel. There is no evidence in the record or the DEIS that the two other potential development sites identified are likely to become limited service hotels. There is no need for the special permit in the Vanderbilt Corridor. Thus, the special permit proposal has no facts supporting it and no rational basis for its adoption.

The proposed special permit for transient hotels would be a unique burden on the Roosevelt Hotel. It is the only hotel in Midtown Manhattan that would be subject to a special permit requirement. This is discriminatory and without a rational basis. At the very least, the text should exempt existing hotels, their enlargements and redevelopments from the requirement of the special permit.

Sincerely yours,

Caroline G. Harris

cc: E. Hsu-Chen, Director, Manhattan Office
A. Laremont, General Counsel

TESTIMONY FROM THE ASSOCIATION FOR A BETTER NEW YORK BEFORE THE CITY PLANNING COMMISSION REGARDING ONE VANDERBILT

February 4, 2015

Good morning. I am Jen Hensley representing the Association for a Better New York (ABNY). ABNY is a 43-year-old civic organization that advocates to make the city a better place to live, work and visit.

On behalf of ABNY, I am here in support of the One Vanderbilt project proposed by SL Green because of the public, private, and economic development benefits it will bring to New York. Investing more than $210 million in transit infrastructure and public capital improvements, the plan for One Vanderbilt offers greater connectivity to the country's most celebrated train terminal. The plan also pays homage to the iconic landmark and the surrounding Midtown East business district with new public space, innovative design elements, and complimentary building materials.

One Vanderbilt is a prime example of transit-oriented development as the site is located immediately adjacent to Grand Central Terminal and its regional and metro mass transit systems. SL Green's redevelopment plan will create direct transit connections and an important series of transit improvements. These improvements will be solely funded by SL Green and would not be possible without their investment at One Vanderbilt. One Vanderbilt will also serve as a substantial access point, providing direct access to Long Island Railroad East Side Access Lines, MetroNorth and New York City Transit subway lines.

One Vanderbilt will also enhance the public space surrounding the Terminal like never before by creating a new public plaza on Vanderbilt Avenue adjacent to the Terminal as well as a transit hall at the base of the tower. This hall will have direct subgrade connection to Grand Central and will serve as an additional train waiting area and gateway to East Side Access. The public plaza and the transit hall will greatly improve circulation and alleviate crowding within the terminal, and provide new designated places for commuters to congregate.

The construction of One Vanderbilt will also create thousands of good-paying middle class jobs for the city, as it is projected to create 5,200 construction jobs, 190 permanent union jobs, and double the number of workers employed on the block.

We applaud the vision and commitment that SL Green has brought to the plan for One Vanderbilt and for their investment in Midtown East. This project presents a historic opportunity to revitalize public and private space around Grand Central Terminal while making significant improvements to the transits assets in and around the terminal. The public benefit proposed by SL Green is substantial and we believe the project should move forward expeditiously.

Testimony for the CPC Hearing on the Vanderbilt Corridor Proposal

Leo Korein, Feb 4, 2015

Hello, I am Leo Korein, and I am here representing my family office as the owners of Lever House and two other Landmarks, 240 Central Park South and 608 5th Avenue.

I am here to speak in favor of the Vanderbilt Corridor proposal.

Rezoning the Vanderbilt Corridor is a crucial piece in preparing East Midtown for the demands of the 21st Century. This preparation must encompass the roles of both new buildings and landmarked buildings that, together, represent the best of New York. By providing a broad, straightforward and manageable transfer of landmark development rights, we believe it will put landmark owners like us in a position to properly maintain and preserve the properties for their continued historic significance to the city's character.

The existing provisions for transfer of development rights from landmarks are intended to provide some compensatory benefit for the burden imposed on a property owner as a result of landmark designation. While the owner of a building that is not landmarked may demolish its building and build a new one, as-of-right, using all development rights permitted under its zoning classification, the owner of a landmark building is severely limited, and typically precluded from using its development rights on the landmark site. Some compensation is afforded by Zoning Resolution Section 74-79, which permits landmarks to transfer air rights across the street. However, transfers using this mechanism require a cumbersome ULURP process, which typically takes about two years, and is often impractical for the developer of a receiving site.

The *Modification of the Existing Grand Central Subdistrict Landmark Transfer Special Permit* is an excellent first step in refreshing East Midtown for the 21st Century. Many landmarks will only be able to contribute their unused development rights to the planning goals in the area if this modification is enacted and expanded. Unfortunately, the modification proposed still requires the ULURP process, limiting its potential benefits.

Further, we are concerned that the Modification to the Landmark Special Permit and the Public Realm Improvement Bonus will compete with each other. This creates a potential conflict if developers are allowed to negotiate the value of landmark development rights against the value of public realm

improvements; such negotiations would divide stakeholders and deeply undermine the potential benefits that this rezoning seeks to create. It would be greatly preferable to create a Public Realm Improvement Bonus that developers would be incentivized to use in tandem with the Landmark Transfer Special Permit, as opposed to having them in direct competition.

We are committed to ensuring that Lever House remains an iconic building and an active part of a thriving and globally competitive East Midtown. We believe that thoughtful changes like the *Modification of the Existing Grand Central Subdistrict Landmark Transfer Special Permit* for the Vanderbilt Corridor proposal can be beneficial to landmarks and the neighborhoods they belong to. We hope that the Vanderbilt Corridor Proposal and any further rezoning in East Midtown consciously support Landmark's ability to transfer their development rights without creating unintended conflicts with other planning goals.

Thank you to the Commission for the opportunity to be here.

Submitted via e-mail to:
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With hard copy to:

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Michael Kwartler, FAIA
Principal

My name is Michael Kwartler, principal of Michael Kwartler and Associates and president of the Environmental Simulation Center. By way of background I authored the City's first performance-based contextual zoning regulations – Housing Quality Zoning ("HQZ") and co-authored, with the Department of City Planning, Midtown's zoning's Height and Setback regulations. They are the subject of my testimony.

Background

The Midtown zoning Height and Setback regulations, adopted in 1981, were designed to respond to:

- the "light" going out in Midtown as a result of special permits which allowed buildings to rise sheer from their street lines, e.g., AT&T (Sony) building which set daylighting standards back to pre-1916 conditions (e.g.Equitable Building);
- the need for clear and flexible as-of-right regulations, and a supportable daylight standard, in lieu of regulations which tended to prescribe a fixed zoning envelope;
- energy conservation and solar access for perimeter task lighting; and
- the recognition that new buildings benefit greatly from the richness of the built environment, and displacing its diseconomies (e.g., blocking solar access) onto other zoning lots is a burden to all as eloquently expressed in Garrett Hardin's "Tragedy of the Commons" where incremental overuse destroyed the Commons for all.

The response was new performance-based regulations based on an actual standard of daylight and openness for Midtown's streets which analyzed the historic expectation of daylight resulting from both the 1916 and 1961 zoning regulations. As noted in the Department's *Midtown Development* (June 1981), the Daylight Compensation and Daylight Evaluation Height and Setback regulations "...give great flexibility in building design so long as the daylight standard is achieved ...and prevent buildings from being placed entirely up against the street line, overwhelming the adjacent street." (pp. 65-66)

Proposed Special Permit and One Vanderbilt Avenue

The proposed special permits (ZR 81-641 and 81-642) allow the City Planning Commission to modify Midtown zoning's Height and Setback regulations (ZR 81-26 Daylight Compensation and ZR 81-27 Daylight Evaluation). Compliance with the Daylight Evaluation requires the average amount of sky left open above typical street wall heights for all frontages be no less than 75%. This standard has been sustained for

almost 35 years resulting in bright, sunny streets in Midtown, with new development almost all done as-of-right.

The proposed One Vanderbilt Avenue development scores a negative 62% or the equivalent of two AT&T buildings piled on top of each other. The new super tall MoMa tower by Nouvel, which was also granted modifications to the Height and Setback regulations, received an overall daylight score of plus 46.07% less than the minimum 66% in any street frontage. The requested waiver for One Vanderbilt Avenue is unprecedented setting daylight standards back to pre-1916 zoning conditions thus setting an awful precedent for the future of Midtown.

The proposed special permit text, while requiring the applicant to demonstrate the development's degree of non-compliance, does not require the applicant to demonstrate to the Commission that a feasible design which accommodates the proposed floor area is not feasible and that the requested modification is the minimum amount necessary to achieve a feasible building design. In addition, the DEIS is silent on the unprecedented reduction of daylight nor does it present alternatives to the proposed development.

In other words, the proposed text modifications are neither accountable nor transparently arrived at but rather asserted. Is there, for example, a diminution of daylight which is unacceptable?

Finally, there is the issue of precedent set by One Vanderbilt's virtually ignoring Midtown's daylight standard. The other sites in the Vanderbilt corridor do not front on two wide street or the "air park" above Grand Central Terminal. Should those sites be able to score negative 62%? And then there is the highly probable precedent set for all of East Midtown, which will result in a degradation of Midtown's environment.

Conclusion

I urge the Commission to strengthen the proposed text as suggested above to add accountability and transparency and a more nuanced approach for the other sites in the Vanderbilt Corridor, emphasize that One Vanderbilt is not a precedent for other applications, require other feasible alternatives, and have them analyzed in the DEIS.

The Midtown zoning's performance-based Height and Setback regulations, with its historically derived daylight standards, have served the City well for almost 35 years resulting in as-of-right development which has added to the environmental quality of Midtown. I urge the Commission to maintain these standards and when they can't be met, to provide the public with concrete reasons as to why a development cannot feasibly apply – balancing the environmental quality of Midtown with other perceived "goods."

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Testimony of Jessica Lappin
President of the Alliance for Downtown New York
New York City Department of City Planning

February 4th, 2015

Good afternoon Chairman Weisbrod and Commissioners.

I am Jessica Lappin, President of the Alliance for Downtown New York, the Business Improvement District in Lower Manhattan. Thank you for allowing me to speak on the Vanderbilt Corridor proposal.

In August 2013, as an East Side Councilwoman, I delivered testimony to you at the East Midtown Rezoning public hearing. In my testimony, I agreed with the overall goals of the rezoning, but shared my key objections to the proposed plan. I outlined five main areas of concern. They included: 1) the need for greater transit improvements at Grand Central, including cost estimates and an iron-clad commitment to fund them; 2) the District Improvement Bonus system; 3) the public realm plan; 4) the vulnerable landmarks in the area; 5) and the need for a special permit requirement for hotels.

I am here today because something important happened: you listened. The proposal before you today is quite different from the one you were reviewing in 2013. And in my opinion, it's better. It addresses those concerns, which were raised by other community leaders as well, and is a lovely example of how a responsive government should work.

Today, SL Green is seeking approval of a new special permit that would allow a floor area bonus for its proposed One Vanderbilt building. In exchange, they will provide a series of improvements to the transit and pedestrian networks in and around Grand Central.

The cost of those improvements, $210 million, has been identified up front. The list, which has been provided to the public this time around, is lengthy and meaningful. And the developer will not be allowed to use bonus floor area for One Vanderbilt until these improvements have been completed. In addition, SL Green is responsible for any cost overruns.

In light of these improvements, the MTA should be able to run more trains during peak hours. More trains will significantly improve travel conditions for the workers in Lower Manhattan – and for the 1.3 million people, myself included, who ride the IRT daily. The ridership on this line is more than that of San Francisco, Chicago, and Boston's entire transit systems – combined. Grand Central Terminal lies at the heart of the Lex line, and unfortunately is a critical bottleneck for straphangers. Clearing that jam would lead to improved service for the entire line, which in turn should lead to a better experience for commuters to Lower Manhattan and elsewhere.

As a result, I am here in support of this application today and thank you for allowing me to testify this morning.

Testimony of the Grand Central Partnership Before the New York City Planning Commission on the Vanderbilt Corridor Rezoning Proposal and the One Vanderbilt Development Project

February 4, 2015

Good morning Mr. Chairman and Commissioners. My name is Peter Lempin representing the Grand Central Partnership, the midtown Manhattan business improvement district, which is proud to have the subject applications within our district. On behalf of our Board of Directors, we welcome the opportunity to comment on the SL Green One Vanderbilt project, and the City's Vanderbilt Corridor proposal.

Today, our community faces a new challenge that if not properly and promptly addressed will put the preeminence of our district at risk by allowing it to stagnate into competitive disadvantage. These challenges come in the form of an aging infrastructure of commercial properties that often fail to meet the needs of Class A and high tech firms in the growing 21st century world economy.

While we know the longer term plan for the larger geographic area is the subject of productive discussions with numerous stakeholder groups, in our view, today's proposals represent an important and immediate step forward in addressing these challenges as the proposed actions would allow for the creation of exactly the type of modern, efficient and sustainable commercial office space that modern tenants demand. We believe that by approving the One Vanderbilt tower which contributes million of dollars in public transportation improvements to ease commuter congestion in and around Grand Central Terminal, a huge step will be made towards modernizing our aging transit infrastructure in Midtown east. The project will also create thousands of good paying jobs and will generate significant ~~millions of dollars in~~ annual tax revenues.

Also, as stewards in designing and maintaining public realm streetscape assets since the mid-1980's the Partnership is excited about the creation of the new public space on Vanderbilt Avenue. As you may know the Partnership is the applicant and maintenance partner for another pubic space which is right across the street

on Park Avenue, and is expected to open in 2016. We've had productive meetings with the SL Green team to further this collaborative effort to determine the long term role we will play in the maintenance and programming of the new public space. Of course, we look forward to learning more about the design components of the plaza, and in working with building ownership, the city, and the community in the public review process, and we are confident that we can be a critical player in the experience the users of the new space will have.

We urge you to approve these proposals which will help to revolutionize the Vanderbilt Corridor and the adjacent surroundings to preserve the Grand Central area as a world-class destination for business, and a destination for those who work, live and visit the neighborhood. This is exactly the type of development our city needs to grow and strengthen the local economy.

Thank you.

Regional Plan Association

RPA testimony before the New York City Planning Commission on February 4, 2015, in support of Vanderbilt Corridor and One Vanderbilt Draft Environmental Impact Statement, Amendment ULURP No. 150130(A)
Pierina Ana Sanchez, Associate for Policy and Planning

Good morning, my name is Pierina Ana Sanchez and I am an associate for policy and planning at Regional Plan Association, which aims to improve the New York metropolitan region's economic health, environmental sustainability and quality of life through research, planning and advocacy.

RPA is in support of the draft EIS and amendment under consideration. The proposed zoning text amendment and city map change will facilitate commercial development along Madison and Vanderbilt avenues in Manhattan, improve pedestrian circulation within Grand Central Terminal and its vicinity, and allow greater opportunity for area landmarks to transfer their unused development rights. In particular, the increase in allowed height and density for One Vanderbilt Avenue in exchange for over $200 million in public improvements is a good deal for New York City. It would bring needed modern office space to one of the most transit accessible locations in the world. More importantly, improved transit connections and circulation would greatly enhance the experience of subway and commuter rail passengers and address a critical impediment to the future development of East Midtown.

The investments will greatly improve platform access and circulation for the 4, 5 and 6 subway lines with new stairs, an expanded mezzanine and trimmed columns and stairs on the platforms. These should improve circulation enough to allow the MTA to add an additional train during rush hour, helping relieve overcrowding on the trains as well.

By creating an exit for the new Long Island Rail Road terminal being built below the subway and Metro North platforms, the project will address a shortcoming of the East Side Access project. As currently designed, it will take LIRR passengers several minutes to reach the street from the train level, cutting into the time savings that riders destined for East Midtown would achieve by going to Grand Central instead of Penn Station. By creating a new exit that will bypass crowded train platforms and the food court, many passengers will be able to reach the street more quickly and easily. It is important that this improvement be made prior to the completion of East Side Access, now estimated for 2023.

We hope that the project can be further improved by moving the subway sidewalk entrances in front of the Mobil building on Third Avenue to the building itself. Doing so would build on other zoning changes that have created incentives for off-sidewalk entrances in other busy districts – such as Times Square. Attention must also be paid to the issue of barriers to walking at the site. In particular, newsstands that are removed for the construction period should not be put back where they block the free flow of pedestrian traffic, notably at the northwest corner at Vanderbilt and 42nd Street.

We also note that these investments won't fix all of the circulation problems at Grand Central Terminal, especially those involving the #7 train, where use and congestion will increase when the new West 34th Street station opens in 2015 and as the Far West Side is developed. Additional funding will be required to address these issues and to give the station a complete overhaul. Future developments in East Midtown should address these priorities.

As with all public-private agreements, the terms of this transaction need to be open and transparent, and the city and the MTA need to set very specific performance standards for the improvements with reasonable penalties to be imposed if the terms and standards are not met.

For these reasons, Regional Plan Association supports the proposed text and map amendments, and we would be happy to answer any questions or provide further information on request.

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February 17, 2015

BY HAND

City Planning Commission
Calendar Information Office, Room 2E
22 Reade Street
New York, NY 10007

Re: ULURP Nos. C150127 ZRM and C150129 ZSM
and CEQR No. 14DCP188M

Ladies and Gentlemen:

This letter will transmit for the record ten copies of Statements with respect to the referenced ULURP applications and Comments on the Draft Environmental Impact Statement under the referenced CEQR number. The enclosed Statements and Comments have been prepared by Kramer Levin Naftalis & Frankel LLP, Boies Schiller and Flexner LLP, Professor Lawrence Tribe and Michael Hess.

Very truly yours,

Paul D. Selver

Cc: Hon. Carl Weisbrod, Chair
Anita Laremont, General Counsel
Edith Hsu-Chen

STATEMENT OF MIDTOWN TRACKAGE VENTURES LLC TO THE NEW YORK CITY PLANNING COMMISSION REGARDING THE VANDERBILT CORRIDOR REZONING (ULURP NO. N150127) AND THE ONE VANDERBILT PUBLIC REALM IMPROVEMENT BONUS SPECIAL PERMIT (ULURP NO. C150129)

AND

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT UNDER CEQR NO. 14DCP188M

*****

FEBRUARY 17, 2015

BOIES, SCHILLER & FLEXNER LLP
575 LEXINGTON AVENUE
NEW YORK, NY 10022

Boies, Schiller & Flexner LLP is litigation counsel to Midtown Trackage Ventures ("Midtown"), the owners of the land beneath and development rights appurtenant to the site of Grand Central Terminal ("GCT" or the "Terminal"). We are submitting this Statement and Comments on Midtown's behalf to highlight the substantial litigation risk created for New York City's taxpayers by the Vanderbilt Corridor Rezoning ("Rezoning") and the One Vanderbilt Public Realm Improvement Bonus Special Permit ("Special Permit").

Forty-seven years ago, the previous owners of Grand Central applied for a permit to build an office tower on top of the Terminal. The City denied them a permit to build that building. Grand Central was landmarked under New York City's Landmarks Preservation Law, and the proposed office tower would have conflicted with the beaux-arts façade of New York City's most famous transit hub.

Grand Central's owners filed suit against the City on the basis that the application of the Landmarks Law entitled them to just compensation under the Constitution's Takings Clause. In defending this claim, the City was able to convince the courts – including the Supreme Court of the United States – that it did not owe the owners just compensation because the unused development rights could be transferred to nearby sites. The resulting Supreme Court decision, *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), allowed the City to avoid paying just compensation for deprivation of the development rights in light of the fact that, because of their transferability, the development "rights afforded are valuable".

However, under the Rezoning and Special Permit, the unused Grand Central development rights are no longer "valuable". At the time of the *Penn Central* decision, Grand Central's unused development rights were "made transferable to at least eight parcels in the vicinity of the Terminal, one or two of which have been found suitable for the construction of new office buildings."

Today, the only buildings "suitable for the construction of new office buildings", on any reasonable time horizon, are in the Vanderbilt Corridor. For these sites, the Rezoning has eliminated any prospect of Grand Central transferring to these sites in a way that a court might consider "valuable". Indeed, the Rezoning permits development without use of a single Grand Central development right. Instead, development can achieve maximum possible density through a Public Realm Improvement Bonus, obtainable upon public approval of infrastructure improvements. The City has demonstrated that it will support these improvements, even when they are far less expensive than the fair value of density in the Vanderbilt Corridor. Accordingly, development will proceed in the Vanderbilt Corridor through use of the Public Realm Improvement Bonus, not through any "valuable" transfer of Grand Central's unused development rights.

Under the Rezoning and Special Permit, the once "valuable" rights that saved the City from paying just compensation in *Penn Central* now lose their value. We believe that this, among other aspects of the Rezoning and Special Permit, subjects the City and its taxpayers to a substantial claim in litigation.

We highlight this risk not in an attempt to litigate our case before the Commissioners. The legal and factual points above will be for a court to decide. Rather, we raise this prospect of litigation because it is

a fundamental flaw in the Rezoning and is something that the Department of City Planning's Draft Environmental Impact Statement fails properly to acknowledge or address.

STATEMENT OF LAURENCE H. TRIBE,
CARL M. LOEB UNIVERSITY PROFESSOR, HARVARD UNIVERSITY[1]

TO THE NEW YORK CITY PLANNING COMMISSION
REGARDING THE VANDERBILT CORRIDOR REZONING (ULURP NO. N150127)
AND
THE ONE VANDERBILT PUBLIC REALM IMPROVEMENT BONUS SPECIAL PERMIT (ULURP NO. C150129)

AND

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT UNDER CEQR NO. 14DCP188M

*****

FEBRUARY 17, 2015

Executive Summary

I have been retained by Boies, Schiller & Flexner LLP, counsel to Grand Central's owner, Midtown Trackage Ventures LLC, to provide my opinion regarding the constitutionality of the City's proposed treatment of the Grand Central development rights under the Vanderbilt Corridor Rezoning Proposal. The City has proposed zoning text changes for an area of East Midtown known as the "Vanderbilt Corridor" and a Special Permit that the real estate developer SL Green is seeking for a new high rise, One Vanderbilt.

My considered judgment is that the proposal creates an unconstitutional taking of the Grand Central owners' property that would trigger the public obligation to pay just compensation, saddling the taxpayers of New York City with as much as $1 billion in legal liability. This is money that ought to be paid by the developer SL Green, yet under the current proposal there is a very substantial risk that ultimately the taxpayers will be forced to bear the cost — and in effect to subsidize a $10 billion REIT that is the largest owner of office buildings in New York City. Given the risk to taxpayers, it is also reasonable to question why the City has not obtained any protection from SL Green for this risk, such as indemnification.

I. The Basic Bargain of the NY Landmarks Law Assumes That TDRs Are Valuable.

In the words of Justice Holmes, "a page of history is worth a volume of logic." *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921). Historically, transferable development rights

[1] University title and affiliation included for identification purposes only; the views expressed are solely those of the author as a scholar of constitutional law.

("TDRs") have been a cornerstone of the New York City Landmarks Law, NYC Admin. Code. §§ 25-301 et seq., and the Zoning Resolution. "The modern sense of the TDR technique as a way to preserve certain areas and develop others has been used since New York City included a density transfer mechanism in its landmarks preservation law in 1968."[2] "In urban areas, the TDR method is a valuable landmark preservation tool."[3]

The basic bargain between the city and a private owner is that the owner is subject to the restrictions that come with historic landmark status in exchange for enhanced opportunities to transfer unused development rights to new building sites nearby. If those development rights are extinguished or made worthless, then the basic bargain is abrogated, and just compensation will be owed.

In *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978), the U.S. Supreme Court addressed the question of whether New York's refusal to approve construction plans for a 50-story office building over Grand Central (which by then had been designated as a landmark), amounted to a taking of private property triggering the need to pay just compensation. In its defense, the City emphasized the value of the TDRs and informed the Supreme Court that, "[a]t trial, the evidence showed that the air rights had substantial value"[4] and that "the transfer rights from the landmark site to an adjacent site constituted a valuable asset."[5]

In holding that the City did not need to pay just compensation, the Court credited the City's defense and noted the ability of Grand Central's owners to transfer their development rights to at least eight parcels in the vicinity of Grand Central, thus ensuring that "the rights afforded are valuable." 438 U.S. at 137. The Court explained that the TDRs "undoubtedly mitigate whatever financial burdens the law has imposed on appellants and, for that reason, are to be taken into account in considering the impact of regulation." *Id.*

Critically, the Court stressed that its decision upholding the New York Landmarks Law was premised on the facts as they then existed. The Court warned that a change in the economic opportunities available to Grand Central's owners might produce a different result.

Since the *Penn Central* decision, TDRs have remained an essential part of the New York City Landmarks Law, as a key preservation tool in justifying restrictions on historically significant property.[6] The courts have accepted the basis of that bargain, so long as the transferable development rights are in fact valuable.[7]

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[2] New York Department of State, *Transfer of Development Rights* at 3, James A. Coon Local Government Technical Series (2011), *available at* http://www.dos.ny.gov/lg/publications/Transfer_of_Development_Rights.pdf.

[3] *Id.* at 2.

[4] *Penn Central Transp. Co. v. City of New York*, Appellees' Brief, 1978 WL 206883 (U.S.) at 11.

[5] *Id.* at 17-18.

[6] *See* Sarah J. Stevenson, *Banking on TDRs: The Government's Role as a Banker of Transferable Developments Rights*, 73 NYU L. REV. 1329, 1334–35 (1998); Note, *Development Rights Transfer in New York City*, 82 YALE L. J. 338 (1972) (describing the history of New York City landmarks zoning and the use of transferable development rights as a "tool").

[7] *See, e.g.*, *383 Madison Associates v. City of New York*, 193 A.D.2d. 519, 520 (App. Div. 1993) (explaining that, under the Landmarks Law, Grand Central Station-adjacent buildings received transferable development rights (TDRs) as a "trade-off, shifting as-of-right development to adjacent sites").

II. The Pending Proposal Abrogates The Bargain On Which The Landmark Law Is Premised.

The latest proposal would renege on the bargain that gives value to Grand Central's development rights. The reason those rights are valuable is that they allow nearby landowners to engage in more extensive development of their own properties than would otherwise be permitted under the zoning laws. By allowing redevelopment without the transfer of a single Grand Central development right, the proposal eliminates the basis on which Grand Central's rights have any value.

The courts have repeatedly recognized that such a bait-and-switch triggers the legal obligation to pay compensation. For example, when the U.S. Environmental Protection Agency initially promised confidential treatment to pesticide makers who submitted proprietary data in their registration applications, and then subsequently reversed course and publicly disclosed the data, the U.S. Supreme Court had no trouble finding that the manufacturers could bring a claim for a compensable taking. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984). The Court opined that "the Federal Government had explicitly guaranteed to Monsanto and other registration applicants an extensive measure of confidentiality and exclusive use," that "[t]his explicit governmental guarantee formed the basis of a reasonable investment-backed expectation," and that "the use or disclosure conflicts with the explicit assurance of confidentiality or exclusive use contained in the statute during that period." *Id.* at 1011, 1013. The Court found that the possibility that the data retained some modicum of value for other purposes did not preclude a taking claim. *Id.* at 1012 ("That the data retain usefulness for Monsanto even after they are disclosed — for example, as bases from which to develop new products or refine old products, as marketing and advertising tools, or as information necessary to obtain registration in foreign countries — is irrelevant . . . .").

Similarly, when the federal government encouraged banks to take over failing savings and loan associations by promising that they could take advantage of a special accounting treatment, and then later changed its mind, the Supreme Court held that the banks could sue for breach of contract. *United States v. Winstar Corp.*, 518 U.S. 839 (1996).

Here, the proposal seeks retroactively to abrogate the government's past promises and to force the owners of Grand Central to bear the cost of public benefits, which are exactly the factors that trigger the need to pay just compensation. The Fifth Amendment's Due Process and Takings Clauses aim "to prevent the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Eastern Enters. v. Apfel*, 524 U.S. 498, 522-23 (1998); *see also Armstrong v. United States*, 364 U.S. 40, 49 (1960). These principles are a subset of a broader norm of government regularity, which helps ensure that government may not break its promises with impunity, especially where investment-backed expectations have developed around them.[8]

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[8] *See United States v. Security Industrial Bank*, 459 U. S. 70, 77–78 (1982) (noting takings limitations on the government's ability to discharge secured interests in bankruptcy); *United Trust Co. of New York v. New Jersey*, 431 U.S. 1 (1977) (applying Impairment of Contracts Clause to invalidate the repeal of a covenant that had limited the ability of the Port Authority of New York and New Jersey to use revenues and reserves promised as security for bonds); *Raley v. Ohio*, 360 U.S. 423 (1959) (due process prevents a state from punishing an individual for exercising an option that its agents had expressly told him he could lawfully exercise).

III. The City's Defenses Do Not Withstand Scrutiny.

The City has offered a series of objections and justifications, but none withstands scrutiny.

1. The City has said that the proposal on its face does not expressly stop the transfer of development rights, but that is a meaningless defense. The *effect* of the proposal is to eliminate any viable market for Grand Central development rights and to render them worthless. Under the *Penn Central* test, the practical effect of the regulation is paramount, because the court must inquire as "[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations." 438 U.S. at 124. Whether a court will find a taking "depends largely 'upon the particular circumstances [in the individual] case.'" *Id.* (internal citation omitted). The *Penn Central* Court observed that even where a state law "substantially furthers important public policies," it "may so frustrate distinct investment-backed expectations as to amount to a 'taking.'" *Id.* at 128.

Thus, the Supreme Court has instructed that a takings claim requires an analysis of the "economic effects of government actions." *Yee v. Escondido*, 503 U.S. 519, 523 (1992); *see, e.g.*, *Arkansas Game and Fish Comm'n v. United States*, 133 S. Ct. 511, 518 (2012) ("most takings claims turn on situation-specific factual inquiries"); *id.* at 521 ("It is of course incumbent on courts to weigh carefully the relevant factors and circumstances in each case, as instructed by our decisions."); *Palazzolo v. Rhode Island,* 533 U.S. 606, 617, 627 (2001) (court must examine "a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action" to determine whether "a particular exercise of the State's regulatory power is so unreasonable or onerous as to compel compensation"); *United States v. Causby*, 328 U.S. 256, 262 (1946) (taking occurred even where "the enjoyment and use of the land are not completely destroyed" and "[s]ome value would remain," because the government's action "would limit the utility of the land and cause a diminution in its value"); *Hudson Water Co. v. McCarter*, 209 U.S. 349, 355 (1908) (explaining that if height restriction becomes too onerous, "the rights of property would prevail over the other public interest, and the police power would fail. To set such a limit would need compensation and the power of eminent domain.").

The practical realities here demonstrate that the proposal creates a compensable taking. The fact of the matter is that there are no sites outside the Vanderbilt Corridor on any reasonable time horizon that might be redeveloped using Grand Central rights. And even if a new site unexpectedly came up for redevelopment, under the City's view nothing would stop it from doing exactly what it has done here: change the zoning rules and eliminate the need for any transfer of development rights from Grand Central. Where government is already failing to live up to one promise, it should not be able to save itself by making further empty promises about what it might do in the future.

2. The City has also argued that the proposal gives the City the discretion not to require any infrastructure improvement in connection with a TDR transfer, and it contends that the possibility of such a discretionary waiver of infrastructure improvements gives value to TDRs. But this argument fails to cure the problem and actually creates a new one. The possibility of a discretionary waiver of infrastructure improvements is simply a gimmick that harms the public. Ordinarily, the City has the obligation to ensure that the public receives a package of infrastructure improvements commensurate with the benefit granted to developers like SL Green.

The City's proposed surrender of this obligation represents a gift to developers that will mean a loss of the kind of improvements that benefit the public in connection with a new development.

In any event, the possibility of a discretionary infrastructure waiver fails to ensure that TDRs are accorded proper value or that developers like SL Green will buy them. The City's discretion is a wildcard and cannot serve as a basis of value for TDRs. The proof of that proposition is in the pudding: here, SL Green is not offering to buy a single TDR – except from an entity that SL Green itself owns.

Thus, the mere possibility of the City exercising discretion to issue a waiver is no obstacle to a takings claim. In *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997), for example, the Supreme Court held that development restrictions (including restrictions on the transfer of TDRs) were ripe for a takings challenge, even though a planning agency had not reached a final decision on a possible application by the landowner to transfer the TDRs and even though the agency exercised discretion in the matter. *Id.* at 740-42.

The ripeness rule of *Suitum* is fortified by a broader principle applicable here: governmental caprice – in the form of a potential, discretionary government waiver – is not an adequate foundation for property rights. The New York Court of Appeals reached that conclusion in striking down a 1972 zoning amendment (which created a "Special Park District" and rezoned two private parks by opening them to the public, while compensating the owners with a TDR program) as unconstitutional: "[t]he State may not, under the guise of regulation by zoning, deprive the owner of the reasonable income productive or other private use of his property and thus destroy all but a bare residue of its economic value." *Fred F. French Investing Co. v. City of New York*, 39 N.Y.2d 587, 591 (1976). In particular, the court found that the TDRs at issue in that case could not save the zoning amendment because the value of the resulting rights was too contingent on "the exigencies of the market and *the contingencies and exigencies of administrative action*." *Id.* at 598 (emphasis added). The court explained that "[t]he problem with this arrangement . . . is that it fails to assure preservation of the very real economic value of the development rights" and "renders uncertain and thus severely impairs the value of the development rights." *Id.*

Precisely the same reasoning is applicable here. The City's attempt to disguise its taking by inserting the possibility of a discretionary infrastructure waiver into the proposal represents the kind of end-run around the Takings Clause that the Court has repeatedly condemned.[9]

3. Nor can the proposal be defended on the ground that Grand Central could simply offer its TDR rights for sale at prices attractive enough for developers to buy them instead of undertaking the infrastructure improvements that would be required for the developers to obtain the alternate bonus made available under the proposal. The City has little incentive to create the type of negotiating dynamic that might allow Grand Central a meaningful "seat at the table". Rather, because the City here is evidently trying to encourage development and break Grand Central's supposed "monopoly", the City will simply stand behind whatever set of improvements

[9] *E.g.*, *Palazzolo*, 533 U.S. at 626-27 (rejecting the argument that "by prospective legislation the State can shape and define property rights and reasonable investment-backed expectations, [so that] subsequent owners cannot claim any injury from lost value," because "[t]he State may not put so potent a Hobbesian stick into the Lockean bundle"); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) ("[A] State, by ipse dixit, may not transform private property into public property without compensation").

the developer wishes to submit for public approval. Thus, the Rezoning appears to be structured so that Grand Central cannot even offer its landmark rights at a price low enough for a developer to be counted on to accept, much less engage in genuine back-and-forth negotiation to arrive at such a price. That is simply one more bait-and-switch, not a mechanism for arriving at what might amount to a fair price for the TDRs the City is determined to render worthless.

The City's apparent position is that Grand Central's owners should be happy to get whatever they can salvage in a fire sale of their TDRs, however close to zero that might be. But the Supreme Court has repeatedly refused to accept similarly coercive arrangements. In *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013), the Court there opined that government could not "circumvent[]" takings liability "because of the way in which it structured its handling of a permit application," *id.* at 2591, and rejected "[e]xtortionate demands for property in the land-use permitting context." *Id.* at 2596. *See also Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) (rejecting arrangement requiring owners to surrender elements of their property rights as conditions for permits); *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (same).

Conclusion

The proposal would entail an unconstitutional taking of the property of Grand Central's owners and trigger the public obligation to pay just compensation. Beyond the proposal's potentially substantial financial consequences for city taxpayers is the troubling message it sends. Justice Brandeis described government as "the potent, the omnipresent teacher." Here, the lesson seems to be that government promises are made to be broken. If New York is indeed the greatest city in the world, it ought to be able to keep its word.

Michael D. Hess

I write as a concerned citizen, a former Corporation Counsel of New York City, and an attorney with over forty years' experience as a litigator, including ten at the Department of Justice representing the United States of America in civil matters. I believe that the City Planning Commission's (CPC) proposed actions regarding the Vanderbilt Corridor Rezoning, in general, and the One Vanderbilt Public Realm Improvement Bonus Special Permit, in particular, are ill advised and expose the City to potential significant damages, both to the public fisc and to the integrity of the administration.

In 1965, the city passed the heralded Landmark Law, which allowed the city to preserve historically important structures and the character of the neighborhoods in the city without destroying the economic value of these unique properties. The City defended the law in a long running court battle initiated by the Penn Central Railroad, the then owners of Grand Central Station ("GCT"), by promoting the fact that an impacted landmark structure did not suffer an actual illegal taking of a landmark's property rights. In 1978 the Supreme Court found that the City's refusal to allow the Railroad to raise much needed funds by building a huge boxlike tower above GCT did not constitute an illegal taking. In essence, the Court found that the owners of GCT didn't lose their valuable property rights because the law allowed its preexisting air rights to be transferrable to several other sites in the vicinity of the terminal, thus appropriately balancing the municipality's preservation interests and the property owner's interests.

This landmark decision is the bedrock of much of America's land use policies when it comes to the treatment of a historically significant building. It created a grand bargain between the City and the property owner that supported the maintenance and economic viability of important privately owned landmarks, while allowing development in the same geographic area that respects the zoning text, including the overall building bulk and density for the area.

The City now wants to violate that grand bargain, in a hurried process, by creating out of whole cloth new development rights that vastly increase the density of the Vanderbilt Corridor, starting with one of those critically important and rarely available development sites proximate to GCT, without utilizing the valuable air rights of GCT. Doubling the size of a building on the Vanderbilt Corridor and allowing the only other site available for development in the near future, the MTA site, to use the same procedure for utilizing newly minted development rights, while GCT's air rights in the corridor lay fallow is just wrong. Indeed, the City argued in the Penn Central case that if the GCT ceased to be economically viable, its owners might well be entitled to compensation. Now that the City itself has undermined the economic viability of the GCT air rights, I fear it will be exposed to potentially huge financial loses and significant delays from litigation.

I also find it troubling that while the City is engaged in a major comprehensive plan for midtown east, the city has proposed to carve out the most valuable and available development site for a new zoning text, thereby engaging in what the courts may well consider being "spot zoning," an insidious and illegal practice. And, it wants to do this while the ongoing comprehensive planning is supposedly only months from completion.

The City Planning Commission's proposal for the Vanderbilt project makes the City not only the regulator of development through its police powers, but also makes an unequal market participant, selling these newly created development rights to the most favored project, as a complete alternative to the air rights of GCT. These are the same air right recognized by the United State Supreme Court when the city posited their value to defend the landmark law. This is a very dangerous precedent that puts at risk all the city's important developments that have relied on the value of air rights to preserve precise resources.

Our concern should be all the greater when you recognize that virtually everything the developer and the city propose in terms of the Vanderbilt project could be accomplished under existing laws and regulations. By utilizing existing air rights of the GCT, and the police powers of the City, appropriate public benefits, such as public transportation improvements can be ensured in the Vanderbilt development project. And this could be done either now or presumably in a few months as part of the pending comprehensive plan. This is how land use policy of the City has successfully functioned for some fifty years.

In 1998 the City Planning Commission completed a long process to create the Theater Subdistrict zoning regulations, which supported the preservation of the Broadway theaters by allowing the theaters to sell their air rights to other properties in the designated zone, in return for funding to guarantee the maintenance and operation of theaters. In 2001 the New York Court upheld the program as an appropriate balance of the need for preservation and the rights of private property owners. Joseph Rose, the then Chairman of the City Planning Commission, best expressed the City's position in a press release when he said, "The unanimous ruling is a triumph for the future of the Broadway theaters, the authority of the democratic process, and the integrity of our land use and environmental review procedures. This means New York City will not have

to choose between economic growth and the preservation of irreplaceable cultural and economic resources."

What is to stop the city from now abrogating the 1998 Special Theatre Sub District program that saved the Broadway theatres or the program that allowed for the development of the High Line? Once it has reneged on the land use policies and grand bargain it touted to the United States Supreme Court, then property owners beware, you may face costly and lengthy legal battles seeking damages for what you rightfully believed to be unassailable property rights.

I want to be clear here. I don't know what the value of this project is or the value of the GCT rights or the correct amount of public improvements. Those issues should be sorted out in the market place and within the regulatory process. That is what we did in 1998 with the Theater Subdistrict, and with other developments, such as the High Line, thereby improving the City and succeeding financially through the operation of the private property market place. What is clear is that the City must not vitiate forty plus years of very successful and court sanctioned land use policy to push through a project that is so susceptible to a lengthy and potentially costly litigation. A project that violates the grand bargain sanctioned by the Supreme Court, by completely undermining the value of the GCT air rights, and the integrity of the city's promises.

I also found it disconcerting that the developer presented a lawyer at a recent public meeting to announce there can be no legal challenge to this project, asserting it is just a scare tactic by opponents. If the developer believes that, then the developer should be required to protect the public fisc by indemnifying the City for any costs, including penalties, incurred by the City in going forward with what I believe is an unwise program that will open the door to a

very significant litigation risk. Even if the developer isn't offering an indemnification, the City should be demanding it as a condition of approving the project.

Submitted on February 17, 2015.

Michael D. Hess

New York, New York

STATEMENT OF MIDTOWN TRACKAGE VENTURES LLC
TO THE NEW YORK CITY PLANNING COMMISSION
REGARDING THE VANDERBILT CORRIDOR REZONING (ULURP NO. N150127)
AND
THE ONE VANDERBILT PUBLIC REALM IMPROVEMENT BONUS SPECIAL PERMIT (ULURP NO. C150129)

AND

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT UNDER CEQR NO. 14DCP188M

*****

FEBRUARY 17, 2015

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EXECUTIVE SUMMARY

Kramer Levin Naftalis & Frankel LLP is special land use counsel to Midtown Trackage Ventures LLC ("Midtown"), the owner of the land beneath and development rights appurtenant to the site of Grand Central Terminal ("GCT" or "Terminal"). This Statement, together with Statements prepared by Boies Schiller & Flexner LLP ("Boies Statement"), Professor Lawrence Tribe ("Tribe Statement") and Michael Hess ("Hess Statement"), are being presented to the New York City Planning Commission ("CPC" or "Commission") in opposition to the Vanderbilt Corridor Rezoning ("Rezoning") and the One Vanderbilt Public Realm Improvement Bonus Special Permit ("Special Permit") as they have been proposed and amended to date and, collectively, as comments on the Draft Environmental Impact Statement for, *inter alia*, the Rezoning and the Special Permit dated October, 2014 ("Draft EIS").

Background

The Department of City Planning ("DCP") has said that it drafted and is seeking approval of the Rezoning to achieve three objectives:

- To "address a number of development sites along Vanderbilt Avenue that offer the opportunity to provide modern commercial space in the immediate vicinity of Grand Central Terminal in the near term;
- To "create a mechanism for linking new commercial development to significant transit and public realm improvements in the overall Grand Central Terminal area"; and
- To "provide greater options for the transfer of unused landmark development rights."[1]

The Rezoning purports to accomplish all three of these objectives by increasing the maximum floor area ratio ("FAR") within the Vanderbilt Corridor to 30, creating a new special permit giving the City the power to grant floor area bonuses of up to 15 FAR for improvements to mass transit and the below- and above-grade pedestrian circulation systems (referred to as the "public realm"), and amending the existing special permit authorizing landmarks to transfer their unused development rights to remote sites to allow a transfer of up to 15 FAR.

The Draft EIS prepared under the City Environmental Quality Review ("CEQR") identifies three sites within the Vanderbilt Corridor that are likely candidates for redevelopment within the next 20 years: One Vanderbilt, which is the subject of the Special Permit being reviewed concurrently with the Rezoning; 347 Madison Avenue, a property owned and currently being offered for sale by the Metropolitan Transportation Authority ("MTA") ("MTA Site"); and the Roosevelt Hotel site. The One Vanderbilt site is being developed with about 12.3 FAR of bonus floor area pursuant to the Special Permit and a 2.7 FAR transfer of landmark development rights from a nearby property –

[1] "Rationale for the Vanderbilt Corridor Text Amendment", www.nyc.gov/htm/dcp/html/vanderbilt_corridor/index.shtml.

development rights transferred to One Vanderbilt in a non-arms length transaction between two affiliated organizations. The terms under which the MTA Site is being offered are structured to ensure that the successful bidder will generate all of its additional floor area as a bonus pursuant to the Public Realm Improvement Special Permit and will not use any landmark development rights. The Draft EIS states that the redevelopment of the Roosevelt Hotel site will also proceed under the Public Realm Improvement Special Permit – that is, if it is not designated as a New York City landmark. Neither the Draft EIS nor the East Midtown Rezoning and Related Actions FEIS, prepared in connection with the 2013 consideration of an areawide rezoning that included the Vanderbilt Corridor, have identified any other site that within the existing Grand Central Subdistrict that is projected to be developed within the next 20 years. Thus, based on the City's own analysis, the potential for the transfer of additional landmark development rights within the Corridor in the foreseeable future has been reduced by more than 1.5 million square feet.

Principal Points

The Rezoning has not been successful in achieving all of its three goals, and both the Rezoning and the Special Permit raise significant policy issues and legal questions. The Rezoning has been designed to encourage new development to generate additional floor area through the Public Realm Improvement Bonus rather than through development rights transfers from landmarks; the Special Permit incorporates an illegal floor area bonus; the City has chosen to ignore alternatives to the Rezoning that would both achieve all three of its objectives and maintain its historic land use policy toward landmark preservation; and the public review process for both the Rezoning and the Special Permit, including the Draft EIS, is riddled with legal deficiencies. In addition, the Rezoning itself constitutes spot zoning and, as pointed out by Professor Tribe and Boies Schiller & Flexner, effects an unconstitutional taking of the Terminal's development rights. More specifically:

- **The Rezoning is a threat to landmark preservation**. The Rezoning is a sharp break from almost 50 years of consistent City policies that encourage landmark preservation by ensuring that landmark owners have adequate opportunities to transfer their unused development rights. In conflict with these policies, it effectively eliminates the possibility of Terminal development rights transfers in the Vanderbilt Corridor by giving the City the authority, constrained only by the most general of standards, to offer developers a floor area bonus so attractive that they will never seek to purchase even a square foot of the Terminal's rights. As a precedent, it demonstrates that the City, when it is politically expedient to do so, will not hesitate to undermine the basic bargain of landmark protection by taking away from the landmark the practical ability to transfer its unused development rights. It thus threatens the very foundation of landmark preservation in New York City, undermining both the Supreme Court's decision upholding the Landmarks Law and the economic incentives necessary to legitimize and encourage preservation by private and not-for-profit owners and users.

- **The Special Permit Grants an Unwise and Unlawful Floor Area Bonus for Private Construction of Public Mitigation**. Two of the bonused improvements in the Lexington Avenue/42nd Street subway station, having an estimated cost of nearly $44,000,000 and a value of 109,000 square feet of floor area, are mitigation measures for the Hudson Yards Rezoning

and the East Side Access project. These measures were, under the terms of their environmental documentation, required to be paid for by the City and the MTA (with a contribution from the Federal Transit Agency), respectively. Granting such a bonus is poor public policy because it generates additional density without providing a new density-ameliorating amenity and because, in the case of the East Side Access improvement, it takes federal money – and its associated jobs and economic activity – out of the subway station with no assurance that other uses for the money will be found within New York City. It is also, in the case of the City at least, unlawful as the kind of "zoning for dollars" condemned in *Municipal Art Society v. City of New York*, the case that overturned the sale of the New York Coliseum on the ground that the City should not be allowed to enrich itself through the grant of a floor area bonus.

- **There are alternatives to the Rezoning that achieve all three of DCP's objectives by providing both substantial or equivalent public realm improvements and improved opportunities for the transfer of landmark development rights**. Midtown has analyzed the scope of public realm improvements that could be done in connection with a 30 FAR building at the One Vanderbilt site under both current law and a program in which one-half of the additional FAR was generated by the Public Realm Improvement Bonus and one-half was transferred from a landmark. Its conclusion was that, using assumptions that the level of non-bonused transportation improvements and other benefits would be determined on a basis comparable to that approved at 383 Madison Avenue and that bonused improvements would cost $400/square foot of floor area, the One Vanderbilt building could be developed under current law and still provide approximately the proposed amount of finished on-site indoor public space, at least $53,500,000 for other on-site and adjacent transit-oriented improvements, and $52,000,000 in improvements to the Lexington Avenue/42nd Street subway station. **Developing One Vanderbilt where one-half of the additional floor area was generated by a floor area bonus and one-half was derived from a landmarks development rights transfer would achieve all of DCP's stated objectives by producing ALL of the public realm improvements in the current proposal that are not already required to be funded by public sources as environmental mitigation and provide for a meaningful transfer of landmark development rights.**

- **The Draft EIS does not comply with the CEQR**. The Draft EIS is materially inaccurate and misleading in its description of the Purpose and Need for the Rezoning. It fails to explore both the policy implications of the extraordinary and unprecedented initiatives in the Rezoning described above and the proper range of alternatives – including, also as noted above, both a no Rezoning alternative that includes a development rights transfer from theTerminal and an alternative in which additional floor area for new developments in the Corridor comes from both landmark development rights transfers and public realm improvements. As a result, it is both practically and legally insufficient to provide the basis for the informed public debate contemplated by both CEQR and the Uniform Land Use Review Procedure ("ULURP") and as a basis for CPC and City Council decisions on the Rezoning and Special Permit.

- **<u>The Rezoning is illegal spot zoning</u>**. The only explanation for the Rezoning, as certified, is that it was designed to benefit two, and perhaps three, individual property owners at the expense of Midtown. It represents a deliberate and unnecessarily drastic departure from the City's historic policies toward landmark preservation; it creates zoning mechanisms that give the City unprecedented influence over the way in which a private developer will increase floor area within the Corridor; it has been rushed into the public review process despite (and prior even to the start of) an ongoing comprehensive planning process for the East Midtown area of which it has historically been a part; and its Draft EIS deliberately obfuscates the Purpose and Need for the Rezoning, ignores its impacts on important public policies, and fails to include a full and proper range of alternatives. It may be a plan, but it is not comprehensive and neither it nor its public review process is "well-considered" within the meaning of the General City Law.

Any one of these issues offers a more than sufficient basis for denying approval of the Rezoning in its present form. Together, they present a compelling case for rejecting it altogether.

DISCUSSION

The Rezoning is a Threat to Landmark Preservation

For nearly half a century New York City's land use policy has recognized, through the New York City Landmarks Law, NYC Admin. Code. §§ 25-301 *et seq.*, the importance of protecting and preserving historically and/or culturally significant resources by restricting their use and development. The City, like other local governments, has achieved these objectives not by acquisition of historic properties but by creating incentives that encourage private owners to preserve these properties by providing them with the opportunity to make a "reasonable return" on their investments. Thus, for almost as long, the Zoning Resolution also has provided relief from these restrictions by giving individual landmarks enhanced opportunities to transfer their unused development rights to new building sites. There are good reasons for the City to favor these transfers. First, they give the landmark owner an opportunity to capitalize on the otherwise unusable development potential of its land. Second, they help insulate the Landmarks Law from being invalidated as an unconstitutional "taking" of private property by mitigating the financial burdens imposed on the landmark owner. Third, they benefit the City by facilitating development and generating additional tax revenue, including the property taxes that would have been lost without the transfer. And, finally, they protect the integrity of the "well considered plan" mandated by the General City law because these transfers "do not add new floor area to the district, but redistribute existing floor area".[2]

Section 74-79 of the Zoning Resolution authorizes individual landmarks in mid- and high-density zoning districts to transfer by special permit their unused development rights to lots that are adjacent to or across the street from the landmark's lot. The special permit was enacted in 1968, soon after the adoption of the City's Landmarks Law, to mitigate the financial burden of landmark

[2] City Planning Commission report, N 980271 ZRM, June 3, 1998

designation and to avoid a constitutional challenge to the new law. It was seen as an innovative planning tool that could both preserve landmarks for the education and enjoyment of future generations and provide a reasonable return for landmark property owners. Thus, in its report adopting the special permit, the City Planning Commission stated: "The owner of a designated landmark building can realize an economic gain by selling his unbuilt, additional floor area he would otherwise not have; the neighborhood, meanwhile, can retain an essential amenity, a revitalized landmark."[3] In addition, unlike zoning bonuses, ZR Section 74-79 furthered the City's "well-considered plan" by expanding the range of development opportunities without increasing the overall density of a neighborhood.

The ZR Section 74-79 special permit was amended in 1969 in response to the particular economic challenge faced by the Terminal. The amendment was offered to address the problem that there were then (as there continue to be now) an insufficient number of realistically eligible receiving sites immediately proximate to Grand Central Terminal to absorb more than a fraction of its unused development rights. It did so by authorizing the transfer of landmark development rights through a chain of lots under common ownership to a receiving site that was remote from the landmark. Within the City's high density zoning districts, this change expanded the opportunities for ". . . an owner of a landmark to realize the value of the land by transferring unused floor area potential to appropriate locations in order to preserve the landmark"[4].

The City's defense in the litigation that followed its denial of the Terminal owner's application for permission to construct an office building above the Terminal took full advantage of the existence and effectiveness of, ZR Section 74-79. Thus, the City argued that, "[a]t trial, the evidence showed that the air rights had substantial value"[5] and that "the transfer rights from the landmark site to an adjacent site constituted a valuable asset."[6] These arguments were credited in the Supreme Court's 1978 decision in the Penn Central case upholding the City's use of the Landmarks Law to deny construction above the Terminal. The Court reasoned that the Terminal's owner had not "been denied *all* use" of their air rights because the "rights are made transferrable" and thus the "rights afforded are valuable".[7] Emphasizing how close this was to becoming a compensable taking, Justice Rehnquist, joined by two of his colleagues, wrote a vigorous dissent in which he found that the Landmarks Law's impact on the Terminal was a "taking" and that the value of the Terminal's transferable development rights was not sufficiently certain to constitute "just compensation."[8]

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[3] City Planning Commission report, CP-20253, May 1, 1968

[4] City Planning Commission report, CP-20938, November 5, 1969

[5] Penn Central Transportation Company v City of New York, Appellees' Brief, 1978 WL 206883 (U.S.) at 11

[6] *Id.* At 17-18.

[7] Kate Gilmore, Columbia University urban planning and historic preservation master's thesis, "A Process Evaluation of New York City's Zoning Resolution (ZR) § 74-79: Why Is It Being Used So Infrequently?", May 2013

[8] *Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 151-152 (1978).

This promise of the Penn Central decision – that the Terminal's transferrable development rights were valuable because they could be profitably transferred to local receiving sites – was among the more important issues that the City addressed in enacting the Special Midtown District in 1982. More specifically, the City Planning Commission defended its reductions to the floor area ratios of the Terminal and other East Midtown landmarks on the ground that the reduction was uniform across both sending and receiving sites and that the "relative attractiveness of the transfer privilege is thereby preserved."[9]

The creation of the Grand Central Subdistrict was a response (i) to the divestiture of the Penn Central's ownership of its at- and above-grade interest in the land adjoining Park Avenue and (ii) to the City's successful opposition, in connection with a 1989 proposal to redevelop 383 Madison Avenue, to the use of Penn Central's below grade fee interest as a vehicle for satisfying the multi-block transfer provisions of ZR Section 74-79. The combined effect of these two events was to circumscribe substantially the receiving area for the Terminal's development rights. The City Planning Commission acknowledged the problem presented by the more limited transfer area, noting in its report on the Subdistrict that ". . . the potential use and distribution of the Terminal's unused development rights has emerged as a major planning issue for this area, both in terms of the future character of the area as well as the long term preservation of the landmark Terminal building."[10] Its solution to the problem was to supplement the provisions of ZR Section 74-79 with a new basis for the transferability of the Terminal's development rights – one that uncoupled transferability to remote receiving sites from ownership of these sites and permitted the rights to be moved throughout an area centered on the Terminal's underground pedestrian circulation system. As reflected in its report, the Commission was satisfied that this new Subdistrict would ". . . represent a significant step toward achieving the development and preservation goals for the Terminal and surrounding area."[11]

The Vanderbilt Corridor Rezoning is dramatic departure from this history in three particularly significant respects, and the precedent it sets threatens the integrity of New York City's historic land use and landmark preservation policies. They are:

- The extraordinary size of the bonus made available. The Public Realm Improvement Bonus for a floor area ratio ("FAR") of up to 15 is five times the size of the current transit improvement bonus, three and one-half times the size of the theater rehabilitation bonus, and almost twice the size the District Improvement Bonus in Hudson Yards. While the City has granted two individual projects bonus floor area approximately equal to that it proposes to grant to One Vanderbilt, each of those projects is on a zoning lot that is nearly four times the size of the One Vanderbilt zoning lot, and neither project's lot is an eligible receiving site for landmark development rights.

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[9] City Planning Commission report, N 820253 ZRM, March 16, 1982

[10] City Planning Commission report, N 920260 ZRM, June 24, 1992

[11] City Planning Commission report, N 920260 ZRM, June 24, 1992

- The availability of a bonus that offers a complete alternative to the transfer of development rights. None of the existing special districts under the Zoning Resolution allow a floor area bonus to serve as a complete alternative to the transfer of development rights in maximizing a site's FAR.

    - A transfer of development rights is the only way to increase FAR in the South Street Seaport Subdistrict and is a required component of any increase to more than 18 FAR elsewhere in the Special Lower Manhattan District.;

    - A development rights transfer is the only as-of-right vehicle for increasing FAR, and it is required to be used alone or in conjunction with the subway improvement bonus to increase FAR to more than 18, in the current Grand Central Subdistrict;

    - A development rights transfer is the primary vehicle for increasing FAR in the Theater Subdistrict, where it is supplemented by the discretionary theater rehabilitation bonus in ZR §81-745;

    - A development rights transfer is either the sole, or a mandated component of the, mechanism for increasing FAR on all eligible sites in the Special West Chelsea District that are not traversed by the High Line;[12]

    - A development rights transfer is the only way of achieving more than 18 FAR in the Special Hudson Yards District.

- The role of the City as market participant and regulator. There is an inherent conflict of interest when, as proposed here, the City inserts into the development rights market. As a seller, the City can control the price of the bonus while, as a regulator, it is responsible for assessing its value. The City as seller is incentivized to underprice the bonuses relative to the cost of landmark development rights (either by accepting less work to earn the bonus or by granting bonus floor area for work that should not be bonused), while the City as regulator has an obligation of ensuring that the public gets a package of infrastructure improvements commensurate with the bonus granted. The conflict is intensified where, as we will show below, some of the floor area bonus granted by the City relieves it of a pre-existing financial obligation.

These proposals, and the policies and principles on which they are based, are inconsistent with the City's current programs for transferrable development rights and its support of historic preservation generally. Enacting them into law here, at the site of the City's most iconic landmark, will demonstrate the City is prepared – indeed, in this case is more than willing – to jettison those policies and their underlying principles and to embrace a spot rezoning that will provide at best only a few public benefits that cannot be provided under existing law and will enrich a select number of private developers at the expense of the Terminal. The City's readiness to harm a landmark as

[12] The one exception to this rule is a zoning lot that was marked by a unique combination of conditions, including a vacant parcel that, without special relief, would have been rendered substantially undevelopable because of the presence of an overbuilt building on another parcel in the zoning lot.

important as the Terminal is a threat to the development rights transfers available today to lesser landmarks. This threat is made all the more real by the fact that the City will be able to cite the Rezoning as precedent the next time it seeks to impair or eliminate the ability of a landmark to take advantage of its development rights transfer opportunities. The Rezoning, both by itself and in conjunction with possible future attacks on landmark development rights transfers, will thus erode the value of these rights throughout the City. It is a result that will have grave legal and practical implications for the future of the New York City Landmarks Law.

The Rezoning has the potential to undermine the foundation of the *Penn Central* decision and thus to open the Landmarks Law to a constitutional challenge and the City to substantial litigation claims. If it is approved, the Public Realm Improvement Bonus will offer developers in the Corridor seeking to increase their building's floor area a complete alternative to landmark development rights. And the bonus will operate without any meaningful constraints on how much public improvement will be required to earn the bonus. For example, the text of the Rezoning does not require that the Commission even consider the relationship between the cost of the bonus floor area to the developer and the market value of the floor area which the bonus allows to be developed.

The availability of such a bonus will foreclose redevelopment that uses the Terminal's development rights. That the Terminal's transferrable development rights had real value was a key to the willingness of the Supreme Court to find that the City did not owe just compensation to the previous owners of the Terminal when they were prevented from constructing above the Terminal. If City actions (such as the Rezoning and Special Permit) undercut that value, and if, as the New York Court of Appeals noted in *Fred F. French Investing Co. v. City of New York*,[13] development rights will have an "uncertain and contingent market value",[14] then they will not even serve to mitigate the impact of the regulatory taking, much less provide "just compensation."

Indeed, simply by proposing the Rezoning, the City has prevented development from proceeding with the use of the Terminal's development rights.[15] One Vanderbilt has been able to ignore the

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[13] 39 N.Y.2d 587 (1976).

[14] 39 N.Y.2d at 591.

[15] Much has been made by the City about eliminating the Terminal's monopoly on transferrable development rights within the Vanderbilt Corridor. Ignoring for the moment that this monopoly was created by the actions of the City in designating the Terminal as a landmark and creating the Grand Central Subdistrict in order to protect the constitutionality of the Landmarks Law, the Terminal's monopoly is no different from that of any other seller of development rights. And in each case, the seller's monopoly is needed to level the playing field in a transaction in which the purchaser of development rights has monopoly power on its side of the transaction.

The City has attempted to avoid dealing with this economic reality by suggesting that Midtown has used (or will use) its market position as owner of the Terminal to frustrate development in the Grand Central Subdistrict by asking more for its rights than they are actually worth. However, there is absolutely nothing in the record that Midtown either has done so or has any intent to do so in the future. Midtown is a rational economic actor. The reason that there were no sales of Terminal development rights between Midtown's acquisition of the Terminal property and 2013 is because, during this period, there was no development in the Subdistrict Core and only one, small development in the wings – a development that wasn't interested in purchasing the Terminal's rights. Midtown has from the time it acquired the Terminal recognized that the receiving sites within the Subdistrict that are projected by the City to be developed within the next 20 years (all of which, according to Figure 1-8 in the Final EIS for the East Midtown Rezoning and Related

Terminal's development rights by use of the Public Realm Improvement Bonus for the vast majority of its additional density and by generating the balance of its floor area through a non-arm's length transfer of development rights between two affiliated parties. The responses to the MTA's RFP were all submitted without including any of the Terminal's development rights, and the Draft EIS confirms that the MTA Site will be redeveloped with a Public Realm Improvement Bonus special permit. The only other site in the Corridor that the City anticipates will be developed with new construction within the next 20 years is the Hotel Roosevelt, and the Draft EIS states that it too will use the Public Realm Improvement Bonus to generate its additional floor area.[16] Because there can be no assurance as to when the Roosevelt Hotel site will be developed and because the City's own documents have indicated that it will be redeveloped using a floor area bonus and not landmark development rights , the Terminal's unused development rights have little if any ascertainable value today.

The practical impact of the Rezoning on the Landmarks Law and historic preservation is that owners of individual landmarks and landmark-eligible building would lose whatever confidence they now have in their ability to mitigate the financial challenges posed by individual landmark designation. These challenges are real. Owners of individual landmarks are both restricted in what they can do with their property and required to bear the added expense of maintaining the property in accordance with the Landmarks Law. For many—especially those that are not-for-profit organizations – these twin burdens present a Hobson's choice between devoting resources to advancing their missions and to maintaining their buildings. When it is no longer possible to balance these competing demands, as it has become for numbers of religious institutions, the inevitable result is that designated building falls into decay. The enhanced ability to transfer the development rights that cannot be used on-site because of the Landmarks Law can relieve this burden by providing not-for-profit owners with cash with which to maintain their buildings and by providing a profit-motivated owner with both additional funds for maintenance and an overall return on its investment in a designated property that more closely approximates the return of one that has not been designated. The threat that development rights transfers will be eliminated by legislation comparable to the Rezoning will impair the ability of landmark owners to maintain their properties to the standards demanded by the Landmarks Law; will induce more owners to challenge

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Actions, are located in the Vanderbilt Corridor) have a receiving capacity that is only modestly larger than the amount of development rights appurtenant to the Terminal and that, as a result, it must use every possible opportunity to sell these rights. This recognition would have led it to strike a deal with each potential buyer of its rights if the City had not short-circuited the negotiation process by advancing the Rezoning. Moreover, Midtown has stated for the record on countless occasions that it is prepared to sell its rights at their fair market value as determined by a proper appraisal.

[16] In discussing new development within the Corridor, the Draft EIS states: "Additional pedestrian circulation improvements around the Terminal would be provided off-site pursuant to the Grand Central Public Realm Improvement Bonus special permit. . . . . The projected redevelopment of the MTA and Roosevelt Hotel sites also would utilize this special permit, and may therefore include public amenities such as open public spaces, subsurface pedestrian passageways leading to subway or rail mass transit facilities, public plazas, arcades, or improvements to the right-of way such as streetscape, sidewalk, crosswalk, and median enhancements.[emphasis added] . . . . In this way, the redevelopment of the MTA and Roosevelt Hotel sites, like the proposed One Vanderbilt development, would contribute to the goal of improving public circulation and transit access in the area around Grand Central Terminal." Draft EIS at 19-11-12..

efforts to designate their properties; and reduce the liquidity of the market in older buildings as prospective buyers hesitate to purchase a property that might in the future not be permitted to realize its full value as an investment because it has been designated as an individual landmark.

The bottom line is that the Rezoning is eliminating any meaningful value for the Terminal's transferrable development rights and that it has the long term potential both to reduce property values in the City by reducing the number of buyers willing to risk their investments in buildings that are or could be designated and to result in the invalidation of the Landmarks Law itself.

Granting a Floor Area Bonus to Construct
Publicly Funded Environmental Mitigation Is Unwise and Unlawful

The improvements to the Lexington Avenue/42nd Street subway station referred to by the One Vanderbilt developer as the "Hyatt North Stairs" and the "New Stair to Mezzanine Below 125 Park Avenue" ("125 Park Stair") were part of the environmental mitigation packages required to be undertaken as a condition to the approval of two public actions that are now being implemented – the Hyatt North Stairs for the Hudson Yards Rezoning and Development Program ("HY Rezoning") and the 125 Park Stair for the East Side Access Project. Together, these two improvements have been estimated by the developer to cost approximately $43,800,000 – generating a bonus of approximately 109,500 square feet of floor area.

The Findings Statement for the HY Rezoning states that "[t]he city of New York would provide the required funding for all transit mitigation . . . . [Emphasis added]" Co-Lead Agencies' Findings Statement at 2. The Record of Decision for the East Side Access project provides that the costs of mitigation measures will be borne by the MTA – albeit, we believe, with the Federal Transit Administration contributing one-half of the cost of these measures as its share of project costs. Record of Decision prepared by the U.S. Department of Transportation, the Federal Transit Administration and the Metropolitan Transportation Authority at 6-7. Because these projects were approved in reliance on the public sector's commitments to pay for all required mitigation measures, they are binding obligations on the City (in the case of the North Hyatt Stairs) and on the MTA (in the case of the 125 Park Stairs) notwithstanding that they do not have to be completed until some future date.

Thus, more than 20% of the bonus floor area proposed under the Special Permit is for work that either the City or the MTA is required to perform as a condition to the approvals of the HY Rezoning and East Side Access, respectively. The grant of a floor area bonus for this work pursuant to the Special Permit is bad public policy. It is also beyond the scope of the City's zoning powers.

- The bonus does not serve the purpose used to justify its grant. This is because the Special Permit, rather than granting the bonus floor area in return for an improvement that will ameliorate the additional density, will grant the bonus for two improvements that are required to be provided whether or not the it is approved. Using One Vanderbilt to provide these improvements does not produce a net gain in either convenience or amenity for the public. Nor does it increase the pool of funds available to improve the station (as bonusable transit

improvements are supposed to do). Rather, it allows the City and the MTA to remove funds budgeted for improvements to the station – resulting in a wash at best, and a potential reduction in the funding for station improvements.

- Construction of the 125 Park Stair by a private developer rather than the MTA will relieve the federal government of its obligation to contribute to the cost of the work without any commitment that federal funds will be made available for use in the Lexington Avenue/42nd Street subway station or elsewhere in the subway system. In other words, the Special Permit will both remove federal dollars from the City's economy and increase the size of the One Vanderbilt building. It is adding insult to injury – a loss in outside monies that could be used to generate economic activity in the City and a reduction in light and air to those who live and work here.

  Legally, this proposal would be no different from the "zoning for dollars" bonus held unlawful in *Municipal Art Society v. City of New York,* 137 Misc. 2d 832 (Sup. Ct., N.Y. Co. 1987), where the New York Supreme Court invalidated the sale of the land now occupied by Time-Warner Center. There, the City was contractually entitled to receive a higher price for the sale of its interest in the land on which Time-Warner Center was built in exchange for granting a floor area bonus for a subway improvement. The Court's view of this arrangement was summed up in its comment that "government may not place itself in the position of reaping a cash premium because one of its agencies bestows a zoning benefit upon a developer . . . ." 137 Misc. 2d at 838. The proposal found flawed in *Municipal Art Society* decision is the same as the City's proposal here. Both use the grant of a floor area bonus under the Zoning Resolution to enrich the City -- the former by generating a higher price for the sale of City property and the latter by relieving the City completely of a substantial and burdensome financial obligation.

The grant of a floor area bonus to induce a private party to satisfy a public obligation to mitigate an environmental impact should be subject to a careful and thoughtful public review, one marked by a searching inquiry into its implications for the future and a robust debate as to its propriety. Absent such a process, neither the public nor our elected and appointed officials will have the information they need to decide whether this component of the One Vanderbilt subway work should receive any bonus at all.

Yet there is barely a mention (and certainly no consideration) of this issue in the Vanderbilt Corridor Rezoning applications, in the material filed in support of the applications, in the information disseminated to the public by the Department of City Planning and the developer, or in the Draft EIS. The absence of any such discussion raises a question as to whether the Department of City Planning violated its own standard for certification under the ULURP – that an application "cannot be certified until DCP determines that the application includes all forms, plans and supporting documents that are necessary to address all issues related to the application", www.nyc.gov/html/dcp/html/ap/step5_ulurp.shtml#certification – when it certified the ULURP applications for the Rezoning and the Special Permit. It is also one of the reasons why, as we will discuss in greater detail below, the Draft EIS for both of the Rezoning

and the Special Permit omits the information and critical analysis required to make it legally sufficient under the CEQR.

There are Alternatives That Offer Many if Not All of the Benefits of the Current One Vanderbilt Proposal

This memorandum has discussed the significant issues of policy and law that are raised by the Rezoning and the Special Permit. Given these issues, it would have been logical for the City to have explored fully the extent to which it could achieve the three objectives it established for the Vanderbilt Corridor if it utilized, consistent with the way it has in the past, its authority under existing special permits and if it proceeded either without the Rezoning or with a different and more nuanced Rezoning. It did not do so.

Midtown has therefore analyzed the extent to which the City would have been able to achieve its objectives with the development of the One Vanderbilt site under both current law and with its development in which one-half of the 15 FAR increase proposed in the Rezoning would come from a floor area bonus for public realm improvements and one-half from a landmarks development rights transfer. The analysis assumed that the bonused transportation improvements would cost $400/square foot of floor area generated and that, in order to ensure that the project is accompanied by appropriate public benefits, CPC would use its discretionary authority under ZR Section 74-792(c)(3) to require that transferred development rights would be accompanied by finished public circulation space and other public amenities proportional to those provided at 383 Madison Avenue.[17]

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[17] The ZR Section 81-635 special permit that transferred 285,866 square feet of floor area from the Terminal to 383 Madison Avenue included both about 11,400 square feet of finished, on-site public circulation space and, as its "major improvement of the surface or subsurface pedestrian circulation network in the Subdistrict", a deep escalator from the lobby of the new building to the North End Access and the enclosure and finishing of 1,680 linear feet of platform between the North End Access and the Terminal proper. The cost of its "major improvement of the . . . pedestrian circulation network" was, based on the $12 million in security for the work estimated by MTA and referenced in ARTICLE 4.H of the Construction and Maintenance Agreement between Gregory/Madison LLC and the MTA dated as of January 6, 1999, to be approximately $9.6 million, or about $33.60/square foot. The payment by the developer of 383 Madison Avenue for the Terminal's development rights was, based on both the tax stamps affixed to the Instrument of Transfer and the record of deposits into the Trust established to receive 5% of the consideration for the transfer, $14,957,292, or about $52.30/square foot. Thus, the "all-in" cost of the transfer for 383 Madison Avenue was $85.90/square foot of floor area transferred, of which 39.1% was the cost of the "major improvement".

There are two approaches to valuing the "major improvement" in today's dollars. One is to escalate the cost of the improvement, as estimated by the MTA, by a percentage equal to the increase in the ENR Construction Cost Index for New York City. This approach would produce a current cost of about $50/square foot of floor area transferred, or 12.5% of the $400/square foot value ascribed by the City to development rights in this area. The other approach would value the work at $156/square foot of floor area transferred (39.1% of $400/square foot), an amount that is reasonable because it is no larger a percentage of $400 than the cost of the work at 383 Madison Avenue was to the "all in" cost of the floor area transferred there. Midtown believes that a $50 cost is too low in that it does not capture for the public the enormous increase in land values since the 383 Madison Avenue transaction. It also believes that $156 cost may be higher than is appropriate for work that can be required only at the discretion of the CPC. Accordingly, it is using the average of the two costs, or $103/square foot of floor area transferred, in the computation of the cost of pedestrian circulation improvements and other public amenities in its analysis.

Based on these assumptions, Midtown's conclusions were as follows:

- Existing Law. One Vanderbilt could be developed under the currently applicable provisions of the Zoning Resolution utilizing a 3 FAR transit improvement bonus pursuant to ZR Section 74-634 and a 12 FAR transfer of landmark development rights pursuant to ZR Section 74-79. The former would produce approximately $52,000,000 in improvements to the Lexington Avenue/42nd Street subway station. The latter would provide approximately 21,500 square feet of finished pedestrian circulation space on and adjacent to the building's site (or about the amount of on-site space included in One Vanderbilt's program) and at least $53,500,000 for other on-site and adjacent pedestrian circulation improvements. In other words, it could provide a substantial portion of both the on-site and off-site transit-oriented improvements that are being offered by One Vanderbilt and are not required to be funded from other sources.[18]

- A Public Realm Improvement Bonus of 7.5 FAR and an Increase in the Permitted Transfer under ZR 81-635 to 7.5 FAR. Development of One Vanderbilt under this scenario would produce $130,000,000 in work for the bonus, at least $33,500,000 in work associated with the landmark development rights transfer, and approximately 13,000 square feet of finished pedestrian circulation space on and adjacent to the building's site. In other words, the grant of bonus floor area and the enhancements associated with the development rights transfer under this scenario would fund ALL of the public realm improvements (including the Vanderbilt Public Plaza) that are not required to be funded by other sources, while the development rights transfer would ensure protection for the landmarks in the Subdistrict. **This is the only scenario under which all three of the City's stated objectives for the Rezoning – major new development in immediate proximity to the Terminal, substantial infrastructure funding, and improved transferability for landmark development rights – can be achieved.** It would turn what under the Rezoning as proposed is a "zero sum game" between independently owned landmarks, on the one hand, and the Public Realm Improvement Bonus, on the other, into a plan that would benefit all interested stakeholders and the public.

There is simply no legitimate policy-based reason for ignoring these two alternatives to the Rezoning. The City's failure even to allude to them in its ULURP and CEQR documentation has already hindered full public consideration of the need for the Rezoning, and it will continue to do so. This failure is also evidence that, as will be discussed *infra*, that the Rezoning is in fact spot zoning that has as its purpose benefitting development parcels in the Corridor at the expense of the Terminal.

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[18] Transit-oriented improvements do not include the construction of the Vanderbilt Public Plaza, which does nothing to improve circulation in and through either Grand Central Terminal or the Lexington Avenue/42nd Street subway station and which, in any event, is an extraordinary amenity to the One Vanderbilt building. Improvements funded by other sources are the Hyatt North Stairs and the 125 Park Stair. These two improvements, having an estimated cost of about $42,700,000, are required mitigation by the City for the Hudson Yards Rezoning and by the MTA for the East Side Access project, respectively.

The Draft EIS Does Not Comply With CEQR

The Draft EIS states that the Rezoning is being advanced to address specifically identified development sites in the Vanderbilt Corridor and to respond to three needs. The first is that the ". . . existing zoning regulations applicable in the Vanderbilt Corridor [that] permit additional density through the provision of infrastructure improvements . . . . are limited in applicability and do not offer adequate opportunity to address the scope and scale of these infrastructure challenges."[19] The second is that the 21.6 FAR maximum permitted by the Grand Central Subdistrict's special permit (ZR §81-635) ". . . does not adequately reflect the Vanderbilt Corridor's potential for high-density development [and] . . . is lower than what is permitted through the existing citywide landmark transfer special permit in high density districts in the Special Midtown District [because] transfers in these areas under this provision have no maximum limit . . . ."[20] The third is to "permit greater opportunities for landmarks in the Subdistrict to transfer their unused development rights."[21]

The Draft EIS's explanation of the need for the Rezoning as proposed is materially inaccurate.

- It overlooks the availability of the ZR Section 74-79 special permit to produce major buildings on the One Vanderbilt and Bank of America sites and assumes the City will not take full advantage of its discretionary authority under that special permit to require, most reasonably on terms that are at least comparable to those previously required under ZR Section 81-635, the provision of "public amenities such as . .. . open public spaces [and] subsurface pedestrian passageways leading to public transportation facilities . . . .", ZR §74-792(c)(3), and of the potential combination of this special permit with a ZR Section 74-634 subway improvement bonus special permit on the One Vanderbilt site to produce substantial public realm improvements. Instead, it argues that the City's power to provide for public amenities under Section ZR 74-79 has " . . . not resulted in significant improvements to pedestrian circulation in the area" and that the ZR Section 74-634 special permit does not offer a large enough bonus to incentivize the desired range of improvements.[22] In making this argument it assumes that the absence of "significant improvements" under ZR Section 74-79 is a function of the City's authority under the applicable statutes rather than the result of the Commission's decisions on prior special permit applications. The failure to explore the opportunities for the provision of major public realm improvements offered by marrying the Special permits under ZR Sections 74-79 and 74-634 contributes to the inadequacy of the Draft DEIS' analysis of alternatives to the Rezoning.

- It ignores the adverse effects of amending ZR Section 81-635 to make circulation improvements discretionary on the City's ability to obtain such improvements without a floor area bonus and,

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[19] Draft EIS at 1-7.

[20] Draft EIS at 1-8

[21] *Id.*

[22] *Id.*

in considering the Special Permit, of the failure of the City to exercise its discretionary authority to obtain such improvements. Using the assumptions applied *supra* to the alternative zoning scenarios, Midtown estimates that the 114,050 square feet of floor area proposed to be transferred from the Bowery Savings Bank would produce unbonused work of about $11,750,000 plus finished, on-site circulation space of approximately 4,400 square feet – the approximate equivalent of the Vanderbilt Public Plaza and the Public Transit Hall proposed at One Vanderbilt. Yet rather than require this work as a condition for the Bowery Savings Bank transfer, the City proposes to reward the transfer with a floor area bonus of about 53,000 square feet. Both the loss of the obligation to condition the ZR Section 81-635 special permit on the provision for circulation improvements and the failure of the City to exercise its discretionary authority to require One Vanderbilt to provide unbonused improvements comparable to those at 383 Madison Avenue have cost the City significant opportunities to utilize the One Vanderbilt project to provide additional enhancements to the public realm. The impact of this omission should have been studied in the Draft EIS

- It does not acknowledge that the Rezoning utterly fails to achieve its stated objective of providing "greater opportunities" for landmark development rights transfers. This is because it fails to consider that the combined effect of the Rezoning and the Special Permit will, under the City's own assumptions, eliminate any opportunity to use the Terminal's development rights at any time in the foreseeable future.

The result is a CEQR document that fails to explore fully the public policy implications of the extraordinary and unprecedented zoning initiatives that have been built into the Rezoning and the Special Permit. More specifically, and as discussed in detail *infra* in this Statement, it does not address (a) the absence of need for the Rezoning; (b) the failure of the Rezoning, both as proposed and as applied through the Special Permit, to accomplish its stated objectives and the availability of an alternative zoning change that does achieve these goals; and (c) the significant adverse effects of the creation of the Public Realm Improvement Bonus and the City's use of it to pre-empt the field for generating increased floor area within the Corridor on: (i) the actual transferability of the Terminal's development rights; (ii) the *Penn Central* decision and the New York City Landmarks Law, both of which are jeopardized by the loss of certainty as to the value of the Terminal's development rights; (iii) public confidence in the City's commitment to establish and maintain programs that both protect landmarks and mitigate the financial hardships attributable to their regulation under the Landmarks Law; and (iv), as pointed out in the Boies Statement and the Tribe Statement, the potential cost to the City of a successful claim by the Terminal's owner for "just compensation." Nor does it address the implications of City's willingness to use a zoning bonus to incentivize private implementation of public obligations to provide environmental mitigation.

It also fails to consider properly the full range of alternatives to the Rezoning. These must be revised and expanded to include:

- <u>A Fair Discussion of the Lesser Density Alternative</u>. The discussion of the Lesser Density Alternative in the Draft EIS omits the potential use of the City's authority under ZR Section 81-635, even as amended pursuant to the Rezoning, to require improvements to the pedestrian

circulation system in and around the Terminal. Use of that authority could have produced, in addition to the approximately $52,000,000 in subway improvements generated by ZR Section 74-634, the Public Transit Hall and at least $11,750,000 in other pedestrian circulation improvements.

- No Action – As-of-Right. A no action, as-of-right development under existing law using 1 FAR of landmark development rights.

- No Rezoning. A special permit development on the One Vanderbilt site under existing law that maximizes the use of the subway improvement bonus under ZR Section 74-634, utilizes 12 FAR of landmark development rights transferred from the Terminal, and includes amenities comparable to those provided at 383 Madison Avenue.[23] This alternative would offer the public and those charged with deciding whether to approve the Rezoning and the Special Permit an opportunity to determine for themselves the extent to which each is needed in light of the substantial improvements that could be generated under current law.

- Full Benefit Rezoning. An amendment to the text of the Zoning Resolution permitting development of up to 30 FAR in the Corridor but providing that no more than one-half of the additional floor area may be generated by the Public Realm Improvement Bonus and no more than one-half may come from a development rights transfer from a landmark. This alternative would accomplish all three of the City's stated objectives; it would, consistent with the City's land use policy in Special Districts, ensure that the floor area bonus and the development rights transfer complement rather than compete with each other; and it would protect the constitutionality of the Landmark Law and public confidence that the City will continue to foster policies that both the physical integrity and financial viability of landmarks.

- Keep the Circulation Improvement Mandatory. An alternative that contains the same provisions as the Rezoning other than the elimination of the existing requirement in ZR Section 81-635 for enhancements to the pedestrian circulation system in and around the Terminal. This alternative would be more consistent with the need to provide infrastructure improvements that "address the scope and scale of [the area's] infrastructure challenges."

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[23] The arguments that the No Rezoning and the Full Benefit Rezoning alternatives do not need to be studied because the developer of One Vanderbilt does not have control over the Terminal's development rights or because they are outside the scope of the Special Permit are without merit. It is black letter law that a publicl agency has a broader responsibility to study alternatives than does a private developer. 1 Rathkopf's The Law of Zoning and Planning §9.15 (4th ed.) (citing *Horn v. International Business Machines Corporation*, 110 A.D.2d 87 (2d Dept. 1985) *See also Webster Associates v. Town of Webster*, 59 N.Y.2d 220 (1983) ("[T]he purpose of requiring inclusion of reasonable alternatives to a proposed project is to aid the public and governmental bodies in assessing the relative costs and benefits of the proposal. To be meaningful, such an assessment must be based on an awareness of all reasonable alternatives other than the proposed action.[emphasis added]" 59 N.Y.2d at 228). Here, the Rezoning applies to four potential development sites, so a wider range of alternatives is necessary in order to fairly assess the extent to which it is needed and whether its objectives can be accomplished either under existing zoning controls or through an amendment to the Zoning Resolution that more successfully accomplishes the stated objectives of the Rezoning and is more consistent with the City's historic and current land use policies.

Each of these alternatives (other than the no action as-of-right alternative) achieves all or substantially all of the objectives of the Rezoning with fewer if any of its adverse effects on Grand Central Terminal, on the continued vitality of the *Penn Central* decision and the New York City Landmarks Law, and on the public policy foundation of the Zoning Resolution's broader development rights transfer programs. Their omission has produced a profoundly flawed document -- one that is fraught with bias and misinformation. It has frustrated intelligent public debate on both the Rezoning and the Special Permit. It meets neither the letter nor the spirit of CEQR.

The Vanderbilt Corridor Rezoning is Illegal Spot Zoning

The Vanderbilt Corridor Rezoning, as certified, was designed to benefit two individual property owners – Green 317 Madison LLC (the owner of the One Vanderbilt site) and the MTA (the owner of 347 Madison Avenue) – at the expense of the owner of Grand Central Terminal (Midtown). It was deliberately cut out of the comprehensive planning process for East Midtown; its substance is not "well-considered" as required by the General City Law; and the process by which it is being reviewed fails to meet both the letter of and the spirit of informed debate that animates ULURP and CEQR. It gives the City the tools to exercise absolute control over the sourcing of additional floor area – that is, the unprecedented power and discretion to grant a zoning bonus that is of exceptional magnitude and that offers a complete alternative to using landmark development rights. It further benefits the private owners by eliminating the obligation in ZR Section 81-635 to provide pedestrian circulation improvements as a part of any development rights transfer program and by granting a floor area bonus to those improvements that were no longer required. And it illegally advanced the City's self-interest by relieving it of a pre-existing obligation to mitigate the environmental impacts of the Hudson Yards Rezoning – a savings to the City of in excess of $37 million.

The Draft EIS provides further evidence of the questionable purpose of this Rezoning. It begins with an inaccurate and misleading characterization of the purpose of and need for the Rezoning; it omits any discussion of programs that maximize public benefits under existing law; it ignores the impacts of its unprecedented features on land use and public policy; and it fails to consider the full range of alternatives.

Significantly – and not surprisingly – the Rezoning has so far worked as the City and the private developers planned it to. One Vanderbilt is moving forward without a single square foot of the Terminal's development rights, and, by structuring its RFP for 347 Madison Avenue to advantage bidders who utilize the public realm improvement bonus rather than a development rights transfer, the MTA has ensured that the development of its site will do the same. The effect of being frozen out of participation in the development of these two sites is to cost the Terminal the opportunity to dispose of up to approximately 1.1 million square feet of development rights under the Rezoning – or more than two-thirds of its currently unused development rights. With no other sites outside the Corridor expected to be redeveloped within a reasonable time horizon, this will mean the complete devaluation of the Terminal's development rights.

CONCLUSION

The Vanderbilt Corridor Rezoning is both unwise and illegal. The size of the bonus for the One Vanderbilt building far exceeds the incremental value of the improvements it is offering in return. The process by which both are being advanced has been marked by material non-disclosures and misrepresentations as to the implications of and alternatives to the Rezoning – defects that preclude both full and intelligent public debate and decisions that are based on a full consideration of ALL of the relevant facts as required by ULURP and CEQR. The entire package is illegal spot zoning; it threatens the legitimacy and validity of New York City's Landmarks Law; and, as pointed out in the Boies Statement and the Tribe Statement, it risks a constitutional challenge that could require payment of substantial "just compensation" at the taxpayer's expense.

CPC has a long and distinguished history of producing zoning that balances the interests of all stakeholders in a way that zoning controls protects private rights and that the development they produce advances the public interest. Its history of fair administration of both ULURP and CEQR, while not quite so long, is equally distinguished. There is nothing in the Rezoning or the Special Permit that cannot be realized in a way that is fairer both to all of the interested stakeholders and produces equal or greater benefits for the public. The Commission should not approve this package. It should reject the Rezoning and the Special Permit and reconsider the land use controls in the Vanderbilt Corridor as a part of a more comprehensive and appropriate package of zoning changes for the whole of East Midtown.

REBNY®
REAL ESTATE BOARD OF NEW YORK

Testimony from the Real Estate Board of New York to the City Planning Commission in Support of the Vanderbilt Corridor Text Amendment and One Vanderbilt Special Permit

February 4, 2015

The Real Estate Board of New York, Inc. (REBNY) is a broadly based trade association of over 16,000 owners, developers, brokers, managers and real estate professionals active throughout New York City. We strongly support the proposed Vanderbilt Corridor Text Amendment and the Special Permit Application for One Vanderbilt. REBNY believes that the Proposed Actions will strengthen East Midtown and New York City's economy.

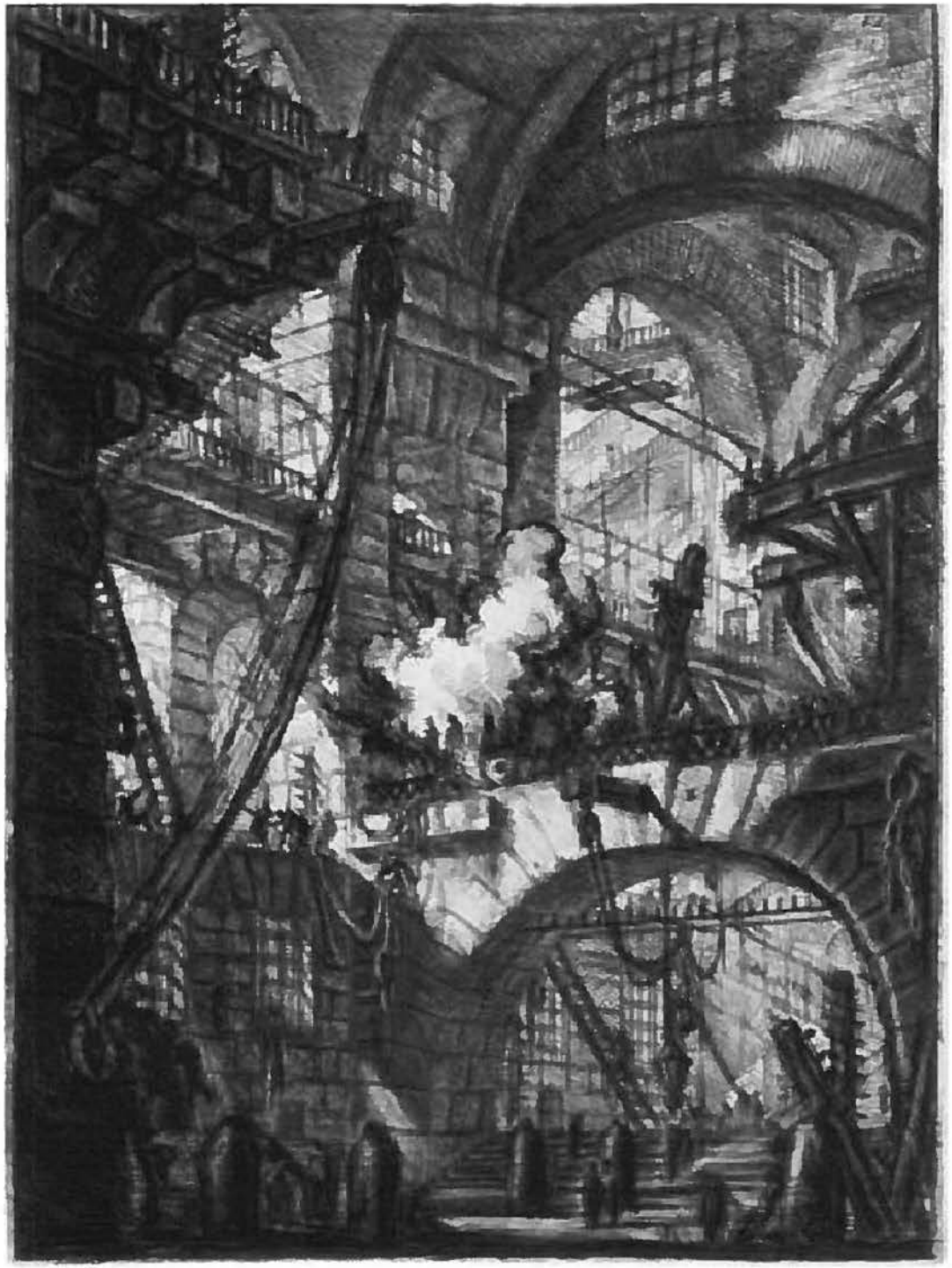
The East Midtown business district is critical to the City's tax base and economy. It is the city's most prominent commercial district and regional transit hub with approximately 70 million square feet of office space and numerous commuter transit connections into Grand Central Terminal. However, to retain its position as a preeminent global business district, the City needs to address the problems of its aging office buildings and of its insufficient office development.

The Department of City Planning has developed a sound proposal along the 5-block Vanderbilt Corridor to encourage modern commercial development by allowing more flexibility in the transfer of landmark development rights. The proposal also creates a mechanism to link new development to much needed infrastructure and public realm improvements in the Grand Central area. In addition to new buildings that will reflect modern ideals and set new standards in sustainability and design, this proposal provides the most appropriate way to ensure that meaningful transit improvements are fully integrated into this plan so that all five blocks can take full advantage of Grand Central, especially once East Side Access is completed.

Relatedly, the Proposed Action would permit SL Green to construct an approximately 1.8 million gross square foot mixed use office building ("One Vanderbilt") with an enclosed public space at ground level. One Vanderbilt is exactly the type of dense, transit-oriented development that belongs immediately adjacent to Grand Central Terminal. Designed with careful attention paid to the needs of modern tenants, One Vanderbilt will feature open and efficient floor plans and will be a LEED-certified, Class A building. SL Green will finance and facilitate the construction of all public improvements, including enhanced transit connectivity and new public spaces. In fact, the applicant has worked diligently with the Community Board and Borough President's Office to further improve urban design elements that may impact public space—evident by their submission of an "Alternate" application to allow for greater design flexibility.

In total, SL Green will invest $210 million in transit infrastructure and public realm improvements and complete this work as a condition of occupancy of their new building. This investment will immediately improve pedestrian circulation in and around Grand Central Terminal. Additionally, One Vanderbilt is projected to create 5,200 construction jobs, 190 permanent union building service jobs, and approximately $50 million in annual tax revenues.

There is general agreement that East Midtown's existing zoning is an impediment for the necessary modernization of its aging building stock. The Proposed Actions are a laudable effort to strengthen East Midtown. SL Green's One Vanderbilt proposal will ensure that much needed public improvements are completed before additional density is constructed next to the Terminal and will be a model of the high quality design and meaningful transit improvements that we can expect from the other potential development sites in the plan. These actions are needed for East Midtown to remain competitive in a global market, and we urge the City Planning Commission to approve these actions that will strengthen our city's economy.



Piranesi

Terminal City
Vanderbilt Corridor

Presumably the reason for the Vanderbilt Corridor special zoning is to improve physical and visual access to the LIRR concourse that is being built below it as part of East Side Access.

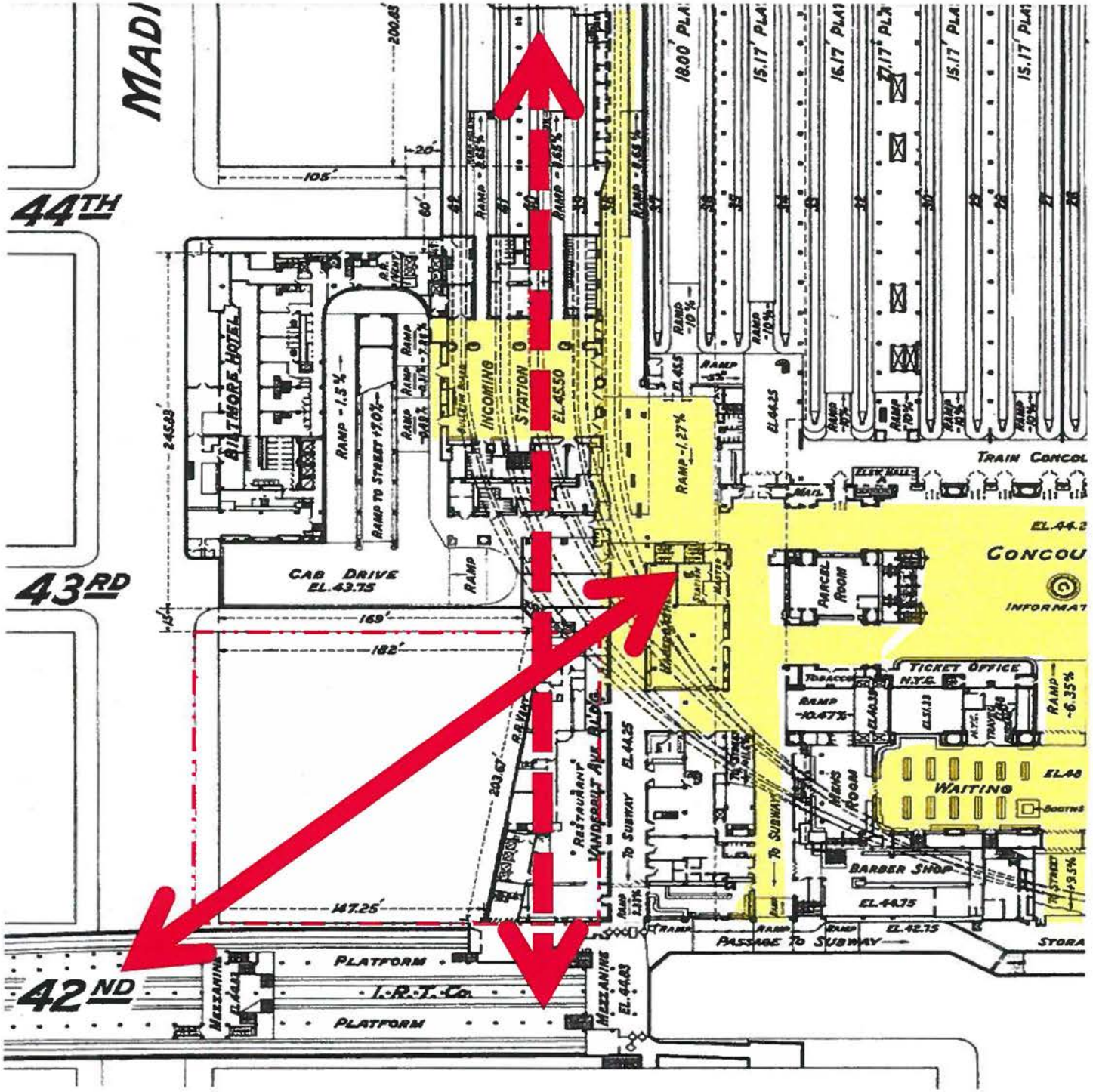
If so, one would expect the district to include all of the sites that could reasonably contribute to access and a plan as to how that access would be provided. To the contrary, the corridor as proposed would need to extend two blocks further north and include both sides of Vanderbilt Avenue to encompass the affected area and there is no plan for improvements to the public realm in the corridor.

The following pages suggest that there are important improvements that could be made to the LIRR concourse, including a much higher ceiling by removing a platform and pair of tracks from the Madison Avenue yard above it, and argue that the improvements at One Vanderbilt could be more conducive to the public good and better earn the bonus floor area that is being claimed.

In particular, it is noted that the 100% location at the northeast corner of Madison Avenue and 42 Street would be better used as a grand new entrance to Grand Central Terminal than as a retail location for a bank.

John West

2 Feb 15



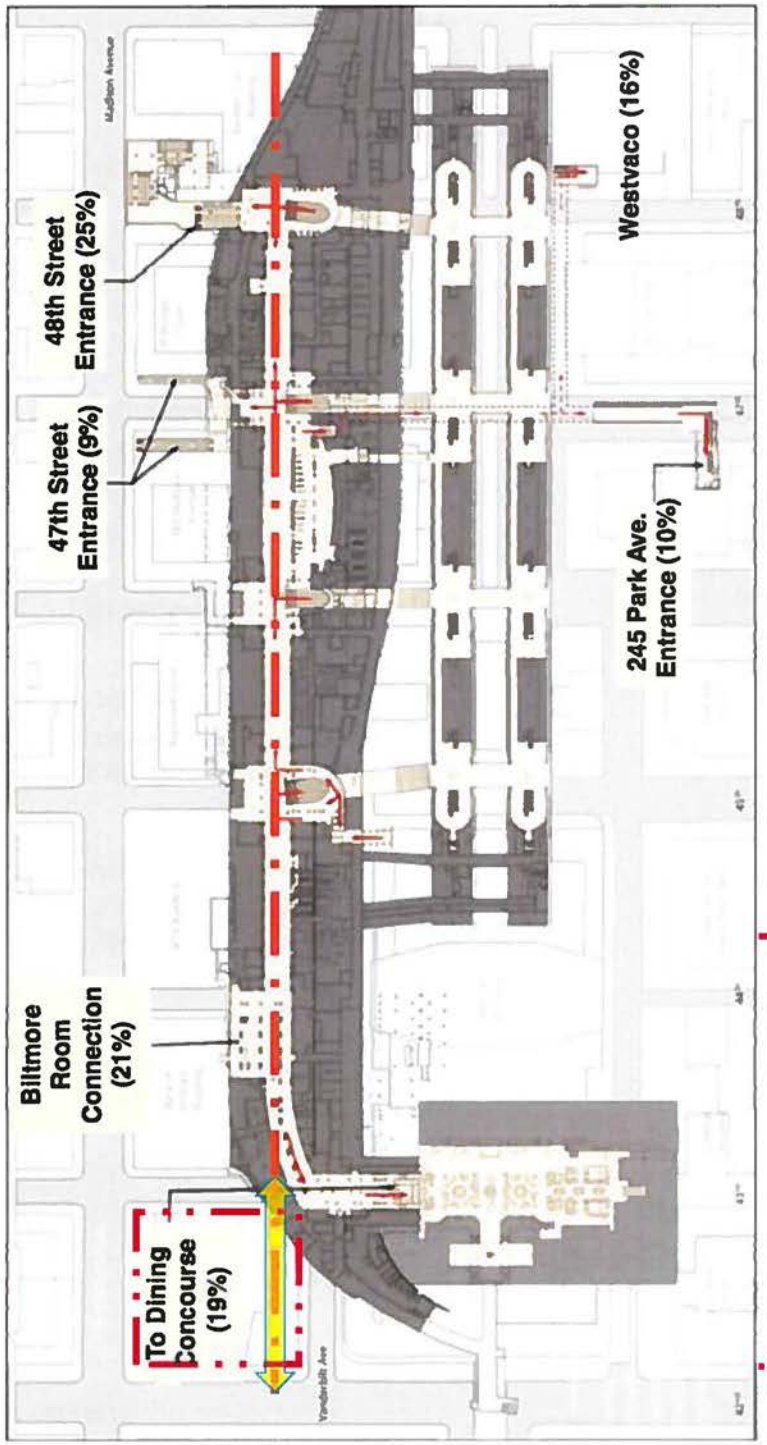
Terminal City
One Vanderbilt

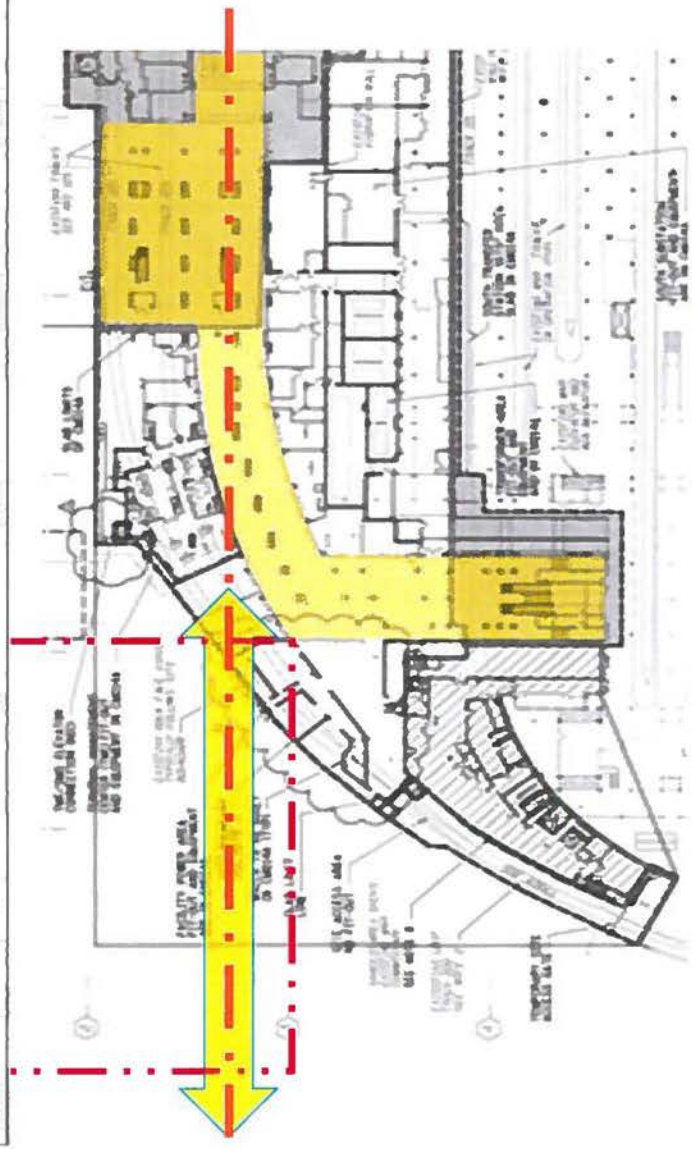
The site of One Vanderbilt sits astride two primary lines of desired circulation at Grand Central.

One (solid red arrow at left) provides a new entrance for Grand Central at the corner of 42 Street and Madison Avenue. It serves those with destinations to the southwest and it connects the street level at 42 and Madison with the level of the Main Concourse, below street level at 43 Street and Vanderbilt Avenue.

The other (dashed red arrow at left) will provide a southern entrance for East Side Access. It needs to connect the LIRR concourse (that is replacing tracks and platforms at the lower level of Grand Central under and west of Vanderbilt Avenue) with both 42 Street and the subway stations below 42 Street.

20 Sep 14





Terminal City

One Vanderbilt

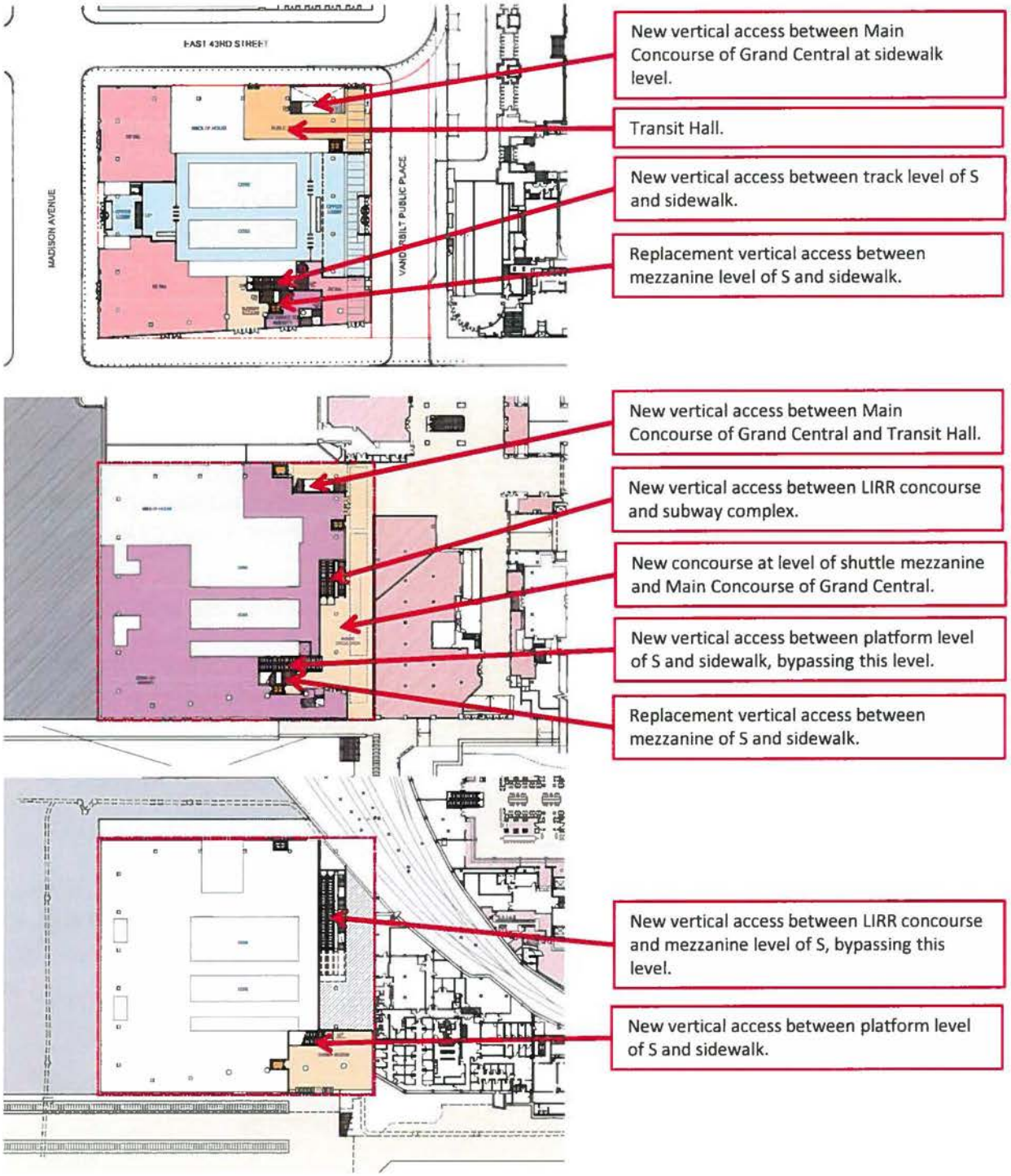
The LIRR concourse of East Side Access is to be at the lower track level of Grand Central just west of Vanderbilt Avenue. The drawing at the far left shows both the concourse and the station, much deeper, under Park Avenue. The drawing at the near left shows an enlargement of the southern end of the concourse.

On both drawings the site of One Vanderbilt is shown in a red outline and the axis of the LIRR concourse is shown by an orange line.

A goal at One Vanderbilt is to provide access between the LIRR concourse and areas to the south and southwest at street level and to the S and 4, 5, & 6 subway lines under 42 Street. This is indicated by the yellow arrow.

Other goals at One Vanderbilt include replacing the access between sidewalk and mezzanine at the shuttle and adding access between the sidewalk and platform level, providing an appropriate entrance to Grand Central and East Side Access from the southeast, and integrating the new building with Terminal City.

16 Sep 14



Terminal City
One Vanderbilt

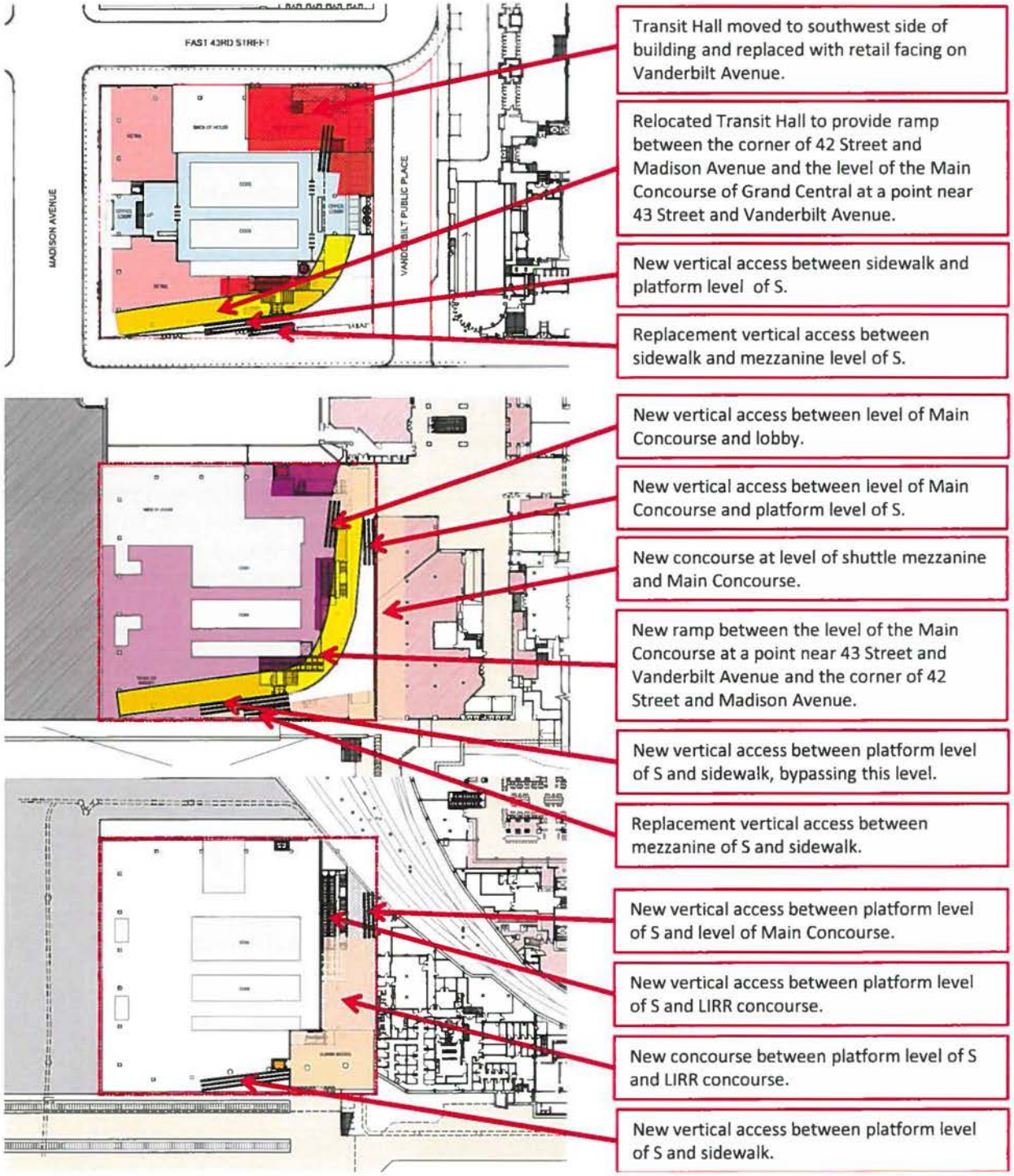
The current proposal for One Vanderbilt includes three significant improvements to the public realm:

- Replacement access between the subway mezzanine level and the street and new access between the subway platform level and the street.
- A connection between the LIRR concourse and the subway.
- A public room entrance to Grand Central.

Unfortunately, the connection between the LIRR concourse and the subway is indirect in that one goes up to go down.

Unfortunately, the public room is not located so that it satisfies a significant route in and out of Grand Central.

And unfortunately the several elements are separate so that they do not add synergistically to the public realm .



Terminal City
One Vanderbilt

An alternative configuration of the public realm in One Vanderbilt would provide all of the proposed elements but would modify them to provide a more useful, better integrated system.

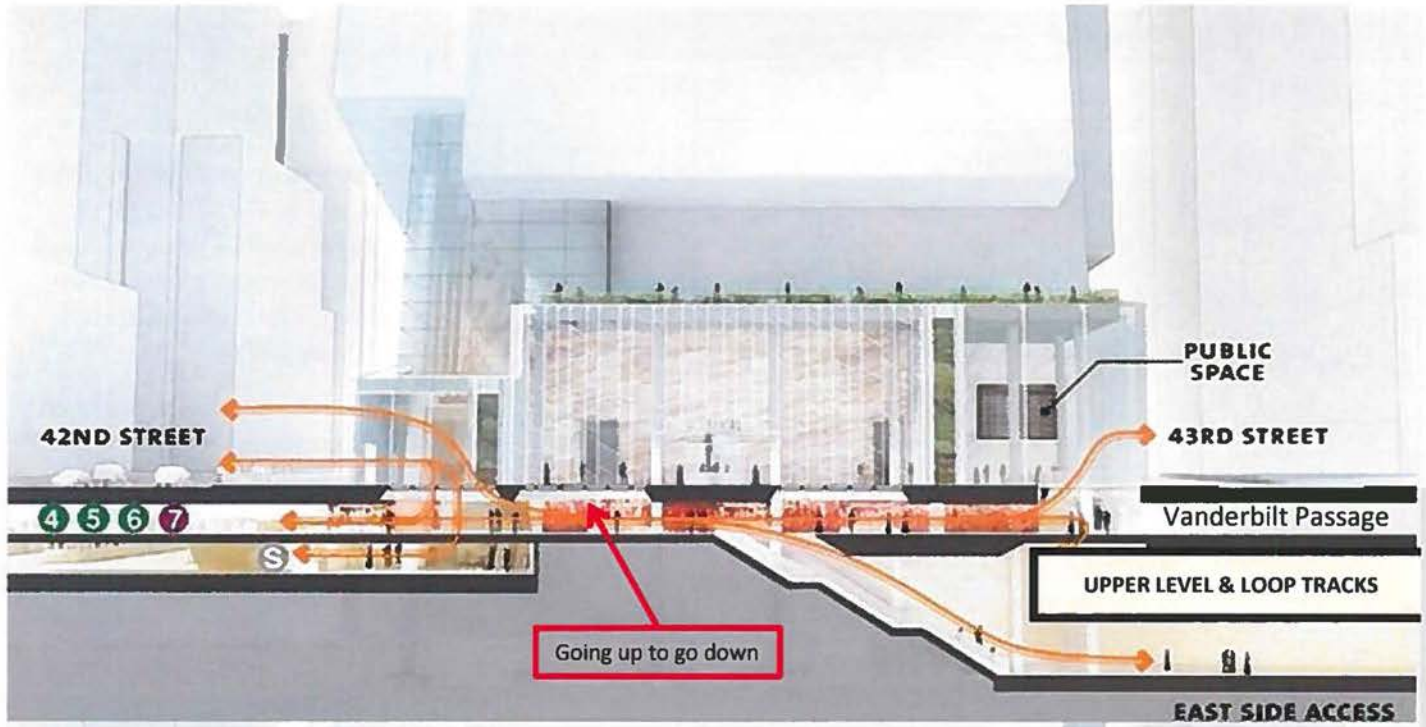
Alternatively, the escalators from the LIRR concourse might stop at the platform level of the S rather than continuing to the mezzanine level of the S, providing a more direct transit to transit connection.

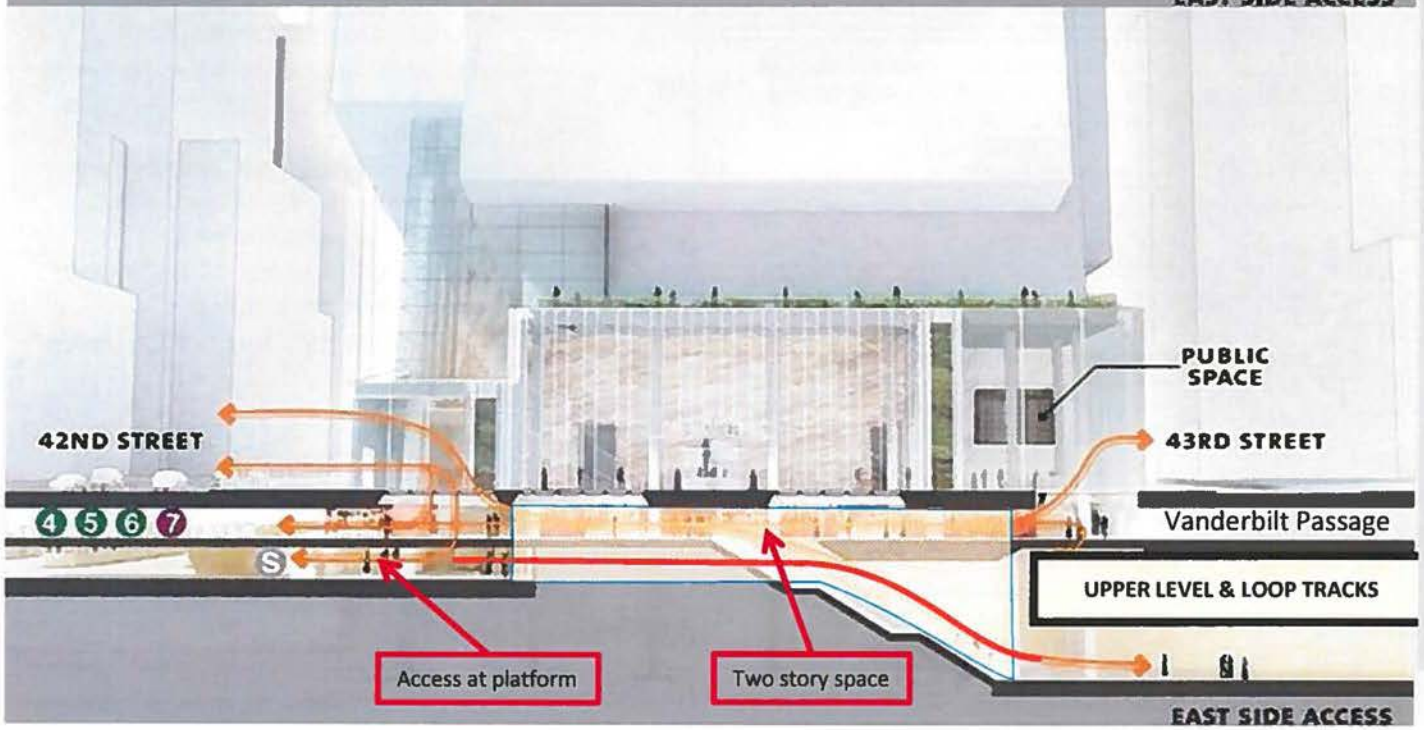
Alternatively, the Transit Hall might be moved to the opposite corner of the building where it could provide an entrance to Grand Central from the corner of 42 Street and Madison Avenue.

And, alternatively, the several additions to the public realm might be combined into a continuous series of spaces so that each contributes synergistically to all of the public purposes.

In addition, like other buildings in Terminal City, One Vanderbilt should, for the convenience of its tenants and visitors, connect directly between its lobby and the concourse system of Grand Central.

18 Sep 14





Terminal City

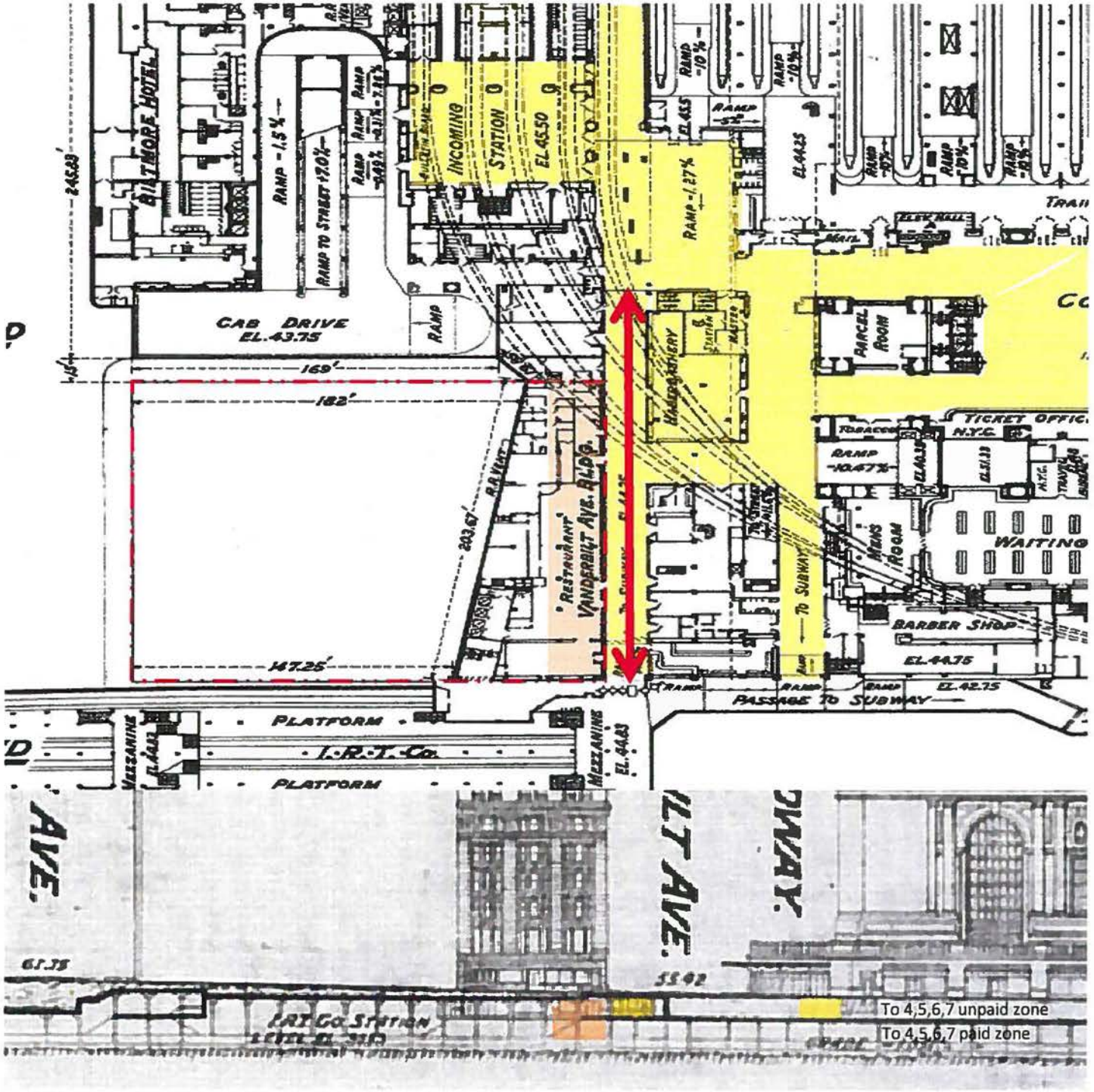
One Vanderbilt

The current proposal for One Vanderbilt (top left) would provide a route between LIRR's East Side Access concourse and the shuttle to Times Square. It would, however, bring passengers from the LIRR concourse to the mezzanine level of the S, from which they would then descend to the platform level – going up to go down.

An alternative (bottom left) would bring passengers from the LIRR concourse to the platform level of the S, allowing a more convenient transit to transit connection.

The alternative has the additional advantage of creating a two story high space between the low ceilinged LIRR concourse and the S station, more in keeping with the scale of Grand Central.

Bringing passengers to the platform level of the S also provides a convenient route to the 4/5/6/7 through the paid passage at the platform level of the S.



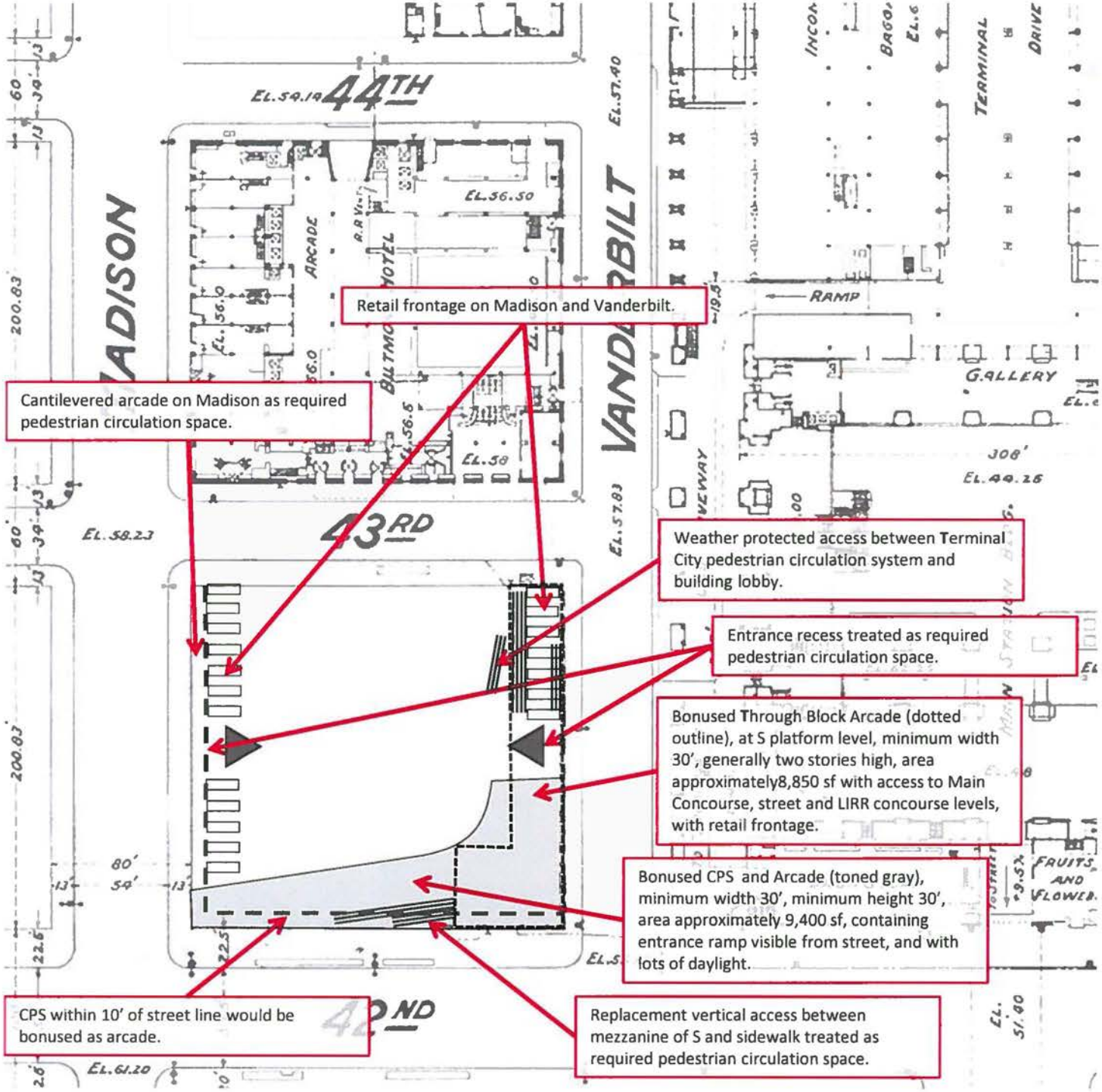
Terminal City
One Vanderbilt

Old Grand Central had a passage, now closed and reused for retail space, at the level of the Main Concourse and running along, and one story below, Vanderbilt Avenue adjacent to One Vanderbilt (red arrow at left). It was on axis with the Vanderbilt Passage to the north and the lower lobby of the Lincoln Building to the south. (Its ends are forensically visible in wall recesses and material changes.)

If reopened, the passage would provide a convenient access to the mezzanine level of the shuttle, on axis with the Lincoln Building and the Vanderbilt Passage (see red arrow at left).

The restored passage could be designed to be open on its west side so as to overlook a new concourse within One Vanderbilt connecting the platform level of the S with escalators to the LIRR concourse (see orange at left).

17 Sep 14



Terminal City
One Vanderbilt

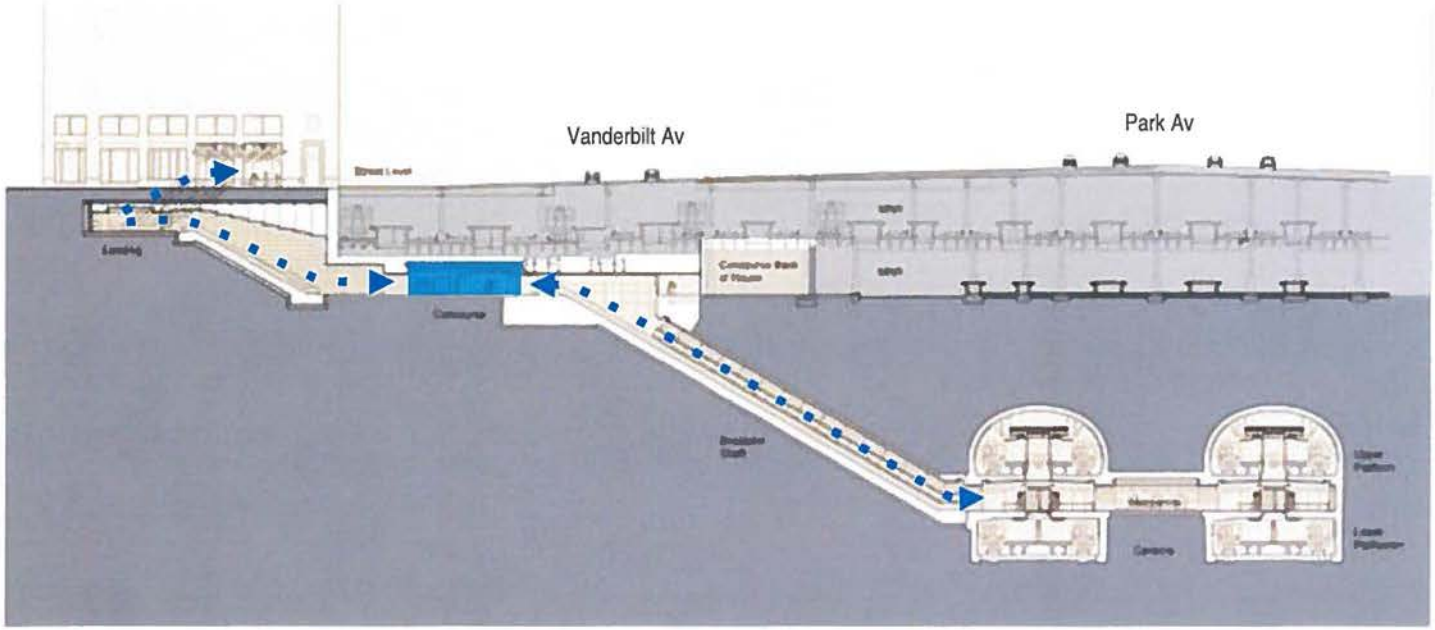
PCS: The Special Midtown District requires 1 sf of pedestrian circulation space for each 300 sf of building zfa. The sketch at left suggests this might be satisfied by an arcade on Madison, replacement access to the shuttle, and lobby entrance recesses on Madison and Vanderbilt. These spaces do not earn bonus floor area.

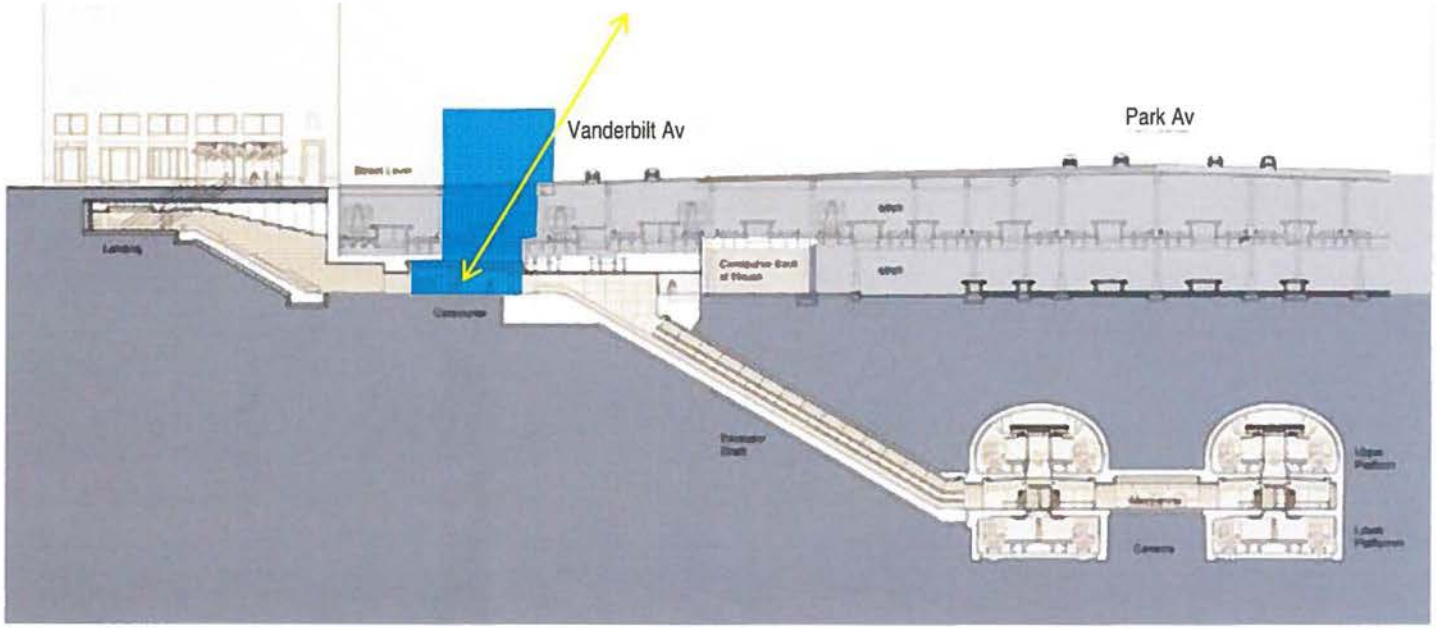
TDR: No major improvement to the pedestrian circulation system has been identified as a benefit to Terminal City justifying the transfer of development rights under the Grand Central Sub-district.

PRI: The sketch at left suggests that the on-site public realm improvement might be a four story space, two stories above grade similar to a Covered Pedestrian Space and Arcade and two stories below grade similar to a Through Block Arcade. With 6,600 sf of CPS at a bonus rate of 14:1, 2,800 square feet of Arcade at 3:1, and 8,850 sf of Through Block Arcade at 6:1 the space would earn a bonus of approximately 144,000 zsf.

23 Nov 14

Terminal City





LIRR trains will use a double cavern station located 150 feet below Park Avenue. Each cavern will have four tracks and two platforms. Passengers will climb by escalators at 44, 45, 46, and 47 Streets to a new concourse below and just west of Vanderbilt Avenue. From there passengers will use additional escalators, stairs and elevators to reach street level.

Because the new concourse for the LIRR will be in the lower track level of Grand Central, replacing some tracks and platforms, it will have a relatively low ceiling, although it will be some 1,300 feet long.

At the cost of one platform and two tracks at the upper track level of Grand Central, the new LIRR concourse could have a much taller ceiling. This would allow a concourse more in keeping with the scale and character of Grand Central.

In selected locations the LIRR concourse could include space above street level in buildings on the west side of Vanderbilt Avenue. This would provide visual orientation between the concourse and the street.

Grand Central Subway Station Complex:
Public Realm Improvements or Mitigation?

Some of the improvements to the Lexington Avenue subway station at Grand Central that are claimed as part of the Public Realm Improvement bonus for One Vanderbilt are also mitigation committed to by the City or the MTA, respectively, for the extension of the #7 line and for East Side Access. (See the attached extracts from the Findings Statement and the Record of Decision.) They include a northerly extension of the mezzanine, a stair between the extended mezzanine and the northbound platform, and a stair between the extended mezzanine and the southbound platform as mitigation for the extension of the #7 line and a stair between the south end of the mezzanine and the southbound platform as mitigation for East Side Access.

Of the $210 million of on- and off-site improvements to the public realm claimed for bonus floor area for One Vanderbilt, $42.7 million, or approximately 20%, are these two items to which the City and the MTA are already committed as mitigation. 20% of the 12.3 FAR claimed for the PRI bonus would be approximately 2.5 FAR.

Of course the Lexington Avenue station desperately needs these improvements; however, if they are provided as part of the Public Realm Improvement bonus for One Vanderbilt the city and the MTA will have been relieved of obligations totaling over $42 million and One Vanderbilt will include 2.5 FAR of additional density without corresponding density ameliorating amenities.

Why does this matter?

It matters because it undermines public trust in the City's zoning regulations and in the agencies responsible for them; and because it is probably illegal.

> Granting One Vanderbilt bonus floor area for fulfilling obligations of the City and the MTA has the appearance of selling zoning – zoning-for-dollars.
>
> Granting One Vanderbilt a bonus for improvements required as mitigation for other projects rather than for new density ameliorating amenities means that the additional density of the building has not been mitigated through the bonus.
>
> Using the Public Realm Improvement bonus to relieve the City and the MTA of multimillion dollar obligations rather than for additional improvements to the public realm appears to be a conflict of interest between the City reducing its financial obligations and protecting the public interest.

The improvements that were identified as mitigation for the extension of the 7 line and for East Side Access should be paid for and built as part of those projects and should be completed by the time the projects become operational. They should not be delayed or paid for through zoning bonuses.

-- John West

No 7 Subway Extension and Hudson Yards

CITY PLANNING COMMISSION

November 22, 2004 / Calendar No. 4 N 040500(A) ZRM

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, relating to Article VIII, Chapter 1, (Special Midtown District), Article IX, Chapter 6 (Special Clinton District), Article XII, Chapter 1 (Special Garment Center District), and the elimination of the Special Jacob K. Javits Convention Center District and the creation of the Special Hudson Yards District in Article IX, Chapter 3.

*****

EXHIBIT A

CO-LEAD AGENCIES FINDINGS STATEMENT

State Environmental Quality Review Act (SEQRA)

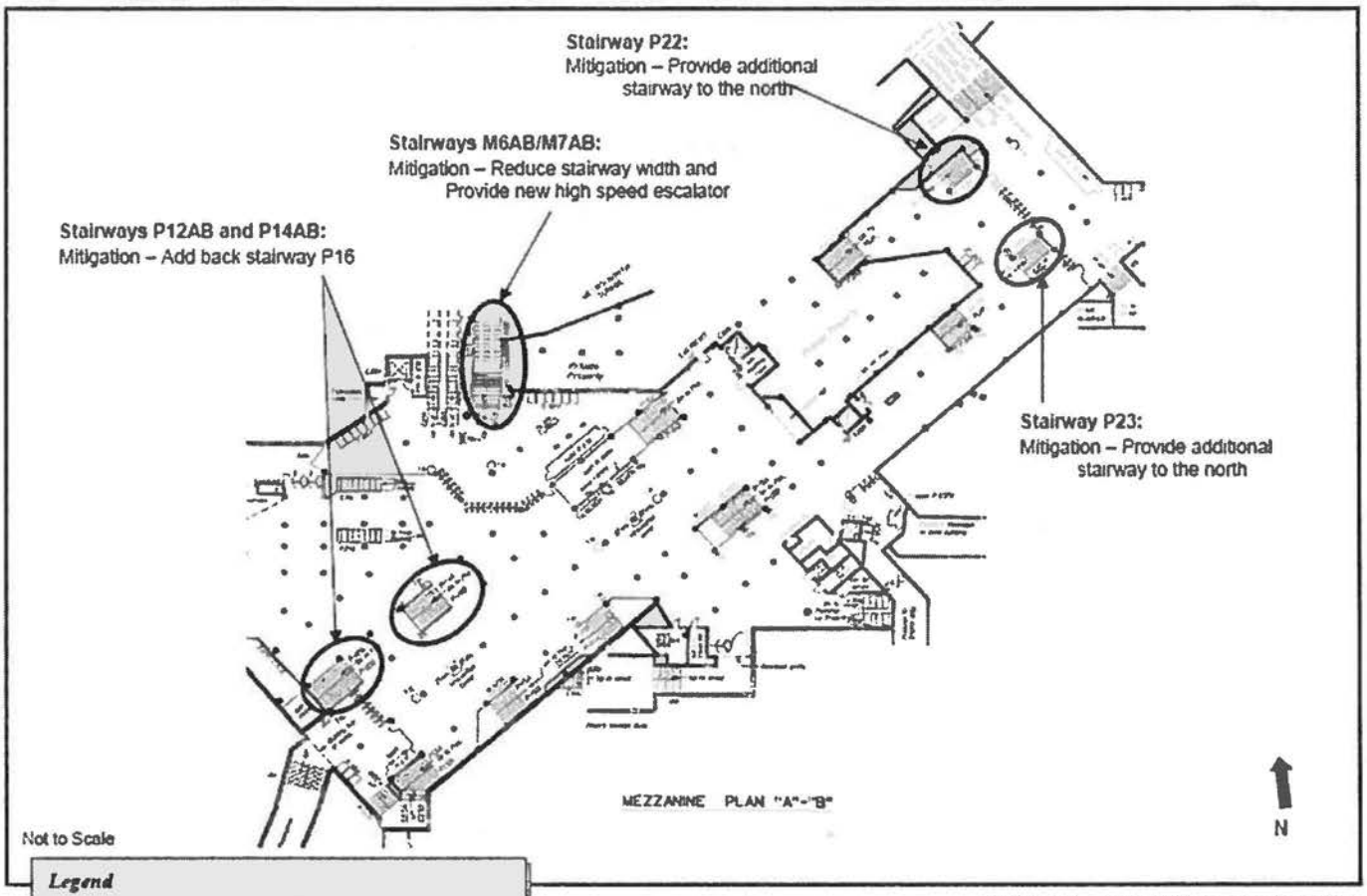
This Findings Statement has been prepared in accordance with Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA), and its implementing regulations promulgated at 6 NYCRR Part 617.

Co-Lead Agencies:	Metropolitan Transportation Authority (MTA) City of New York City Planning Commission (CPC)
Name of Proposed Action:	No. 7 Subway Extension—Hudson Yards Rezoning and Development Program
SEQRA Classification:	Type 1 Action

*****

The City of New York would provide the required funding for all transit mitigation (subway station improvements and new MTA buses) pursuant to arrangements satisfactory to the MTA and the City. The costs of the remaining mitigation measures would be borne by the City, except that the cost of the pedestrian bridge over Route 9A near West 33rd Street would be assumed by the New York Jets, and the cost of the pedestrian bridge between West 39th Street and West 40th Street would be allocated among the City of New York, the State of New York, and the New York Jets.

The CPC has considered the relevant environmental impacts, facts and conclusions disclosed in the FGEIS and has weighed and balanced relevant environmental impacts with social, economic and other considerations. Based on the foregoing, the CPC certifies that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, both the Proposed Action and Alternative S avoid or minimize adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable for both the Proposed Action and Alternative S. The CPC further finds that the Proposed Action and Alternative S are consistent to the maximum extent practicable with New York City's local waterfront revitalization program.



Legend

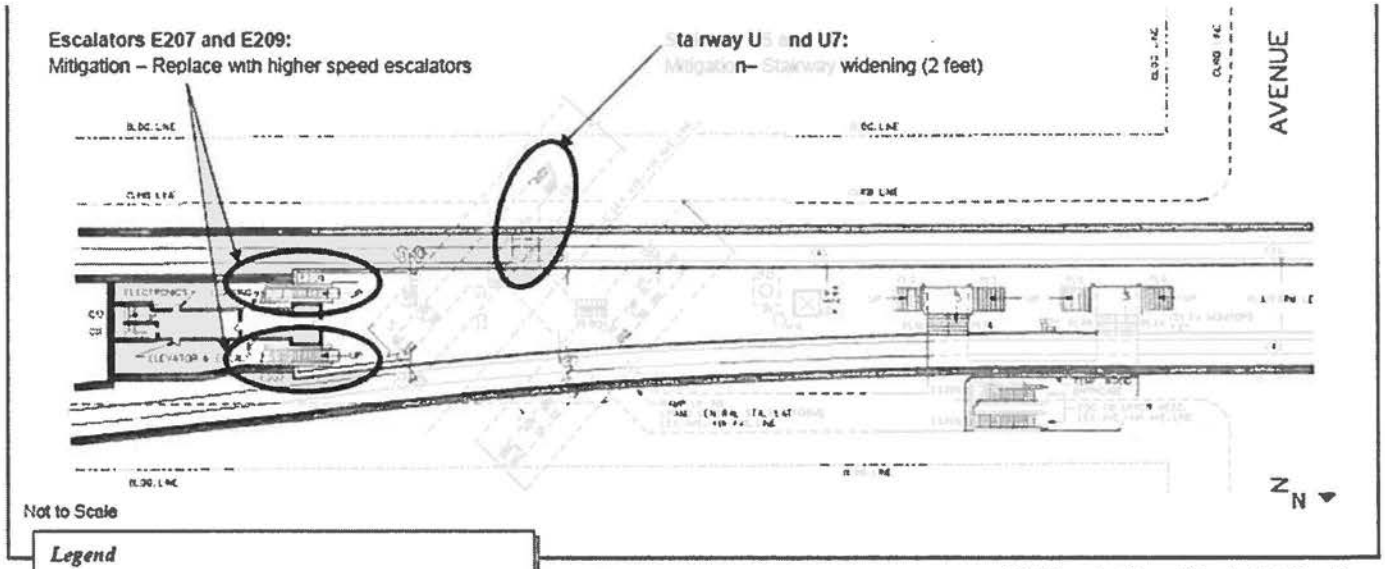
- Existing Station Changes
- Future Station Changes Planned by NYCT
- Impact Location
- Unmitigatable Impact Location

42nd Street – Grand Central Station Plan
Lexington Avenue Line – IRT Division

2025 Future with the Proposed Action: Subway Station Elements with Impacts

Figure 20-13.7

Source: MTA New York City Transit – Department of Subways



Legend

- Existing Station Changes
- Future Station Changes Planned by NYCT
- Impact Location
- Unmitigatable Impact Location

42nd Street – Grand Central Station Plan
Flushing Line – IRT Division

2025 Future with the Proposed Action: Subway Station Elements with Impacts

Figure 20-13.6

Source: MTA New York City Transit – Department of Subways

East Side Access

RECORD OF DECISION
East Side Access Project

prepared by

U.S. Department of Transportation (US DOT)
Federal Transit Administration (FTA)

and

Metropolitan Transportation Authority (MTA)

in cooperation with

Long Island Rail Road (LIRR)

Decision

The FTA, pursuant to 23 Code of Federal Regulations (CFR) Section 771.127 and by this environmental Record of Decision (ROD), finds that the requirements of the National Environmental Policy Act of 1969 (NEPA) have been satisfied for the East Side Access Project ("Project"). The Project is Option 2 of the Preferred Alternative that was evaluated in the East Side Access Final Environmental Impact Statement (FEIS) issued by FTA on March 6, 2001.

*****

ATTACHMENT A
MITIGATION MEASURES

Committed mitigation measures that are now incorporated into the Project are described in detail in the FEIS. This attachment summarizes the incorporated mitigation. The MTA-LIRR is required to make sure all mitigation measures committed to in the FEIS and summarized here are implemented.

*****

MITIGATION FOR TRANSPORTATION IMPACTS

TRANSIT

With the East Side Access Project, a number of improvements would be made to elements of the New York City Transit Lexington Avenue line subway station at 42nd Street/Grand Central Terminal. These measures are designed to mitigate congestion on stairwells, platforms, and line-haul capacity of the Lexington Avenue subway by improving circulation patterns and train throughput. The specific mitigation measures are listed below and illustrated in Figure S-6:

- *Increase use of the free passage connecting NYCT fare control area 236 at the shuttle turnstile area entrance and fare control area 238 at the Lexington Avenue line western turnstile bank.*
- *Create a new turnstile bank just west of fare control area 238 to attract passengers from the free passageway area into the mezzanine area and relieve use of the western stair/escalator bank.*
- *Widen the corridor mouth into space currently occupied by the Pershing Building's basement to create a new stair P10.*
- *Restore stair P16.*
- *Enlarge fare control area 238's turnstile line farther east into the mezzanine area.*

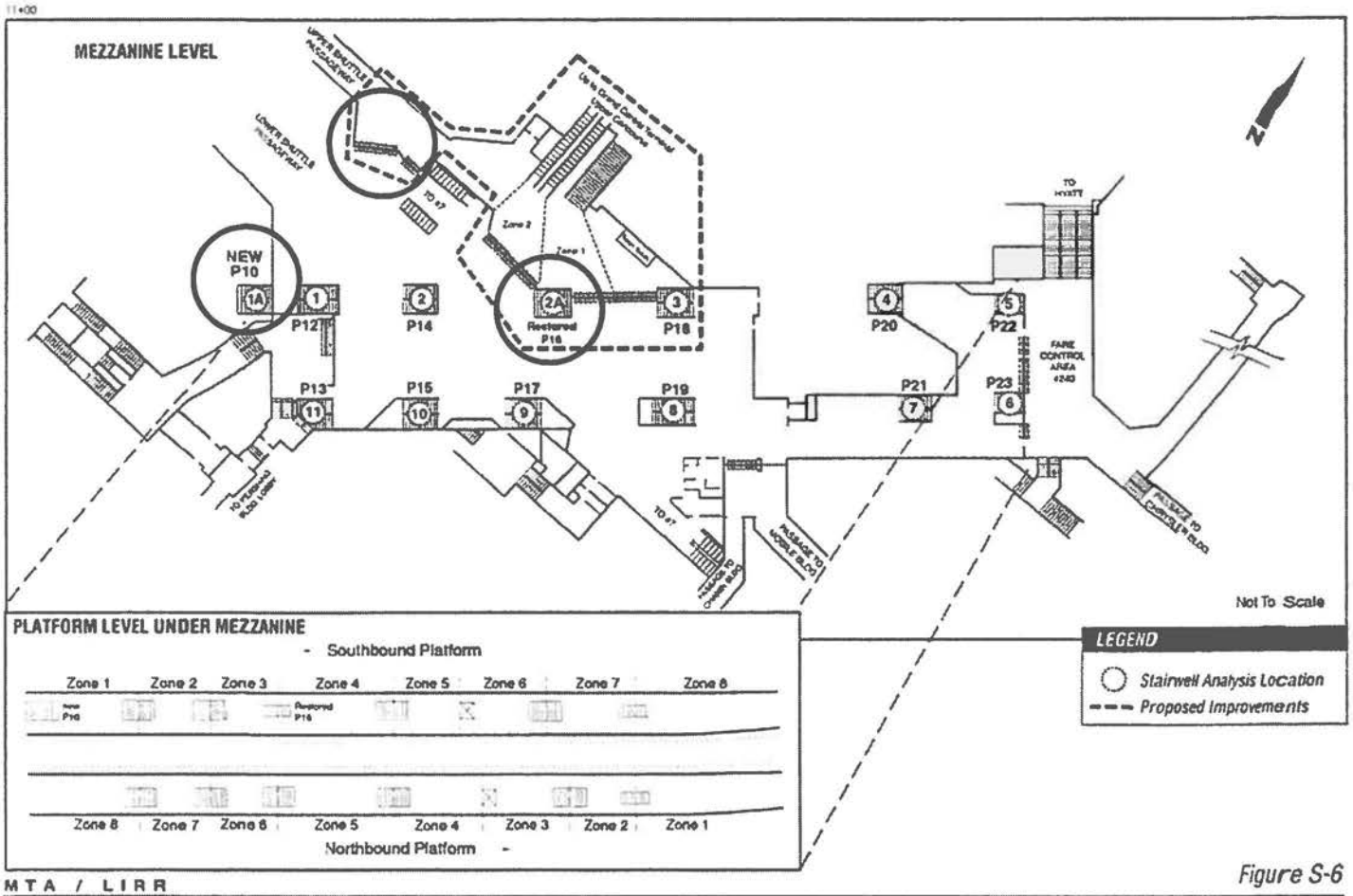


Figure S-6