

Clean Air Campaign Inc., 307 7th Avenue #606, New York NY 10001, 212-582-2578

Nov. 4, 2016

NYC Council Speaker Melissa Mark-Viverito
and other NYC City Councilmembers
250 Broadway
New York NY 10007

Re: L.U. Nos. 506, 507, 508 and related L.U. Nos. 509, 510 and 511.
Via correspondence@council.nyc.gov or other emails

Dear City Council Speaker Mark-Viverito and other City Council Members,

Clean Air Campaign and its Open Rivers Project urge the Council to **disapprove** L.U. 506, 507, 508 and related proposals **unless they are modified to remove all of the language related to the sale or transfer of "air rights" from Pier 40 and/or other sites in the Hudson River** ("the River" below).

I. The proposed "air rights" transfer zoning text amendment for a Special Hudson River Park District and Special Permit(s).

We do not see any other way--other than either total disapproval of all the relevant proposals, or modifications that remove all of the relevant language related to the sale or transfer of "air-rights" from Pier 40 and other sites in the Hudson River--to insure that the unprecedented zoning text amendment proposed to establish a Special Hudson River Park [HRP] District and authorize the sale of purported "air rights" from within that immense new Special HRP District for these proposals to be properly understood and debated before the Council acts.

Zoning text amendments "are not subject to ULURP," according to the Department of City Planning (DCP) May 6, 2016 "Notice of Completion of the Draft Environmental Impact Statement, 550 Washington Street/Special Hudson River Park District," p. 2-2. This suggests that if the Council approves the zoning text amendment in L.U. No. 506, then every deal to sell off more of the purported "air rights" over 490 acres of the Hudson River may have to go through some kind of a ULURP process. But the Council **will already have approved the mechanism and model** for approving one deal after another (including but not limited to the Pier 40 deal) by Special Permit once the overall zoning text amendment proposed in L.U. 506 is approved.

If we are reading the confusing text of proposed L.U. No. 506, 507 and 508 and related proposals incorrectly, we would welcome the opportunity to discuss the language with any City attorneys. It would be even better if attorneys employed by the City would provide legal explanations in writing not only to the full Council but to the general public before the next Zoning & Franchises Subcommittee meeting. (The main source of confusion, of course, lies in the unusual definition of the term "Hudson River park" or "the park" in the State Hudson River Park Act of 1998 to refer to a set of project area boundaries that surround 550 acres of the Hudson River and its shoreline--490 acres of which lie between the U.S. Pierhead and Bulkhead Lines in the River.)

Some of the speakers at the Nov. 1, 2016 Land Use Subcommittee on Zoning & Franchises hearing ("the 11/1/16 hearing" below) expressed the hope that the sale of 220,000 square feet (sf) of air rights from Pier 40 would be "a one-off," while others seemed to say that any additional transfers (after Pier 40's) of purported "air rights" from a vast, 490-acre stretch of the Hudson River would have to go through ULURP (the Uniform Land Use Procedure [ULURP]), just as the Pier 40 deal did.

Unfortunately, ULURP will be no solution for the potentially catastrophic Citywide consequences if the Council approves the sale or transfer of purported "air rights" from the 490-acre in-water part of what River development supporters call "the Hudson River park" or "the park." For one thing, the ULURP process for the Pier 40/Special HRP District deal--the first example of what the Hudson River Park Trust (HRPT, a public authority) and City Planning are trying to achieve--has **not** been a fair, open, democratic, inclusive, or adequately informed public process so far.

But our main concern is that once the Council approves Sections 89-00 and 89-21 of proposed L.U. No. 506--if the Council does approve them--the mechanism and model will have been established for "air rights" sales or transfers from an entire proposed new Special HRP District extending over 490 acres of the River from Battery Park City to W. 59th St. extended out to the U.S. Pierhead Line in the River, 1,000-1,500 feet offshore.

Indeed, supporters of River development at the 11/1/16 hearing indicated that they would be pressing for more "air rights" transfers from the River, perhaps additional "air rights" from Pier 40 itself (depending on the speaker), or at least from other parts of the River.

Similarly, any purported compromise limiting "air rights" sales and transfers to Pier 40 alone for now should not be any comfort to anyone who wants to see the Hudson River preserved as a river. Pier 40 is a huge 14-acre site (the equivalent of roughly four City blocks) that occupies a strategic location within the 490 acres of the River at issue. Pier 40 is in the #1 (highest-risk) hurricane evacuation zone in the River; is in HRPT's tax-free enclave in the River, so that development diverted to the River from other higher, dryer, safer, taxable parts of the City depress real estate and other tax collections; blocks priceless views of open water; and sits in the middle of an irreplaceable marine habitat for Atlantic Coast fisheries.

II. Clarifications related to a few of the inaccurate claims that were made about Clean Air Campaign (CAC) and/or other "agitators" at the 11/1/16 hearing.

A. Support for "the park."

Clean Air Campaign, the Sierra Club, Friends of the Earth, NYPIRG and other groups have strongly supported what we sometimes call "the real park" or "the greenway" on the upland along the Hudson River below W. 59th St.--for many decades. What we oppose is any more building in the River **today**--especially now that 14-17 piers within HRPT's project area in the River have already been built or rebuilt, mostly with public funds.

B. Litigation.

The Sierra Club, Friends of the Earth, CAC and other groups were all plaintiffs in the

successful federal lawsuit that overturned Army Corps permits for the Westway highway and River development project in the same general stretch of the Hudson River where the Special Hudson River Park District is being proposed. See Sierra Club et al. v. U.S. Army Corps of Engineers et al., 614 F. Supp. 1475 (S.D.N.Y. 1985), linked to www.WestwayThenandNow.org.

Our groups are not among the plaintiffs in the City Club et al. lawsuits related to "Diller Island" (the Pier 54/Pier 55 project within the boundaries of HRPT's project area in the River).

C. Pier 40, and soccer-playing children.

Most or all of Clean Air Campaign's leaders and supporters love children, and none of us wants to see them put in harm's way by any Council action that facilitates more building in or over the Hudson River's disaster-prone nearshore waters. CAC has consistently advocated gradually shifting soccer fields, existing office space, parking garages and other non-water-dependent uses of Pier 40 to higher, dryer, safer upland (inland) locations. The 550 Washington Street site itself, and City-owned land nearby, along with many other vacant or underutilized sites throughout the City, belie claims that were made at the 11/1/16 hearing that no other sites for children to play soccer will exist (except for Pier 25) if Pier 40 is not rebuilt for well over \$100 million.

D. Ruinous 2013 amendments to the State Hudson River Park Act do not require the Council to approve any zoning change to authorize "air rights" transfers from the Hudson River. Please see the applicable language that we read out at the 11/1/16 hearing.

E. HRPT has spent roughly \$500 million already--mostly public funds, and mostly for building in and over the Hudson River. HRPT would not need any more money from any source for many years—if ever--if HRPT would stop building and rebuilding more and more structures in and over the River. (HRPT and other River development supporters call this “completing the park.”)

III. Excepts from the written statement CAC submitted at the 11/1/16 hearing follow below. (As Councilmember Cory Johnson may have said, the following points are indeed a mixture of fact and opinion.):

Council approval [of L.U. No. 506 and related proposals] would risk **catastrophic Citywide public safety, financial, environmental and neighborhood impacts**. By facilitating and subsidizing endless rebuilding in a disaster-prone stretch of the River--in the #1 (highest risk) Hurricane Evacuation Zone offshore--the Council would be creating **totally avoidable risks to public safety and the financial health of the City**. Council approval would:

--Put tens of thousands of New Yorkers **in harm's way** unnecessarily, by encouraging them to play soccer or work in offices out in the River offshore, instead of at higher, dryer, safer inland locations. This in turn would force **first responders** to rescue those people when the next big (often unpredictable) hurricane hits the River.

--Grant **blanket permission to unaccountable entities**--the City Planning Commission (CPC) and the "Hudson River Park Trust" (HRPT), a State public authority--to decide where they wish to

claim that unused development rights over the Hudson River exist, and make backroom deals to sell or transfer those legally dubious, purported "air rights" from a public waterway to financial, real estate, or other dealmaking interests.

--**Divert even more disaster recovery funds** than HRPT has snagged already from places like the neighborhoods devastated by Superstorm Sandy. **City budget funds** would also be misused to subsidize infrastructure and services for HRPT's tax-free enclave out in the River--City taxpayer and rate-payer dollars unfairly diverted from essential public needs in the rest of the City.

--**Harm real estate owners and tenants** as far east as Fifth Avenue--and depress City real estate tax revenues--by blocking sight lines to valuable River views, through endless HRPT building and rebuilding in the River....

--Risk **catastrophic storm and hurricane damage costs and liability claims** against the City, and demands for **taxpayer bailouts when risky, complex financing schemes** involving "air rights" transfers from the River go bust. If the Council rubber-stamps CPC's and HRPT's ill-conceived proposals, the Council will be inviting **totally avoidable financial risks for the City**.

--Risk destroying a prime marine habitat for fisheries prized by fishermen and party-boat operators, bait and tackle shops, and other businesses from Sheepshead Bay to City Island.

--Implement a ruinous 1960's plan for the River which is totally at odds with the current realities of **climate change** and increasingly frequent and severe storms and hurricanes; with **sensible disaster prevention policies**; and with this country's most basic **environmental laws**.

Under common law the water belongs to all the people. Clean Air Campaign and other groups have worked long and hard to let the River be a river, and on behalf of the wise use of public resources and public spending priorities that are fair to all, not just a wealthy and powerful few. The fast-tracking of harmful proposals for "air rights" transfers from the Hudson River that the HRPT authority and CPC have engineered is not in the public interest. We strongly urge the Council to **disapprove them**. We welcome any questions at any time. Thank you.

IV. Conclusion.

CAC has not been involved in the non-public meetings among public officials, HRPT staff and board members and consultants, and private interests that led to City Planning's and HRPT's proposals. We have only attended public hearings and read as many public documents as we could. We would welcome the opportunity to meet with any Councilmember or staffer to discuss whatever the Council is currently considering--before the Council concludes the negotiations with multiple parties that are currently under way.

Sincerely ,

Marcy Benstock, Executive Director