

THE NEW YORK CITY COMMUNITY GARDEN COALITION
232 EAST 11th STREET NEW YORK, NY 10003-7301



FOR THE RECORD

December 19, 2013

Dear City Council Members,

The New York City Community Garden Coalition is dedicated to preserving community gardens throughout the Boroughs. Today you will be hearing a zoning and development plan that eliminates the Boardwalk Community Garden in Coney Island. This 16 year old garden survived Hurricane Sandy but will be destroyed by a wrecking ball unless the City Council takes decisive action.

Therefore in regard to zoning resolutions LU-0994-2013, LU-0995-2013, LU-0996-2013 and LU-0997 it is critical to community gardeners city-wide and the Coney Island community in particular to reject or at very minimum, table the Coney Island Amphitheater until 2014 when a new Speaker, Council, and Mayor can work out a just scenario for the Boardwalk community gardeners.

The NYCCGC is not opposed to building this project or any meaningful development. If the project has so much merit build it elsewhere. What we are against is the destruction of a community garden that is a neighborhood landmark. A place where people of all ethnicities work side-by-side growing fresh produce in a neighborhood that lacks such amenities. We are against building an amphitheater in an environmentally sensitive zone that likely will be destroyed come the next super storm.

This September in solidarity with local and very vocal community presence, the Community Board in Coney Island voted against the real estate development project that threatens the community garden and neighborhood.

The real estate development project threatening this community garden was previously defeated in another section of Coney Island. The question we ask you is: if the project wasn't good enough for a relatively affluent neighborhood in Eastern Coney Island (Asser Levy Park), then why is it good enough for the primarily poor non under-serve community of Western Coney Island?

The NYCCGC has introduced documents clearly showing that the Boardwalk Community Garden is Mapped Parkland – which means that the community garden is entitled to very stringent environmental law protections against real estate development. The CPC denied that what we showed them is correct.

We also showed that the City is not following its own rules that govern the review process environmental impact assessment. In November the City moved to change those rules in such a way that could adversely impact all community gardens by lowering the bar and make it easier to get rid of community gardens.

Beyond project denial or delay, we're asking the City to "play fair" – by the rules – on a "level playing field" by respecting the public's right to transparency and government accountability to all the people and to respect community gardeners for the tremendous contributions they selflessly make every day to the revitalization of communities citywide.

We urge you to consider using your powerful voice to stop or delay action in this matter.

Sincerely,

Raymond Figueroa Reyes, Board President
Aziz Dehkan, Executive Director
New York City Community Garden Coalition



December 18, 2013

FOR THE RECORD

Raymond Figueroa-Reyes
President

Sean-Michael Fleming
Mara Gittleman
Aresh Javadi
Charles Krezell
Mark Leger
Magali Regis
Eric Thoman
Kate Temple-West
Vandra Thorburn
Karen Washington
Haja Worley

Honorable Leroy Comrie, Chair
Land Use Committee of the New York City Council
and
Honorable Members of the Land Use Committee
New York City Council

Re: Seaside Park & Community Arts Center – CEQR NO. 13DME014K , LU994, LU995 and
All Related Land Use Applications – Need for a New Environmental Impact Assessment via a
Formal Supplemental Environmental Impact Statement

Honorable Councilman Comrie and Honorable Council Members of the Land Use Committee:

My name is Raymond Figueroa. I am President of the New York City Community Garden Coalition presenting here on behalf of the Boardwalk Community Garden. I am writing to request the preparation of a new Supplemental Environmental Impact Statement based on the existence of newly discovered natural resource information that has arisen and the consequential significant adverse effects that were not previously analyzed as a result vis-à-vis the proposed Seaside Park & Community Arts Center project.

Before proceeding to elaborate, I would first like to establish unequivocally – *and in the strongest possible terms* – that we are *not opposed* to the “Seaside Park and a Community Arts Center” *per se*. And we certainly are *not opposed* to the revitalization of the Coney Island community. I want to be very clear on this point.

What we are concerned with *and* specifically opposed to is the planned location for this proposed project that calls for development to take place on the site of a Parkland/Community Garden.

Please note that none of the Environmental Impact Statements (EIS) for this proposed project contain a chapter on “Natural Resources”. What we surmise as the reason for this is that the proposed project’s initial Environmental Assessment Statement (EAS), which established the Analysis Framework for subsequent EIS’s, was based on inaccurate and irrelevant information. Furthermore, the limited information that was gathered and, in turn, used in the EAS and subsequent EIS’s is, as a result, dated and has grown stale in terms of its relevance and accuracy with respect to the proposed project’s environmental impact.

By way of following up with you more substantively on these CEQR-related concerns, I’ve taken the liberty of providing documentation of relevant environmental impact information from the case of the Boardwalk Community Garden vis-à-vis the proposed project in Coney Island for your perusal and thoughtful consideration. Collectively, these documents shed light on a glaring lack of accurate accounting of existing conditions and detailed analyses of consistency with existing policies and relevant regulations in relation to assessing the proposed project’s environmental impacts as called for and stipulated in the CEQR Technical Manual.

I beg your indulgence as I attempt to summarize some of its more salient aspects and their ramifications.

CEQR EIS PROCEDURAL & SUBSTANTIVE ISSUES

The City's Final Environmental Impact Statement (FEIS) for this proposed project *improperly* cited Section 6(E)(3) of the 2002 Garden Agreement between the State of New York and the City of New York:

According to that FEIS, the Boardwalk Community Garden – located at Block 7071, Lot 142 – was decommissioned by the City in 2004. The FEIS claimed that the City followed a process for decommissioning gardens that was authorized under Section 6(E)(3) of the 2002 Settlement Agreement between the City and the New York State Office of the Attorney General (“2002 Agreement”).

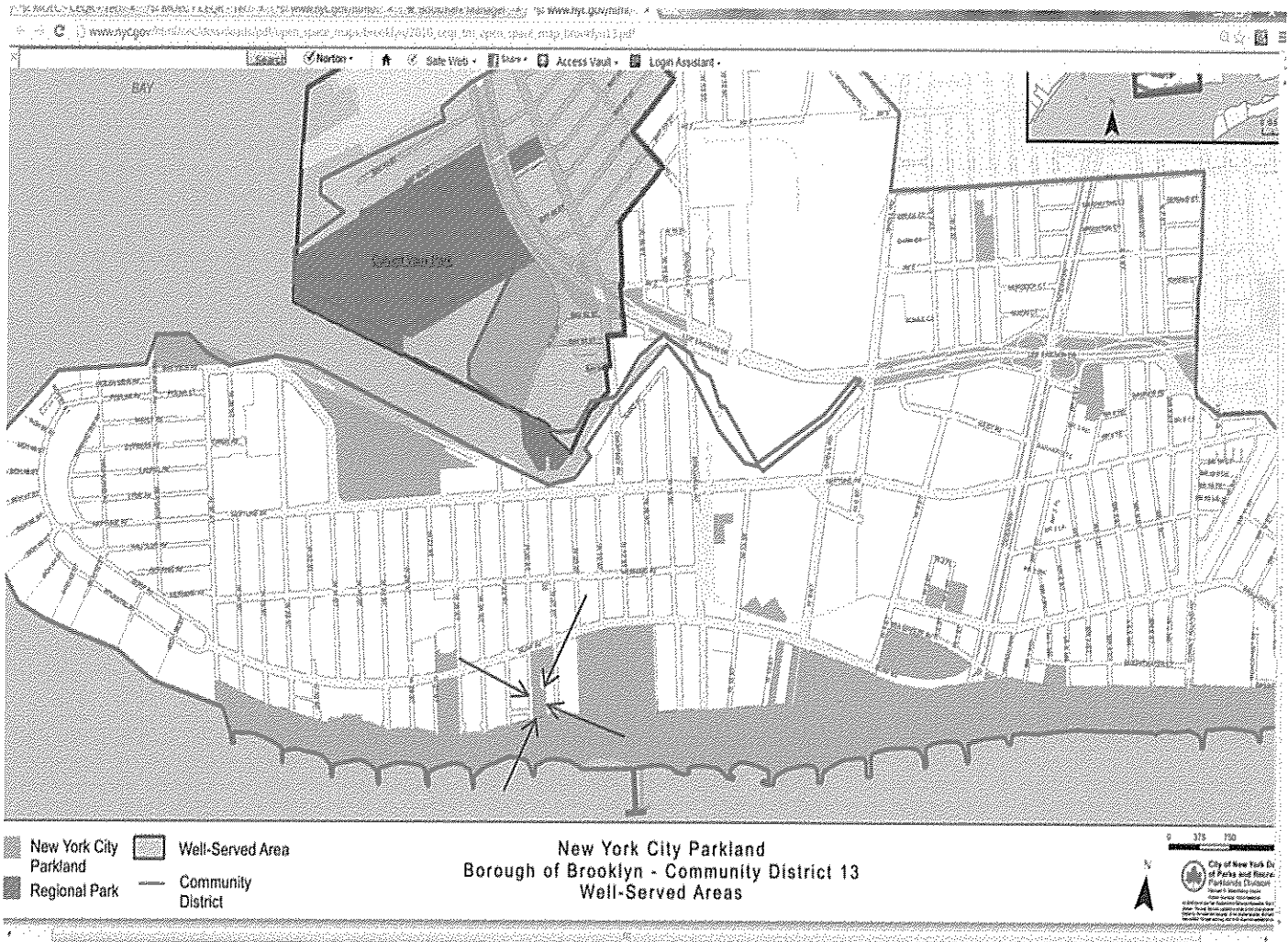
But the City's FEIS overlooked a key piece of information.

The 2002 Agreement created two lists of community gardens: (1) gardens that were owned and under the jurisdiction of the Parks Department were on a list titled “Parks Open Space”; and (2) gardens that were owned and under the jurisdiction of various other City agencies (*e.g.*, HPD, DOE, etc.) were on a list titled “Subject to Development”. The Boardwalk Garden was owned and under the jurisdiction of the Parks Department, and was therefore on the “Parks Open Space” list.

Section 6(E)(3) only applied to gardens that were on the “Subject to Development” list. So, the City was never authorized to use Section 6(E)(3) of the 2002 Agreement to decommission the Boardwalk Garden.

Several parts of the FEIS are based on the assumption that the Boardwalk Garden was properly decommissioned in 2004, using the Section 6(E)(3) process. Because Section 6(E)(3) never applied to the Boardwalk Garden, these are improper assumptions. As such, it is necessary according to relevant governing rules and regulations to prepare a new Environmental Impact Study which accounts for the fact that the garden was **not properly decommissioned in 2004, and remains in active use.**

Furthermore, the Boardwalk Community Garden is a Public Trust Parkland based on the fact that the City's own documentation clearly shows that this community garden is mapped as Parkland, (please see NYC Parkland Document below where the red arrows are pointing):



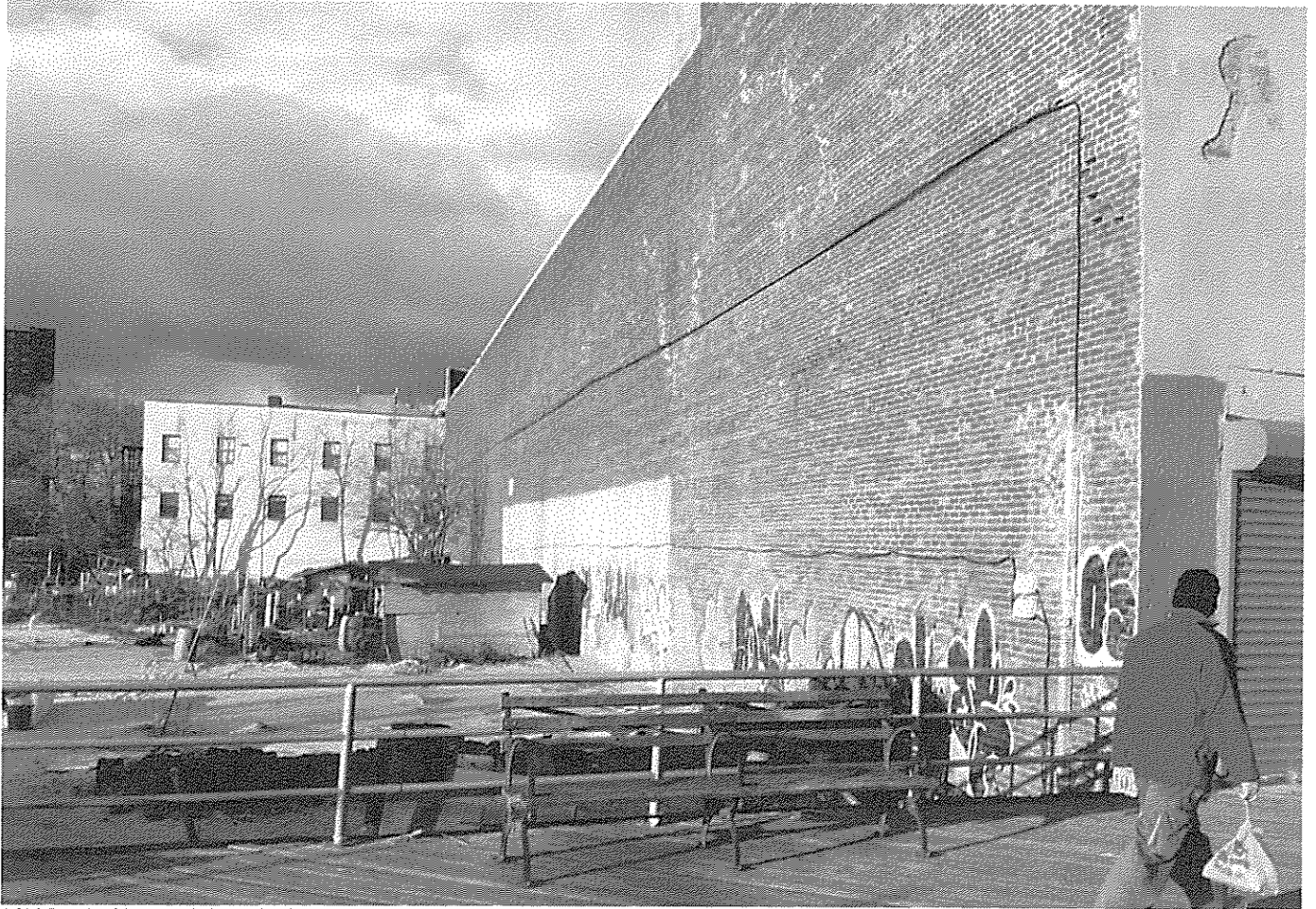
As per the New York State **Handbook on the Alienation and Conversion of Municipal Parkland in New York**, the **Public Trust Doctrine** case law recognizes this community garden as a formally dedicated Parkland and as such must go through the state legislature if any attempt is made to alienate.

Additionally:

1. this map represents the City's clear and unequivocal manifestation of intent to dedicate this particular Parkland
2. this Parkland has been accepted by the public for parks purposes, and
3. this Parkland has been used for park's purposes.

Taken together, these three conditions constitute an irrevocable dedication of this Boardwalk Community Garden as Parkland. And the erroneous attempt on the City's part to de-commission this community garden is completely without any legal justification.

Please note photographs below from the Environmental Assessment Statement (EAS) for CEQR 13DME014K – not taken during peak growing season – in figures 5b & 5c respectively nonetheless show the community garden in the wake of Hurricane Sandy. The original EAS for CEQR 13DME014K, i.e., the first official document in the CEQR sequence is responsible for outlining the *environmental impact analysis framework* for all of the subsequent EIS's for the amphitheater project – as per the CEQR Technical Manual.



(2) View looking north from the Riegelmann Boardwalk to the decommissioned community garden occupying Lot 142 on Block 7071. The western facade of the former Childs Restaurant Building is visible in the foreground of the photograph. **Project Site Photograph Seaside Park and Community Arts Center Figure 5B**



3) View looking northwest from the Riegelmann Boardwalk to the decommissioned community garden occupying Lot 142 on Block 7071. Project Site Photograph Seaside Park and Community Arts Center Figure 5C

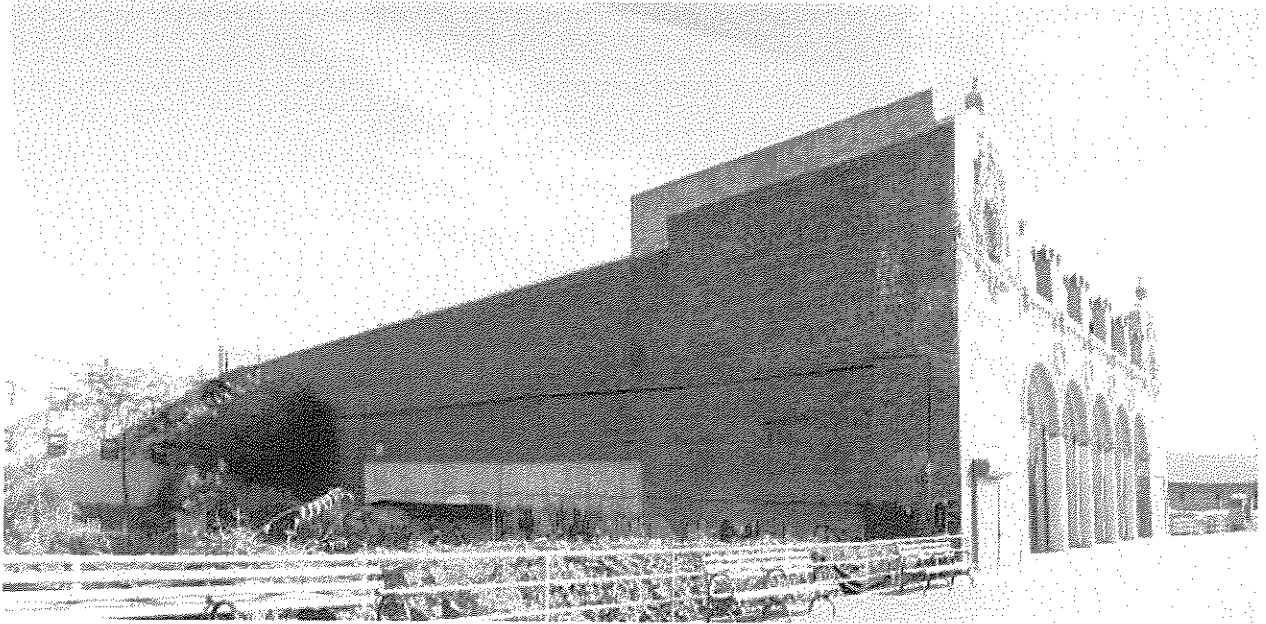
The formal Draft Environmental Impact Statement's (DEIS) remarks on Open Space Impacts do not accurately assess environmental impacts (please note the photograph below from the DEIS figure 3-1 was not taken during peak growing season as stipulated by the CEQR Technical Manual, which, from our perspective, nonetheless documents the community's efforts to repair & restore the Boardwalk Community Garden post-Sandy). **Section "D", EXISTING CONDITIONS, of the Open Space Chapter of the DEIS** acknowledge the following:

Although the community garden is decommissioned, field observations indicate that it is currently being used for gardening purposes.



Figure 3-1 The decommissioned community garden (Lot 142) Development Site Existing Conditions

Please note the July 9, 2013 photo below (courtesy NYC LANDMARKS PRESERVATION COMMISSION) reveals the Boardwalk Community Gardens' lush growth post-Sandy (during peak season) which speaks to the extraordinarily active dedication of the community gardeners to restore their garden after Hurricane Sandy devastated it (please also note that the perspective of the photo is the same as that of the previous photo in figure 5b of the EAS document only more zoomed out).



GKV Architects, PC
Higgins Quasbarth & Partners, LLC

Seaside Park and Community Arts Center
07/09/2013

West 22nd Street Elevation Photos

NTS
LPC-08

COURTESY NYC LANDMARKS PRESERVATION COMMISSION

The Environmental Assessment Statement – a document whose EIS analysis framework is of such crucial importance to the ensuing CEQR-delineated EIS process – was not executed in full compliance with CEQR Technical Manual, chapter on Natural Resources (please see selected excerpts along with comments below):

1. CEQR TECHNICAL MANUAL – ESTABLISHING THE ANALYSIS FRAMEWORK

*CEQR requires all city agencies to determine whether discretionary actions they directly approve, fund, or undertake may significantly and adversely affect the environment..... **Establishing the appropriate framework for analysis of the project allows the lead agency to make reasonable conclusions with regard to the project's likely effects.** (emphasis added) To determine the framework, this chapter should be used in conjunction with the **Environmental Assessment Statement (EAS)** (emphasis added).*

2. Here are the City's responses to questions in its original EAS form for this project:

- **NYC – CITY ENVIRONMENTAL QUALITY REVIEW – ENVIRONMENTAL ASSESSMENT STATEMENT (EAS) for Seaside Park and Community Arts Center [Amphitheater] Project – CEQR NO. 13DME014K –EAS FULL FORM**
 - **PART II: TECHNICAL ANALYSIS – 8. NATURAL RESOURCES – CEQR Technical Manual Chapter 11** – [question] (a) *Does the proposed project site or a site adjacent to the project contain natural resources as defined in Section 100 of Chapter 11 [of CEQR TECHNICAL MANUAL]?* [answer] No.
 - **PART III: DETERMINATION OF SIGNIFICANCE – IMPACT CATEGORY – Natural Resources:** [question] *....the project may have a potentially significant adverse impact?* [answer] No.

As a result of this faulty, non-CEQR compliant Environmental Assessment Statement, the subsequent EIS's – i.e., the DEIS and FEIS that recently went before the City Planning Commission for approval – did *not* contain a chapter on Natural Resources and project-related environmental impacts on the same.

3. CEQR TECHNICAL MANUAL – NATURAL RESOURCES – 100. DEFINITIONS

*A critical source of information on habitat communities present in New York City is the New York Natural Heritage Program's **Ecological Communities of New York State** [chapter on **Terrestrial Communities**]. In that chapter, it identifies in:*

- Section **D. Terrestrial Cultural, sub-section 4. Flower/Herb Garden:**.....*horticultural land cultivated for the production of ornamental herbs and shrubs. This community includes gardens cultivated for the production of culinary herbs. Characteristic birds include American robin (*Turdus migratorius*) and mourning dove (*Zenaida macroura*).*
- in the same Section **D. Terrestrial Cultural, sub-section 1. Cropland/row crops:** it identifies the following: *an agricultural field planted in row crops such as corn, potatoes, and soybeans. This community includes vegetable gardens in residential areas.*

Consistent with this particular classification of natural resources in New York, Boardwalk Community Garden is a Terrestrial Cultural Ecological Community. It is, by definition, a natural resource.

4. CEQR TECHNICAL MANUAL – NATURAL RESOURCES – 322. Field Reconnaissance

Field observations are an early and critical step in determining the scope of a natural resources assessment (emphasis added). *In limited cases, evidence gathered in initial **field reconnaissance at appropriate seasonal times** (emphasis added) may support an assessment showing that a resource is of limited value and/or that a project's disturbance would not be significant. Field reconnaissance of a project site and/or study area should be designed to include the following three considerations: (1) the level of effort (number of hours, days or **seasons** – (emphasis added); number and experience of observers should be consistent with*

the size and complexity of the study area; (2) reconnaissance should occur at a resource's biologically relevant periods (e.g., within the growing season.... (emphasis added)

Brief Comment: As per EAS photographs, it is apparent that field reconnaissance did not occur during Boardwalk Community Garden's biologically relevant periods, i.e., within the growing, which raises the question(s):

- Why not?
- Was there some sort of rush to complete the field survey?
- Why conduct a field survey and take photos at the worst time of the year and, at that, after the devastation of Hurricane Sandy?

5. CEQR TECHNICAL MANUAL –NATURAL RESOURCES – 321. Assess Existing Conditions

This task assesses a natural resource in order to understand its value for one or more functions, as determined by appropriate seasonal surveys (emphasis added) referenced in Section 300, including but not limited to habitat for flora and fauna, ecosystem services, ground water recharge, flood and storm control, erosion control, recreation, open space, and visual quality.... As with all technical analysis areas, the level of detail required corresponds to the anticipated effect of the project. Here, however, the resource is usually presumed to be important and valuable, absent any specific information to the contrary. The evaluation of the resource should either confirm this assumption or show the extent to which the presumption of value cannot be confirmed..... For most of the work outlined.....a certified ecologist, biologist or discipline-specific specialist should be used. (emphasis added);

Brief Comment: the question(s) raised here vis-à-vis the EAS photographs include:

- Who took those pictures?
- Were they taken by a certified ecologist, biologist or discipline-specific specialist?
- If so, again, why did they take these out-of-season photographs in the cold weather season in the wake of Hurricane Sandy?

6. CEQR TECHNICAL MANUAL – OPEN SPACE – 342.1. Field Surveys

Data collection should include field surveys of the open space resources if relevant data are not readily available (emphasis added). In these cases, it is recommended that information be obtained from at least two site visits, at least one of which is at the peak hour of use and in good weather. Information regarding the appropriate timing of a field visit may be*

obtained through conversations with community groups and facility operators. (emphasis)

Brief Comment: the question(s) here:

- Why were the EAS & DEIS field survey photographs not taken at the peak hour of use and in good weather?
- Did any conversations take place with the community gardeners of Boardwalk Community Garden in order to coordinate field visit to the community garden?
- If so, why would the community gardeners suggest the taking of field survey photographs at such a non-peak hour and in the wake of such bad weather conditions as Hurricane Sandy?
 - It is doubtful that such a conversation with the community gardeners took place. It is extremely doubtful that information regarding the appropriate timing of a field visit was obtained through conversations with the Boardwalk Community Gardeners.

*** First Set of Extended Comments**

1. It is apparent that the City of New York overly subscribed to the "***relevant data***" clause – cited above – so much so that I surmise it resulted in a preponderant reliance on internal administrative documents in its files including, but not limited to, the following records: **a) the non-renewal of the community garden's Green-Thumb license, in 2004, b) the re-zoning of the Coney Island area in 2009 attempting to change the parkland use of the lot that the Boardwalk Community Garden is located on, and c) the Parks/DCAS transfer letter in 2013** – to the exclusion of properly executed field studies as called for in the CEQR Technical Manual – all of which subsequently led to the official references to Boardwalk Community Garden in the various EIS reports as a "***decommissioned garden***", a "***vacant lot***", and/or an "***under-utilized garden***", etc. – as the basis for assessing the environmental impacts of the amphitheater development project on the Boardwalk Community Garden, i.e., concluding that there will be no significant environmental impact as a result of this project. (Please see, for example, the above referenced attached EAS and DEIS.)

The over reliance on "***relevant data***" contained in these and other administrative documents – to the exclusion of other relevant EIS field-based considerations such as those delineated in the CEQRA EAS Full Form and in the CEQR Technical Manual Natural Resources Chapter regarding Field Reconnaissance has led to the erroneous environmental impact assessments contained in the proposed project EIS's vis-à-vis Boardwalk Community Garden.

The Natural Resources chapter bears repeating:

CEQR TECHNICAL MANUAL – NATURAL RESOURCES – 321. Assess Existing Conditions

*This task assesses a natural resource in order to understand its value for one or more functions, as determined by appropriate seasonal surveys referenced in Section 300, including but not limited to habitat for flora and fauna, ecosystem services, ground water recharge, flood and storm control, erosion control, recreation, open space, and visual quality. This includes learning what site or study area features would be present on a yearly seasonal basis in the future without the project (e.g., spring, summer, fall and winter), and determining which of these are most important to maintaining natural resource functionality. **As with all technical analysis areas, the level of detail required corresponds to the anticipated effect of the project. Here, however, the [natural] resource is usually presumed to be important and valuable, absent any specific information to the contrary. The evaluation of the resource should either confirm this assumption or show the extent to which the presumption of value cannot be confirmed** (emphasis added).*

And note this also from this from the CEQR Technical Manual:

**CEQRA TECHNICAL MANUAL – NATURAL RESOURCES – 350.
ASSESSMENT ISSUES FOR SPECIFIC NATURAL RESOURCES –
353.3. Meadows or Old Fields, Woodlands, and Gardens**

*These habitats are usually considered to be common and therefore are not often protected by specific regulation. For these as well as all other habitats discussed in this section, **the CEQR analysis begins by assuming that they are valuable** (emphasis). Using the approach outlined in Sections 320 through 340, above, **the resource is characterized according to its vegetation, potential for wildlife habitat, current use, and, as appropriate, the environmental systems that support it** (emphasis).*

2. It is also quite apparent that the analytical framework of the CEQR TM section on Open Space with respect to community gardens in general and the Boardwalk Community Garden in particular is conceptually skewed towards considerations that favor high volume (pedestrian and vehicular) traffic and high volume entertainment value/assessments of open spaces. NYC's urban planners, policy makers, and real estate developers have all signaled their preferences for such development projects while destruction of communities and their natural resources including community gardens are mere collateral damage considerations as evidenced by the city's recent "up-zoning" of the Coney Island West area that includes destroying the Boardwalk Community Garden. This would explain why they regard the proposed amphitheater development project as an open space improvement over the Boardwalk Community Garden albeit these two respective land uses (i.e., that called for by the proposed project and the current Boardwalk Community Garden's stewarding of natural resources) are significantly different.

This analytical framework is conceptually flawed given the narrow criteria with which it attempts to assess the qualitatively and distinctly unique contributions that community gardens make every day to the civic revitalization of local communities throughout our city, including Coney Island West. It is analogous to using a Phillips-head screwdriver to screw down a single slot flat-head screw – it doesn't work. The CEQR Open Space analytical framework is the wrong instrument for assessing the significance of environmental impacts on the Boardwalk Community Garden; it is conceptually biased against community gardens.**

It is not a coincidence that community gardens are often found in urban areas where the local population is suffering disproportionately from Depression-era levels of poverty and unemployment. Within this demographic context, community gardens serve as resonantly meaningful, communally cultivated places that facilitate individual and collective resistance to the ravages of poverty and unemployment including significantly mitigating against concomitant negative health consequences.

For struggling communities such as Coney Island West – living on the socio-economic periphery of our society – Boardwalk Community Garden facilitates the fundamental human right of people (despite their poverty and unemployment status) to be productively and creatively engaged with Mother Earth in a way that is viscerally self-determining and which restoratively honors their sense of human dignity. Certainly, to be peacefully and ecologically engaged in cultivating plants and growing food is a human right that must be protected particularly in light of the fiscal reality of across-the-board government cuts to social programs including the food stamp program. Historically, there are relevant precedents such as the Depression-era Relief Gardens and WW II Victory Gardens that made up for the social dislocation of mass unemployment and the shortfalls in the supply of food and good nutrition during times of great economic strain.

3. So, to re-iterate, the CEQR Open Space analytical framework for assessing environmental impacts is fundamentally conceptually biased against poor people, because it is environmentally biased against community gardens.

It fails to fully capture the socially responsible and environmentally sustainable outcomes of community gardens such as Boardwalk Community Garden. This failure results in the ripple effects over time – that insidiously exacerbate the environmentally adverse impacts on this West Coney Island community and similarly situated working-class poor communities of primarily – though not exclusively – people of color.

4. The following are just some of the Boardwalk Community Garden's natural environmental and socio-economic factors that stand to be adversely impacted by this amphitheater development project that have been conspicuously omitted in the current CEQR process as otherwise called for by the pertinent governmental regulations including those found in Executive Order 91, the New York Code of Rules & Regulations (NYCRR), as well as those stipulated in the CEQR Technical Manual.
 - a. Consider the socio-economic factors also being potentially impacted by the proposed project in this regard. The actual community gardeners of Boardwalk Community Garden, many of whom are either working low-wage jobs, unemployed, under-employed, on public assistance, living on fixed incomes, and/or even pension-less, for whom the community

garden serves as a peace-filled place that allows them to fulfill their most deeply rooted human needs and aspirations to be more fully and meaningfully engaged as human beings albeit not necessarily in the remunerative sense though in nonetheless a productive manner in garden-cultivation activities. What they have lacked in economic capital, the local community has richly made up for in social capital. For them, the garden has come to culturally define their community's character of civic engagement in ways that have steadily been growing collective efficacy. The community gardeners of Boardwalk Community Garden have been involved in a unique deep form of recreation – re-creating and resurrecting themselves from poverty and unemployment, and not allowing economic resources challenges to define themselves as a community. Through the Boardwalk Community Garden, the community is fully embracing its sense of human dignity. They have been celebrating the multiple harvests of their community's resilience as well as the harvests of flowers, herbs, nutritious fruits, and vegetables.

- b.** Further, from a natural environmental perspective, this community garden/parkland*** hosts a variety of ecological services, including, but not limited to, the following:
 - i.** planted trees which promote heat island mitigation and ambient air filtration of particulates and carbon gas emissions,
 - ii.** cultivated soil-based permeable surfaces that promote rainwater infiltration along with storm water run-off & erosion mitigation (a very ecologically sound resiliency practice consistent with practices recognized by the City of New York (please see PlaNYC Sustainable Storm Water Management Plan http://nytelecom.vo.llnwd.net/o15/agencies/planyc2030/pdf/report_10_2010.pdf) in light of the "new normal" of extreme weather events such as Hurricane Sandy),
 - iii.** natural resources conservation through:
 - 1.** rainwater harvesting
 - 2.** regeneration of soils both structurally and bio-chemically via:
 - a.** composting which promotes carbon sequestration (and, in the process, GHG mitigation)
 - b.** cover-crops planted in the off-season that are plowed back into the soil which in turn produce "green manures" in preparation for the Spring planting
 - iv.** organic growing techniques which are free of synthetic chemical pesticides & chemical fertilizers that are:
 - 1.** supporting bio-diversity into soils with composted organic matter (natural – ecologically based – pest control)
 - 2.** utilizing companion plants (natural – ecologically based – pest control)
 - 3.** promoting safe (pesticide-residue-free) pollination, mitigating against pollinator-habitat fragmentation and bee colony collapse,

4. promoting safe (pesticide-residue-free) pollination, mitigating against pollinator-habitat fragmentation and bee colony collapse,
5. producing organically cultivated fresh fruits & vegetables thereby militating against diet-related diseases stemming from poor nutrition in this community that is disproportionately suffering from Depression-era levels of poverty and unemployment.

v. Boardwalk Community Garden is doing/growing a lot of good.

In view of the fact that the CEQR EIS process in this case has lacked substantial compliance in its application of criteria for environmental impact assessment – missing qualitatively significant impact assessment information, we're calling for a Supplemental Environmental Impact Statement (SEIS) to be accordingly initiated as per the CEQR Technical Manual SEIS & NATURAL RESOURCES Stipulations. Please note the following from the CEQR TM:

**1. CEQR TECHNICAL MANUAL PROCEDURES AND DOCUMENTATION 420.
Supplemental EIS (SEIS)**

The SEIS is a flexible tool in the CEQR process. It is used to supplement or amend a previously prepared and circulated EIS. It provides decision-makers, interested and involved agencies, and the public with information about impacts not previously studied. The SEIS is used when:

- *Changes are proposed for the project that may result in a significant adverse environmental effect not anticipated in the original EIS;*
- ***Newly discovered information arises about significant adverse effects that was not previously analyzed** (emphasis added); or*
- *A change in circumstances related to the project has occurred.*

*In considering the need to prepare an SEIS, in the case of **newly discovered information** (emphasis), the agency should weigh the importance and relevance of the information and the current state of information in the EIS. 6 NYCRR 617.9(a)(7). The scope of the SEIS is targeted to specifically address only those issues that meet these requirements. The need for an SEIS may become apparent after the acceptance of the DEIS and up to the time that agency findings are filed, following the completion of the FEIS. SEISs may also be prepared after findings have been made if changes are proposed for the project that requires additional discretionary approval. In this case, the assessment as to whether an SEIS is needed should also consider whether an aspect of the original EIS has grown stale, i.e., whether the passage of time since the original environmental review was conducted has resulted in a change of circumstances, such as the existing traffic conditions or neighborhood character, that may now result in the project, as modified, causing significant adverse environmental impacts that were not sufficiently disclosed in the original EIS. If the assessment indicates that the project may result in a new, previously undisclosed significant impact, an SEIS is*

appropriate and the agency would then prepare an SEIS. If the assessment indicates that it is unlikely that there will be new previously-undisclosed potential significant adverse impacts, the preparation of an SEIS is not required. The preparation of an SEIS is subject to the full procedures that govern the preparation of an EIS, including the scoping process and required public hearings. In addition, supplemental findings statements may be necessary.

2. CEQR TECHNICAL MANUAL PROCEDURES AND DOCUMENTATION 421. Technical Memoranda

In the event that the lead agency determines that it is appropriate to consider whether an SEIS is necessary, it is recommended that the lead agency document this assessment in a technical memorandum. In the event the technical memorandum assessment indicates that the preparation of an SEIS is or may be warranted, the lead agency should prepare an EAS or, if appropriate, may proceed to the issuance of a Positive Declaration. In the event the technical memorandum assessment indicates that the preparation of an SEIS is not warranted, no further documentation or analysis is needed. The technical memorandum should be prepared by the lead agency for its files and should bear the same CEQR number as that of the original EIS. A copy should also be sent to MOEC (i.e., the Mayor's Office of Environmental Coordination.)

***** Third Set of Extended Comments**

Finally, consider the fact that the Boardwalk Community Garden is mapped Parkland (please see NYC Parkland Document below where the red arrows are pointing):

As parkland, it is a public trust, and, as such, it would necessarily have to go through a formal process for Parkland Alienation as per the Public Trust Doctrine in order to be considered for real estate development.

Beyond its mapped parkland status, the Boardwalk Community Garden is also implicitly dedicated parkland by dint of all that goes on in this land – it is impressed with a *public trust* as per guidance provided by the state's HANDBOOK ON THE ALIENATION AND CONVERSION OF MUNICIPAL PARKLAND IN NEW YORK:

Chapter 1: All About Parkland Alienation

The requirement that a municipality obtain legislative authorization in order to alienate parkland is not found in a statute, which is a law passed by the State Legislature. Rather, the basic principle for parkland alienation is founded in case law or “common” law.[] The courts have consistently held that “once land has been dedicated to use as a park, it cannot be diverted for uses other than recreation, in whole or in part, temporarily or permanently, even for another public purpose, without legislative approval.”[]

Formal dedication of parkland or implied dedication of parkland?

The dedication of parkland may be formal through an official act by the governing body of the municipality, such as the passage or adoption of a formal resolution or local law.[] However, dedication can also be implied. This may occur through actions which demonstrate that the government considers the land to be parkland or the public used it as a park. Examples include: a municipality publicly announcing its intention to purchase the lands specifically for use as a park, “master planning” for recreational purposes, budgeting for park purposes, “mapping” lands as parkland, or constructing recreational facilities.[] Dedication through implication can also occur when the common and accepted use of the land is as a park.[] Accordingly, in order for the principles of alienation to apply to municipal land, it need not have been formally dedicated, or even developed with amenities such as lawns, playing fields, or picnic tables.

Here is what the CEQR TM calls for when addressing alienation of parkland:

- 1. CEQR TECHNICAL MANUAL – OPEN SPACE – 500. Developing Mitigation**

If the proposed project results in a significant adverse open space impact..... [s]ome ways in which open space impacts may be mitigated.....follow:

.....Mitigation for the alienation or conversion of public parkland typically involves the acquisition of replacement parkland (emphasis) of equal or greater size and value servicing the same community of users (emphasis).....

Again, in view of the fact that the CEQR EIS process in this case has lacked substantial compliance in its application of criteria for environmental impact assessment – missing qualitatively significant impact assessment information, we're respectfully calling for a new environmental impact assessment via a Supplemental Environmental Impact Statement (SEIS) to be accordingly initiated as per the CEQR Technical Manual SEIS & NATURAL RESOURCES Stipulations.

In order for this proposed project to avoid needless pain and destruction of a civically vital hub of community life, natural resources, *and* cultural ecological community conservation, let's not call ourselves revitalizing the Coney Island community while destroying it in the process for that would constitute a pyrrhic victory. In order for this proposed project to truly be a win/win for all concerned, a good hard look is needed in order to inform such desirable outcomes. There's no need to rush when one does the right thing. A good hard look via the SEIS is the right thing to do.

Thank you for your thoughtful consideration.

Respectfully,



Raymond Figueroa, Jr.
President

Cc:

Lemuel M. Srolovic, Environmental Protection Bureau Chief
State of New York, Office of the Attorney General

Venetia Lannon, Regional Director
New York State Department of Environmental Conservation, Region 2

Steven Zahn, Regional Supervisor for Natural Resources
New York State Department of Environmental Conservation, Region 2

Dr. Robert R. Kulikowski, Assistant to the Mayor
New York City Mayor's Office of Environmental Coordination

Commissioners
New York City Planning Commission

Brad Lander, Co-Chair
Progressive Caucus of the New York City Council

Melissa Mark-Viverito, Chair
Parks and Recreation Committee and Co-Chair
Progressive Caucus of the New York City Council

Letitia James, Member
New York City Council

Jumaane D. Williams, Member
New York City Council

Stephen Levin, Member
New York City Council

Margeret Chin, Member
New York City Council

Daniel Dromm, Member
New York City Council

Julissa Ferreras, Member
New York City Council

Donovan Richards, Member
New York City Council

Jimmy Van Bramer, Member
New York City Council

Deborah Rose, Member
New York City Council

Sheila Smalls, Member of the Steering Committee
The People's Coalition Of Coney Island

Don Riepe, Chapter Director
The American Littoral Society

Ida Sanoff, Executive Director
Natural Resources Protective Association

Geoffrey Croft, Executive Director
NYC Park Advocates

David Sherman, Chairperson
Green Guerillas

Steve Frillmann, Executive Director
Green Guerillas

Joel Kupferman, Executive Director
New York Environmental Law and Justice Project

Dear Council members,

This testimony was omitted from the FEIS for reasons unknown. Please consider this when voting.

November 4, 2013

Yours, *cy* p.s. We want to improve the plan - not shut it down!
♥ Thanks!

Dearest members of the City Planning Commission,

I am writing because I am deeply concerned about the proposed plans for the Seaside Community Arts Center and Park.

I understand and respect the fact that a great deal of work went into making the proposal, that it is considered to be a legacy project of Marty Markowitz, and that some feel the plan must be approved as is or possibly lose funding for the project.

I noticed in the Final Scope of work for an Environment Impact Statement that there is a category called Alternatives. It is unfortunate that that none so far have been documented. There is still time!

Some Alternatives:

-The amphitheater could be placed on the other side of the historic Child's building. iStar, the developer attached to the project, owns this entire block. It has been the site for the Seaside Summer Concert Series for the last two seasons.

-A partnership is created with MCU stadium. Using some of the \$51 million budget, adaptations are made to make the stadium more suitable for regular concerts and community events.

-The Boardwalk Garden is included in the plan and recognized as a permanent garden.

-The Child's Building is used as a true community arts center as well as a restaurant, banquet hall, and performance venue. Local non-profits and leaders are included in this planning and in a board overseeing the project, as well as individuals representing the interests of the city and the developer.

-Community non-profits, leaders, and members are invited to brainstorm other possible adjustments and invited to work out a detailed Community Benefits Agreement. This would include creating a transparent process whereby a percentage of the profits go directly into community initiatives.

Concerning block 7071 lot 142 and the Boardwalk Garden:

-Elderly people and others live directly across the street. We feel this is a concern since this is the proposed site of the amphitheater. As well there is a nursing home on W.23rd which appears to be less than 500 feet away. I believe there is a stipulation about this regarding amplified sound.

FOR THE RECORD

-Approximately 50 gardeners are currently at the Boardwalk Garden growing thousands of pounds of produce a year for their communities.

-There have been different gardening programs on that lot since the late 1970s.

-It became The Boardwalk Garden in 1998. Because it was Parks Department land, it was considered a PERMANENT garden. Of the other Coney Island community gardens only one other garden has this designation.

-It was a relocation site for at least two out of the twelve known Coney Island gardens destroyed around that time. It is believed more than twelve have been destroyed- this is currently being researched.

-In 2004 the Boardwalk gardeners were moved prematurely to an inadequate site. Objects rained down on the gardeners and their tools were stolen. They promptly returned to their original site as the proposed project did not happen. However because the EDC was still interested in the land, Greenthumb was instructed not to reissue their license.

-While there is documentation of a Garden Review packet from that time, there is a possibility that protocol was not precisely followed.

-Superstorm Sandy destroyed the garden, burying it under many feet of sand and debris. The gardeners, with some help from volunteer groups, dug out and replanted the majority of the garden for this season.

-The garden currently works with many greening groups including the Green Guerillas, Just Food, Brooklyn Botanic Garden's Greenbridge Alliance, Bronx Green-up, New York City Community Garden Coalition, and Grownyc.

-The location on the boardwalk is extremely important because it allows for visitors from all over the world, city, and neighborhood to see urban agriculture in action.

-The potential of a community garden as a tool for personal and community transformation is enormous. The Boardwalk Garden is a testament to that and deserves a permanent spot on the boardwalk to inspire generations to come.

Concerning the proposed garden relocation site:

Gardeners appreciate that resources are being contributed to the proposed relocation site by the developer. However:

-It is on HPD, not Parks Department land. This makes the site far easier to develop, and there has been a history of talk about a school someday being built there.

-It is much smaller than the current site, there is far less sun, it is not on the boardwalk, it is directly next to a housing project.

-Boardwalk gardeners have been told they will not be allowed to garden there in the winter months- many plant year-round. Gardeners have also been told children are not allowed on that site. Facilitation appears to be necessary to help plan the future of this site and for this garden to accommodate new gardeners.

-We kindly request that the gardeners are only relocated after further discussions regarding the plan, and only if all necessary approvals for the project are granted. We are hoping that the garden will continue to grow!

Thank you for taking these thoughts into consideration.

I believe it is essential that we all work together in envisioning and creating the future of Coney Island.

Please feel free to contact me at 617 834-3491.

Sincerely with best wishes,

Carolyn McCrory

FOR THE RECORD

From: Aleksandr Sokolov (phone 1-718-648 8242)

Member of "Boardwalk Community Garden on W 22 St."

Residing at 2727 Ocean PKWY, # A 22, Brooklyn, NY 11235

To: State and city of New York officials, bureaucrats, politicians, lawyers

STATEMENT

Ladies and Gentlemen,

I am a member of "Boardwalk Community Garden on W 22 St." for the past few years.

I am 66 years old, but I'm still working. I have a small income and soon I finally leave work and will live on a small pension or maybe I will get SSI. I have a daughter and grandson.

"Boardwalk Community Garden on W 22 St." is an outlet for our relaxation, place where families with low income can grow up organic vegetables and fruits, flowers, where we work, relax, spend a lot of time on the weekends and on weekdays. And now we knew that in the place of our garden will be built an open amphitheater, and to get rid of us city officials offer the lower quality and smaller plots of land on the West 29 St.

First, these area is more far from our house, and because we do not have a car, to get to new place with a small child would be harder. But that's not the main thing; the main thing is that in the garden at W 22 St. we have a real friendly atmosphere for people of different races, nationalities and ages, our garden - a real school of internationalism for children and adults! And this community money-grabbing officials wants to destroy!

The second important point is that we have invested a lot of our labor in the creation of clean garden, turning the ground, littered with piles of debris and overgrown with wild shrubs, a blooming, beautiful garden! Sly officials took photos of our garden after the hurricane "Sandy", when it was half covered with sand and debris, declared that it destroyed and still show these photos everywhere. This is a deliberate lie, they know well that the sand was taken away at the beginning of summer, the garbage taken out and the garden restored and became now even better! But they expect benefits from this lie, in any way they want to push their project, to convince all and sundry that they are better than the local people know what they need. Where did the bureaucrats take such enthusiasm, such activity, which was not seen before? Everything can be explained very simply: the government has allocated after the hurricane "Sandy" a lot of money for the restoration of the coastal zone. The officials hurry up to get appropriate kickbacks from construction companies that will be hiring for these jobs. Of course, who is not caught by the hand - not a thief, but we are not born yesterday, we know how it works, and none of us have no doubt that the money is the only concern of officials, the only reason of their great activity!

They tell: we will allocate you the equivalent of land - a lie; the noise from the shows will not exceed health standards - a lie (let them move to a six-story building (3040 W 22 St.), that is 50 meters away from our garden and will find out is it noisy and fun of musical performances, the traffic and crowds of people every evening when they will come home from work and will want to relax or not?); they say that in the planned park next to the amphitheater, more people will be able to walk - it is true, but their words that in the garden we have few people - it's a lie (are they sitting there all day and count visitors? Our doors are open from morning till night, and every day dozens of people, especially the elderly or children come to us, rest, see the plants were

FOR THE RECORD

planted and are interested in how they can become the members of our community because people do not just want to sit on the benches and guzzle fast junk food, but want to work on the ground, to use organic food); we are told that the jobs will be primarily provided for the members of the community - a lie, once the project will be approved, members of the community will be forgotten, and after a couple of years when everything will be built, there will be only a dozen jobs (and this will solve the problem of employment of the district Coney Island??) ... It would be possible to continue and continue to deny continuous chain of lies of personally interested in the looting of public funds officials, but it does not have sense, everything is clear. The worst thing is that these officials, joined by deputies like Domenic Recchia are not understood of the consequences of their destructive activity. In addition to the destruction of an international community of people who care attitude to five years, the creative work of gardeners prejudice the best interests of the most vulnerable and poor people, they forget about what may will create an explosive situation when angry members of the community can come out to demonstrate, and the most hot-headed and especially young people can organize riots and pogroms... They will get it! This can be abruptly hurricane "Sandy"! They need different shows? But we don't! It can be carried out on the over 500 meters on the eternally empty stadium "Cyclones" or they may built this amphitheater inside a huge vacant building designed for restaurants. There is plenty of space for everything. In short - keep away from us, do some real work.

I am also proposing to discharge from work all the organizers of this thief's project and apply for the criminal cases against them.

11.21.2013

Aleksandr Sokolov

FOR THE RECORD

Statement

My name is Mara Israilova. I live at 3280 Coney Island Ave. apt D12. I've been gardening at the W. 22nd St. I have been gardening at W. 22nd St. since 2007.

We have put a lot of hard work into it. There was a lot of garbage, stones and debris at that place. We cleaned everything; put everything in order that we prepared the soil for the garden. We planted the seedlings and began growing vegetables, plants, flowers. We love being outside in the fresh air taking care of the garden. It keeps me healthy. All the Gardeners are good friends. We spent a lot of time together. This makes us happy.

In 2012 we celebrated "the harvest of the year". Everything was beautiful, unforgettable. Our friends and children enjoyed it as well.

We always have students from nearby schools at our garden. They learn how to grow vegetables, flowers. They like it very much.

All gardeners are very friendly, social; we spent a lot of time with friends. We, gardens, will do everything to prevent the building of the amphitheater. We will fight for justice.

FOR THE RECORD

Statement

My name is Emma Israilova. I live at 3250 Corney Island Ave. apartment C 14. my family and nephews have been gardening at W. 22nd St. since 2007.

I'll describe what we started with. There was a lot of garbage, big stones, and debris at that place. We cleaned everything. It took a lot of time to prepare the soil. Then we began growing vegetables planting beautiful flowers. We love when the flowers are blooming. We've put a lot of hard work into it. Our children also help us grow vegetables, water plants. They like gardening very much.

In 2012 we had "the harvest of the year". All the gardeners prepared together for this. it was wonderful, unforgettable. Everybody was happy-children and grownups. We often have students from nearby schools in our garden. We teach them how to plan when to put seedings into open soil. All gardeners are good friends. They spent a lot of time together. And of course we don't want for this amphitheater to be built at the place of our garden. We will do everything we can to prevent that.

FOR THE RECORD

Statement

My name is Alexandra Tkach. I am 30years old. I live at West 36 st in Brooklyn. I work in Manhattan. I go to work every day and my garden at W. 22nd St. is a good exercise for me as my job is sedentary.

The garden was covered with rocks and bricks which we're still picking up and throwing away, and we are hiring people to help us clean the soil. I grow vegetables and flowers at my garden. I come to the garden ever weekend to plant and work there and then I take the vegetables that I grow to work and give them to my colleagues.

Our garden is very international and we all get along together. Together we improve the fertility of our land.

I respectfully ask you to keep the garden for our further community use.

P.S. after Sandy we also cleaned the garden ourselves; we have the pictures depicting it.

FOR THE RECORD

Statement

My name is Natalia Yurkevich. I have lived at 3030 Surf Ave., Apt. 13 G for 11 years since 2002. When I retired I really wanted to have a piece of land to make a garden.

In 2007 I began sharing the garden at W. 22nd St. We are people who love plants. We meet every day - we improve soil composition by fertilizing it, we grow flowers and vegetable there. In 2012 we had an exhibition of things we harvested. Our garden is the place where we meet our friends. Children come here to see how plants grow. People that walk on the boardwalk enjoy the view of the garden and the plants.

It would hurt me significantly if I don't have the garden, if I don't have the place where I can come to work and exercise. Garden is one of the most important activities of my life.

FOR THE RECORD

Statement

My name is Vladimir Agishev. I live at 3030 Service Ave., Apt. 13 G and I have a garden at W. 22nd St.

It's been 5 years since the garden was organized on a deserted space where there was nothing. Tons of rocks, concrete blocks, and garbage were taken out from this lot. Some help was extended by Green Thumb in association with Brooklyn botanical garden.

All my life revolves around gardening. When I was a child we had a garden; then this passion became my profession. That's why gardening is so important to me. We not only grow plants in the garden but our children and our grandchildren and friends come to the garden. Our garden is the place where we get together, share experience and do physical work.

People who go to the beach enjoy seeing great variety of plants and flowers at the garden. Sometimes you can see humming birds flying around the flowers. One can only imagine how much work has been done at the garden after Sandy. We had volunteers who helped us. But there was no help from the Parks Department to whom this land belongs.

Gardening helps me avert depression and it will greatly hurt me if I don't have the garden.

FOR THE RECORD

Statement

My name is Valentina Musienko. I live at 3093 Brighton 4th street. I am 76 years old and I'm a citizen of US. I'm waiting to move into an apartment at W 24 st.

I've always loved to work outside, to grow vegetables and flowers. I've had the garden at W. 22nd St. since 2008. All the gardeners meet every day and discuss the best ways of growing plants and improving the soil. We buy extra soil, fertilizers, shovels and other instruments for the garden. In 2012 we organized an exhibition of our vegetables and flowers.

It's very good for my health to be outside breathing fresh air and to exercise by working in the garden in the summer and in the winter.

We often have friends with children at the garden who are very interested in vegetables and flowers, who come here to breathe fresh air and thus improve their health.

The garden is international and we all get along very well. I strongly ask to keep this garden for our further use because it is one of the most active parts of my life.

P.S. This garden in the past was a deserted lot full of stones and garbage.