Tuck-It-Away's Issues, Facts and Objections in Opposition to the Columbia University Educational Mixed Use Development Land Use Improvement and Civic Project

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September 4, 2008

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Introduction

On July 17, 2008, the Empire State Development Corporation ("ESDC") adopted a General Project Plan ("GPP") for Columbia University's long sought Manhattanville campus expansion (the "Columbia Plan"). The Columbia plan has generated enormous controversy, anger and opposition. A fundamental reason for this opposition has been that Columbia's plan demands total control over all of the Manhattanville industrial zone, and so requires ESDC to use its power of eminent domain to transfer both public and private land to Columbia. Among the targets of this abuse of government power is Tuck-It-Away, a popular provider since 1980 of storage space and moving services to West Harlem and Manhattan's West Side. Tuck-It-Away owns four properties in Columbia's proposed project zone.

Very simply, eminent domain is not necessary or appropriate to attain any legitimate public purpose in Manhattanville.

This document sets forth Tuck-It-Away's issues, facts and objections as of September 4, 2008, to the GPP as adopted by ESDC on July 17, 2008. Tuck-It-Away objects not only to Columbia's GPP, and to the proposal to take Tuck-It-Away's property. Tuck-It-Away objects also to the process leading up to the adoption of this plan. And Tuck It-Away objects to the findings upon which this plan is based.

Together with this list of issues, facts and objections, Tuck-It-Away submits over 3,000 pages to be entered into the record regarding the Columbia University Educational Mixed Use Development Land Use Improvement and Civic Project. Tuck-It-Away also submits its Preliminary Findings and Objections Regarding the Finding of Blight in the Columbia University Educational Mixed Use Development Land Use Improvement and Civic Project. That document concludes that Manhattanville is not blighted, and to the extent that there are symptoms in Manhattanville that can be confused with blight, these have been maintained, created and exacerbated by Columbia University.

Since its commencement of acquisitions in Manhattanville in 2000, and through its ownership of most of the area since 2005, Columbia has done everything it can to create the appearance of "blight" in Manhattanville. Once busy buildings have become vacant as Columbia refused to renew leases to longstanding businesses and pressuring them to leave. Columbia has let buildings decay, leaving roof leaks and waterproofing problems unaddressed, saving piles of trash for years for their photo opportunity in a blight study, leaving fire exits blocked, and code violations on the books left uncleared.

Manhattanville is not blighted by any historical standards. It is not blighted by the language and legislative intent of New York statutes, or by what little the case law in New York

has to say about blight. Manhattanville is not blighted by developing judicial standards in other states. What blight "symptoms" may be found in Manhattanville are overwhelmingly created by, maintained by, or exacerbated by Columbia University.

Columbia should not be rewarded for creating the conditions it proposes to cure with its GPP. Columbia should not be rewarded for deliberately not maintaining its property, for forcing out tenants, destroying jobs and local businesses, and refusing to take new tenants.

This proceeding under the Urban Development Corporation Act and the Eminent Domain Procedure Law is unconstitutional, violating the 14th Amendment to the Constitution of the United States, and Article I, Section 6 of the New York Constitution. These September 2nd and 4th, 2008 hearings allow each speaker to make a five minute presentation. Five minutes is inadequate time for a speaker to outline his or her objections, much less develop them and back them up. With only this nominal opportunity to object, there is virtually no possibility of persuading ESDC to alter its course. It is not a forum designed for deliberation. No one is permitted to question any of ESDC's or Columbia University's representatives regarding their claims about the Columbia plan, including Columbia's representations about how many and what kinds of jobs will be created or what tax revenues will be generated. There will be no opportunity to question whether taking Tuck-It-Away's property will in fact cause a cure to be found for Alzheimers disease. No one can question what burdens will in fact be placed on infrastructure, how many thousands will be displaced, what communities and economies will be destroyed, and what ecological risks will be created.

This proceeding is unconstitutional in that it prevents a reviewing court from considering any of Tuck-It-Away's issues, facts or objections after the closing of the record on October 10, 2008, while ESDC, in concert with other Agencies of New York City, has been obstructing and delaying release of duly requested records to which Tuck-It-Away is legally entitled under New York State's Freedom of Information Law ("FOIL"). For over three years Tuck-It-Away has been attempting to find out the facts surrounding the Columbia Plan, including the process leading up to the adoption of the GPP. It has filed twelve FOIL requests with ESDC, the New York City Department of City Planning ("DCP"), the New York City Economic Development Corporation ("NYC EDC"), the Office of the Deputy Mayor for Economic Development, the New York City Law Department and the New York City Fire Department. Tuck-It-Away has filed four lawsuits, three against ESDC and one against DCP. Yet, even when it wins the right to obtain documents via a lawsuit, Tuck-It-Away still has not received the documents the courts say it is entitled to. Tuck-It-Away faces the possibility that it will not receive the FOIL documents from ESDC and DCP to which it is legally entitled before ESDC closes the record on these EDPL hearings on October 10th, 2008. If this happens, Tuck-It-Away's due process rights to a fair hearing will have been violated.

ESDC's finding that Manhattanville is blighted is unconstitutional, because the category "blight", as applied by ESDC, is void for vagueness, and therefore a violation of the due process clause of the 14th Amendment to the Constitution of the United States and Article I, Section 6 of

the New York State Constitution. Nothing illustrates the manipulability of the concept more than the tortuous process that ESDC has been through with finding Manhattanville blighted enough to give Columbia its plan.

To begin with, ESDC, upon becoming aware that there were problems with NYC EDC's first attempt at a Manhattanville blight study, should have put all work on the Columbia project on hold, pending review of alleged blight conditions. Instead, ESDC asked Columbia to come up with evidence of blight.

ESDC then proceeded to hire Columbia's consultant Allee, King, Rosen and Fleming, Inc. ("AKRF") to conduct a "Neighborhood Conditions" study. AKRF never should have been retained by ESDC to conduct its "Neighborhood Conditions Study". AKRF had been working as a consultant to Columbia University for the preceding two years, regularly attending ESDC project meetings and assisting in project planning. Whether in preparing an environmental impact statement, getting regulatory approvals from other agencies, preparing the city map override proposal, or preparing the blight study, AKRF was deeply involved in advocating for Columbia's project in proceedings before both ESDC in respect to the GPP and the New York City Planning Commission ("CPC"). The neighborhood conditions study is tainted by the conflict of interest that AKRF has in its relationship with Columbia University and ESDC. As the New York courts have said, you can not "serve two masters". ESDC's making a finding of blight in any degree of reliance upon the AKRF study is an act of bad faith.

The Earthtech study that ESDC hastily assembled after the issue of AKRF's presumable bias came to light before the Appellate Division, First Department of the New York State Supreme Court in no way erases ESDC's error. In the first place, ESDC stated it continues to rely upon the AKRF study. The Earthtech study, moreover, demonstrably shares all the biases of the ARKF study, following AKRF's methodology blindly, without critical evaluation. Without an examination of AKRF's methodology, the Earthtech study does not even constitute a peer review of the AKRF study. In the words of ESDC Deputy General Counsel Maria Cassidy: Earthtech was hired to "replicate" the AKRF study. It has produced as precise a copy as any two strands of DNA.

In a situation where ESDC possesses no written standards as to what constitutes a "substandard and insanitary" or "blighted" area, or how such conditions should be measured, AKRF and Earthtech applied arbitrary and inconsistent standards as to what constitutes "blight". Their lack of fixed and accountable standards renders any finding based on these studies void for vagueness. The conclusions AKRF and Earthtech arrived at were pre-ordained by deep institutional and political commitment to favor Columbia's plan over the community's and local owners'. The consultants delivered the result desired.

The use of eminent domain in Columbia's expansion plan also violates the 5th Amendment to the U.S. Constitution and Article I, Section 7 of the New York State Constitution, because taking Tuck-It-Away's four properties and transferring them to a private developer,

Columbia University, does not constitute a "public use", and is proposed to be done without a dominant public purpose. The Columbia plan, from the beginning and throughout, has been Columbia's initiative, and has been designed principally to benefit Columbia University, a particular class of one clearly identifiable individual private corporation, or to benefit a particular class of identifiable individuals associated with Columbia University.

Any alleged public benefits from the Columbia Plan would be only pretextual and incidental to its dominant private purpose. The purported public benefits are of two sorts. Some are clearly pretextual, such as the urban design criteria from the hijacked 2002 West Harlem Master Plan incorporated into the Columbia project, or the cynically described community benefit "goodies" attached afterwards like ornaments on a holiday tree. The others are incidental benefits like jobs and income taxes that may or may not flow to the public from subsidizing Columbia's private enterprise. These are no different in essence from the benefits that may or may not flow from any private corporation's pursuit of profit. The Michigan Supreme Court ultimately reversed its infamous Poletown decision, in which it had sacrificed an entire neighborhood for a General Motors plant that now stands vacant and idle. Counting on the incidental economic benefits of a private corporation's pursuit of its self interest is often not the good bet its promoters represent, and local communities and property owners should not have to pay the costs of such risk.

The Columbia plan does not meet the "public use" standard as set out under the U.S. Supreme Court's decision in Kelo v. City of New London. It is not the result of a carefully considered plan compared to the New London plan upheld in that case, with the land slated for redevelopment and appropriations made through open public processes, and the developer only chosen afterwards, from among bidders competing to best fulfill a clearly stated public purpose.

The use of eminent domain in the Columbia plan is outside of ESDC's statutory authority because the determination was previously decided long ago, and its findings were made to fit the policy afterwards. The fact that there was no lack of economic demand in Manhattanville, and that Columbia needed no incentive to invest in the area, was something of which the New York City Economic Development Corporation, and ESDC, were fully aware of from the outset. ESDC, acting in bad faith, made a pre-determined policy in regard to the Columbia GPP.

ESDC made its decision in favor of Columbia's plan when it committed four years worth of staff time to developing the Columbia Plan. It did so through its protracted collaboration with various New York City agencies, including the Deputy Mayor for Redevelopment, Daniel Doctoroff, the NYC EDC, the DCP and others to promote the project when it knew that it did not yet have the necessary evidence of blight. And ESDC, together with EDC and other agencies made this commitment in secret, while insisting in public that it was undecided, or the illusion of very different planning processes were maintained, such as the 2002 West Harlem Master Plan into which the community was so broadly invited, or Community Board 9 being led on to believe its vast investment of community energy into a 197 (a) development plan would ever receive serious consideration. The green light had in fact been given to Columbia behind closed doors, and all parties understood that Columbia's plan was going through. If the area wasn't really

blighted, then the mandate was to study it and restudy it, and through Columbia's treatment of the property it controlled, to physically manipulate it, until they could finally claim it was.

This is classic bad faith in government decision making. From its inception, the purpose of the Urban Development Corporation Law ("UDCL") was to promote economic development, but only, with the exception of true civic projects, in blighted, economically depressed areas needing public incentives and intervention to stimulate private investment to cure the wasting "disease" of blight. The statutory intent of the UDCL was not to tilt the balance in favor of politically connected developers when an area was hotly contested and very much in demand. The use of the extreme market intervention of eminent domain in such circumstances is a gross abuse of the purpose of the UDCL, and one that ESDC has embarked upon deliberately and conscious of what it was doing.

When this proceeding is concluded, and Tuck-It-Away's properties are condemned, Tuck-It-Away does not have the opportunity to challenge the condemnation of its property in a trial court. Different from almost every other citizen challenge to a government agency decision, and even to eminent domain proceedings in every other state of which we are aware, here Tuck-It-Away will only have the right to challenge the use of eminent domain in an appellate court, where it will have no opportunity for discovery, no right to introduce new evidence after the closing of the record, no right to call witnesses, or to cross examine ESDC's or Columbia University's experts, and finally where its opportunity to argue its case is limited to approximately ten minutes. This is a process that is less than fair, and a violation of due process of law.

Finally, Tuck-It-Away takes issue with and objects to the role played by ESDC in this entire planning and development process. In 1968, when Governor Nelson Rockefeller created the ESDC's parent, the Urban Development Corporation, in memory of Dr. Martin Luther King Jr., UDC's mission was to clear slum areas and create in their place affordable housing for low income people. Yet, in this Columbia plan, there will be no affordable housing for low income people, only housing for Columbia University students and faculty. And the paltry sum of $20 million that Columbia has offered for housing assistance in a community benefit "memorandum of understanding" when it failed to reach actual agreement with a local community Development Corporation pales in comparison to the estimated 6,000 people Columbia admits it will displace through the secondary effects of rising real estate values in the surrounding area.

Somewhere in the last 40 years, the UDC / ESDC lost sight of its original mission, and what it means to promote economic development in the public interest.

Tuck-It-Away presents this document with the hope that it is still not too late for the board of ESDC to reject the use of eminent domain in the Columbia Plan. Tuck-It-Away plans to amplify and supplement this September 4, 2008 document with additional issues, facts and objections in an October 10, 2008 supplemental submission. Tuck-It-Away also plans on amplifying and supplementing its Preliminary Findings and Objections Regarding the Finding of Blight in the Columbia University Educational Mixed Use Development Land Use Improvement and Civic Project in an October 10, 2008 supplemental submission.

I. ESDC's EDPL ARTICLE 2 PROCEEDING IS NOT IN CONFORMITY WITH THE FEDERAL AND STATE CONSTITUTIONS.

A. The condemnation proceedings violate due process under both the 14th Amendment of the Constitution of the United States and Article I, Section 6 of the New York State Constitution.

1. New York State does not provide for Tuck-It-Away to have the opportunity to challenge the condemnation of its property in trial court, but instead Tuck-It-Away is required to petition the Appellate Division, where it has no opportunity for discovery, to introduce new evidence, to call witnesses, or to cross examine the condemning agency's witnesses, and where its opportunity to argue its case is typically limited to a matter of minutes.

2. Though New York Courts have held New York's EDPL is constitutional because condemnees have an opportunity to be heard at the administrative level in the condemnation hearings, in the present proceeding each speaker's opportunity is limited to five minutes, which does not adequately allow speakers to state, let alone develop and support their issues, facts and objections. The short time for presentation is indicative of the pro-forma nature of the proceedings and ESDC's absence of intent to or capacity for deliberation on the basis of public objections to its plans already long set in stone. Tuck-It-Away's opportunity to be heard is therefore meaningless for any other purpose than as notice of impending litigation.

3. Under EDPL Section 207, judicial review of a condemnation decision may only be made on the basis of issues, facts and objections entered into the record at the condemnation hearing. Tuck-It-Away will not be able to see what is in the record until after the record is closed, and so will not able to enter rebuttal evidence to any inaccurate, deceptive, or meritless assertions or reports entered there.

4. Tuck-It-Away has been impeded from gathering the facts upon which to make its objections by ESDC and other agencies' concerted exploitation of every possible opportunity to delay response to requests for information under New York's Freedom of Information Law ("FOIL"). ESDC has claimed it did not posses records that it was later forced to admit it did. ESDC, DCP and EDC failed to provide legally required justification for its determinations that records were exempt from disclosure, or to justify its redactions of certain records. ESDC and EDC denied administrative appeals without basis, forcing Tuck-It-Away and other Manhattanville businesses to take them to court. In West Harlem Business Group v. ESDC, Index No. 1163839/06, the New York State Supreme Court found ESDC to possess four times as many records as it acknowledged possessing, and ordered certain of them disclosed. In Tuck-It-Away Associates, LP v. ESDC I, Index No. 107368/07, the court decided in accord with the first case. ESDC took advantage of automatic stays of judgement provided to it as a government agency under CPLR Section 5519 to withhold those records while it took an appeal to the Appellate Division First

Department, and then ESDC opposed the petitioners' motions to expedite the appeal in light of impending EDPL proceedings. After losing its appeal in part in those cases, ESDC filed a meritless motion to re-argue or for leave to appeal, gaining thereby a further extension of its stays, most likely past the closing of the EDPL record. ESDC and DCP subsequently filed meritless applications to stay FOIL proceedings in two other cases, Tuck-It-Away Associates, LP v. Empire State Development Corporation II, Index No. 114035 / 07, and in Tuck-It-Away Associates, LP v. New York City Department of City Planning, Index No. 111652 / 07, on the basis of ESDC's motion for re-argument or permissions to appeal.

5. In the case of other agencies, notably the New York City Office of the Deputy Mayor for Economic Development and the New York City Fire Department, agencies have evaded their duties under FOIL by simply refusing to respond to Tuck-It-Away's initial FOIL requests and/or subsequent appeals of the constructive denial of those requests.

6. There appears to have been a concerted effort between city and state agencies to coordinate their responses and resistance to Tuck-It-Away's FOIL requests, sharing notification of each request, consulting and communicating between agencies on how to respond, and sharing legal theories and strategies.

7. As a result of this situation, Tuck-It-Away has been effectively prevented from gathering and timely entering into the record the facts that may show Columbia's proposed condemnations are improper. As a result, even if the Second Circuit has held the EDPL is constitutional because it provides an opportunity to be heard, all that can in practice be heard is Tuck-It-Away's issues and objections, without the facts necessary to make their objections legally effective. This does not meet the constitutional standards of due process.

B. ESDC's proposed finding that the area in which a proposed project is located is "substandard and insanitary", or "blighted", is unconstitutional as applied, because without specific criteria for measuring blight, the term "blight" is void for vagueness and allows for unfettered discretion resulting in arbitrary and discriminatory treatment, and violates the 14th Amendment of the Constitution of the United States and Article I, Section 6 of the New York State Constitution.

1. ESDC possesses no written standard as to what constitutes a "substandard and insanitary" or blighted area. When such a written standard was specifically requested in four separate FOIL requests, ESDC has each time certified that it possesses no such record, or that the requested record does not exist.

2. ESDC proposes to rely upon consultants who in turn have applied arbitrary and inconsistent standards as to what constitutes blight, by lifting traditional blight criteria

from their historical context and tabulating them regardless of the lack of relationship to any underlying blight syndrome.

These contractors found no underlying conditions of economic distress, depressed demand, or of any public liability posed by conditions in Manhattanville. ESDC proposes to make its findings of blight without evidence of any actual "blighting" influence on surrounding areas, without evidence of blight conditions deterring local investment or rental demand.

Instead, AKRF and Earthtech have merely lifted criteria from lists of conditions cited in statutes and case law without regard to the historical context in which those conditions were originally found, and from which they derive their meaning as indicators of any broader syndrome of blight. By using "vacancy" outside the context of later 20th century urban abandonment, for example, or "dilapidated buildings" outside the context of under-investment or insufficient income forcing deferral of maintenance, by using "underutilization" without reference to land uses for which the area was zoned, or "lack of open space" outside the context of a residential neighborhood, AKRF and Earthtech counted such conditions in their tabulations of blight indicators, while overlooking the actual causes of the conditions they observed. These consultants thus failed to note, and in fact have obscured, the strategic behavior of a single dominant property owner, Columbia University, which has overwhelmingly created, exacerbated or maintained the conditions it proposes to remedy with its Plan.

3. ESDC proposes to rely upon consultants who in turn have applied arbitrary and inconsistent standards as to what constitutes blight. Among these arbitrary and inconsistent standards are:

    a. In its Atlantic Yards study AKRF used a standard that identified a building as vacant if it was occupied 50% or less. In Manhattanville, AKRF identified a building as vacant if it was only 25% or more vacant. Without explanation, Earthtech reverted to AKRF's Atlantic Yards standard, identifying a building vacant if it was 50% or more vacant.

    b. In its blight study for another project, the Atlantic Yards project in Brooklyn, AKRF applied an arbitrary standard that any lot built to 60% or less of the maximum Floor Area Ratio ("FAR") was "underutilized," on lots zoned for a maximum FAR of 4 or 6. In Manhattanville, AKRF used this same standard despite the fact that the existing zoning specified a low-rise FAR of 2, specifically designed to make possible single story manufacturing and commercial uses. By arbitrarily applying a 60% standard without regard to zoning, AKRF was able to find all single story lots "blighted", amounting to 43% of lots in the area. Earthtech "replicated" AKRF's standard without critical analysis, merely declaring AKRF's 60% standard "reasonable" without any comment. Earthtech,

moreover, cited utilization relative to the new zoning since December 17, 2007 as evidence of "underutilization". Comparison in reference to such a recent change is grossly inappropriate as any indication of blight, as land owners have not had reasonable time to react to the new zoning. Comparison of existing development to a six month old re-zoning is useless as an indicator of prevailing economic conditions in the area.

c. In describing building conditions, AKRF and Earthtech made no distinction between reparable and irreparable conditions, and so wrongly included conditions that were economically reasonable to repair as "substandard and insanitary" conditions.

d. By including garbage and moveable obstructions to exits as evidence of blight in buildings where such conditions can not be blamed on amorphous social conditions, but instead remain under the complete control of a single, interested party, Columbia, AKRF used an arbitrary and inappropriate standard. Columbia should not be rewarded for maintaining piles of garbage for years awaiting their photo opportunity in a blight study, or for maintaining unsafe conditions of blocked fire exits.

e. By relying on Phase I environmental assessments only, allowing a designation of possible environmental concerns based solely on history of use, and requiring no actual evidence of pollution in fact, AKRF has effectively determined that any gas station and any building that has ever been used for auto repair is by definition blighted, regardless of the uses for which the lot or area was zoned. Earthtech "replicated" AKRF's standard without critical analysis or comment. Examples of such speculative determinations of pollution include Block 1987, Lot 1 (3260 Broadway), Block 1996, Lot 15 (635 West 125th Street), or Block 1997, Lot 1 (647-51 West 130th St.).

f. AKRF and Earthtech cited as environmental concerns any building with either an above ground fuel storage tank (AST) or an underground fuel storage tank (UST), a meaninglessly broad category that includes every building in New York that is oil heated.

4. AKRF and Earthtech also counted as blight conditions public infrastructure such as the 125th Street IRT trestle and the Riverside Drive viaduct, or such uses as the MTA bus depot, that the Columbia plan will not eradicate, remedy or alter, and so which will remain just as much a blighted or blighting condition after any Columbia development as before. The trestle and viaduct, moreover, have been described in the 2002 West Harlem Master Plan as positive aesthetic assets to the area, of historic importance.

5. In creating its list of conditions to record and tabulate, AKRF lifted key criteria, such

as "vacancy", or "dilapidated structures", or "presence of garbage" from their original historical context, treating them as unique, unrelated, terms. These criteria, however, acquired their original meaning as indicators of blight only in so far as they have been part of historical economic and social syndromes identified as "blight". Individually, each condition, such as a vacancy, water damage in a building from an un-repaired roof, or a pile of garbage in a garage can exist from wholly different causes that have no relationship to any syndrome of downwardly spiraling demand. They do not necessarily reflect any impediment to investment. By merely tabulating instances of conditions, without grouping them in relation to a clearly defined economic or social dynamic of which they are part, AKRF fundamentally misrepresents the economic dynamics and causality that is at work in Manhattanville. Earthtech "replicated" AKRF's methodology in this regard without critical analysis or comment.

6. In creating a list of conditions to record and tabulate, AKRF established no basis for assigning relative weight to each. With the tunnel vision of the camera's eye view, and loss of peripheral context, the sheer number of snap shots tells a story very different than a bigger picture seen from a better perspective. AKRF's lack of weighting for the seriousness of the conditions it describes obscures the overall condition of a building, creating an overwhelming negative impression from many minute instances, when the building as a whole remains structurally sound, and may have been found so in a previous survey. No coherent explanation is offered, for example, for why certain cracked sidewalks around the Cotton Club, which could be repaired at modest cost, out weight the satisfactory condition of the building, a much larger component of the value on the lot, and so qualify the whole property as in "poor" condition. This lack of coherent weighting of components of analysis renders the building conditions survey fraught with subjectivity. Property after property is pushed over the very unclearly demarcated line between "fair" or not blighted, and "poor", or blighted by the indeterminate importance given to one condition over another. Earthtech "replicated" AKRF's methodology in this regard without critical analysis or comment.

7. AKRF used non-maintenance in Columbia owned buildings and vacancy caused by Columbia's refusal to renew leases or take new tenants as evidence of depressed economic demand. It did so without considering pertinent and easily available contradictory evidence, such as rising real-estate values, rising rents, and the shortage of commercial and manufacturing space in the surrounding area and city wide. Most significantly, it did not consider or attempt to measure the direct responsibility of Columbia for creating, exacerbating or maintaining those conditions for its own strategic purposes. AKRF thus drew unfounded conclusions, fallaciously inferring the existence of depressed economic conditions when other data clearly contradict these conclusions, and better explanations are at hand for the physical conditions observed. Earthtech "replicated" AKRF's selective use of evidence and erroneous conclusions without critical analysis or comment.

AKRF and Earthtech also ignored the effect of Columbia's announced plans, rumored intentions, and explicit threats of use of eminent domain in attempts to pressure owners into selling, in causing the departure of businesses, the loss of jobs, and deferral of maintenance prior to its acquisition of buildings.

8. AKRF found the area blighted overwhelmingly on the basis of the condition of property owned or controlled by Columbia University, a party that has controlled most of the study area for a substantial period of time, and a party with interest in the finding of blight in Manhattanville. Earthtech "replicated" AKRF's methodology in this regard without critical analysis or comment. To the extent ESDC relies upon any study that ignores Columbia's actions, inaction, or responsibility for creating, maintaining or exacerbating conditions found in Manhattanville, ESDC will be acting in bad faith and rewarding a party with unclean hands.

9. Further factual and analytical demonstration of the methodological biases and unfounded conclusions in the AKRF and Earthtech blight studies will be included in the document regarding the Finding of Blight in the Columbia University Educational Mixed Use Land Use Improvement and Civic Project that Tuck-It-Away will submit by October 10, 2008.

C. If ESDC determines to take Tuck-It-Away's property in connection with the Columbia GPP, it will do so in violation of the 5th Amendment to the Constitution of the United States and Article I, Section 6 of the New York State Constituion. Under the deciding Kennedy concurring opinion in Kelo, a reviewing court may not dismiss a plausible accusation of impermissible favoritism without careful extensive inquiry at a trial court level. Since there is no trial court level under EDPL Section 207, Tuck-It-Away is deprived of the opportunity to gain a fair hearing upon its plausible accusations of such impermissible favoritism.

D. If ESDC determines to take Tuck-It-Away's property in connection with the Columbia GPP, it will violate the establishment clause of the First Amendment of the Constitution of the United States and Article 1, Section 3 of the New York State Constitution by engaging in impermissible discrimination on the basis of religion. The Columbia GPP states explicitly that ESDC will not take the property of the two churches in the area so long as they are in use for religious purposes. This constitutes impermissible discrimination in favor of religious land owners and land use over land owners with no religious affiliation or religious use such as Tuck-It-Away.

E. If ESDC determines to take Tuck-It-Away's property in connection with the Columbia GPP, it will violate the equal protection clause of the 14th Amendment of the Constitution of the United States and Article 1, Section 11 of the New York State Constitution, because the Columbia GPP discriminates between residential and commercial property owners when it states that ESDC will not take residential property as long as people are living there. The GPP also illegally discriminates between private

and public or public service corporation property owners when it states that it will not take the property of the Metropolitan Transit Authority or Consolidated Edison Company by eminent domain.

F. ESDC's condemnation of Tuck-It-Away's property for purposes of constructing a university campus and bio-technology laboratories is in violation of Article 18 of the New York State Constitution which prohibits the State or any political subdivision from engaging in any enterprise for purposes other than low income housing.

II. ESDC'S FINAL ADOPTION OF THE COLUMBIA GPP, BLIGHT FINDINGS, AND PROPOSED ACQUISITION OF TUCK-IT-AWAY'S PROPERTY WOULD BE OUTSIDE IT'S STATUTORY AUTHORITY.

A. If ESDC makes a finding that the Manhattanville area is blighted, such a finding will have been made in bad faith, and so resulting actions will be beyond the agency's statutory authorization.

1. ESDC's determination that the Manhattanville area was blighted was effectively made long before its formal adoption of blight findings on July 17, 2008. ESDC made determinations as to the viability and appropriateness of the project in late 2003 when it agreed to devote substantial staff time and resources to advancing the Columbia project. ESDC further affirmed its effective prior determination in March 2004 when it began regular planning meetings with Columbia, its contractors and attorneys and other involved public agencies, as it did also on August 18, 2004, when it entered into contract with Columbia to prepare documents in connection with such project, committing itself to financial interdependence with Columbia University in connection with a substantial part of agency's program activity. ESDC's statement in the contract of August 18, 2004, that it reserved the right to not exercise eminent domain was pretextual, and does not obviate the fact that the decision to proceed with the project was made on the basis of perception or judgement that it was a suitable project under UDCL Section 10 (c).

2. ESDC was aware that there was a significant possibility the area was not blighted when in December 2004 its staff member declared that there were problems with the first blight study conducted by Urbitran, Inc. for NYC EDC.

3. ESDC was aware that there was a significant possibility the area was not blighted when on August 1, 2005 it asked Columbia University whether Columbia had begun any work on the basis for blight.

4. ESDC proceeded in developing, and furthering the Columbia project for more than two years, at substantial cost to Columbia, itself, and to other agencies, before it decided to conduct a blight study. In late March, 2006 ESDC states it first contacted

the consultant AKRF regarding the performance of a blight study of the Manhattanville area. Establishing that the area was blighted is thus shown to have been perceived by ESDC as a *pro forma* certification of its long standing belief, and not a neutral inquiry with serious consideration of the possibility that the area is not blighted.

5. ESDC hired the consultant AKRF knowing of AKRF's direct retainer to Columbia for the prior two years since early 2004, AKRF's deep involvement in planning the project, AKRF's regular attendance at ESDC project planning meetings, AKRF's retainer to Columbia University to prepare a part of Columbia's GPP, the City Map Override Proposal, and AKRF's extensive activity as an agent of Columbia in seeking regulatory approvals for the Columbia project. Nonetheless, ESDC hired AKRF to perform the study to provide basis for the key finding upon which ESDC's participation in, and the successful realization of Columbia's plan depended: the blight study.

6. AKRF showed its bias towards finding blight in Manhattanville when on August 23, 2006 it presented to ESDC's attorneys Carter Ledyard and Milburn its preliminary findings. It had not even been hired yet to perform the blight study, a contract that was not signed until September 11, 2006. AKRF had not yet hired the engineering firm Thornton Tomassetti, on whose building reports AKRF later purported to base its findings. ESDC, moreover was fully aware of AKRF's bias and intentions to find blight in Manhattanville when it received AKRF's preliminary findings on August 28, 2006. AKRF and ESDC were clearly in agreement as to what the conclusion was going to be. All they needed was a study to prove it.

7. ESDC argued before the New York State Supreme Court in March, 2007, and before the Appellate Division, First Department, on October 9, 2007, with sworn affidavits by AKRF Vice President Dennis Mincielli, that to protect against conflict of interest or improper influence, a certain "Chinese wall" was established at AKRF between employees working on the blight study for ESDC and employees working on other advocacy work for Columbia. ESDC later admitted to the Appellate Division that such a separation had not in fact been maintained. Throughout this period, ESDC, through AKRF invoices submitted to ESDC's retained counsel for the Columbia Project, Carter Ledyard and Milburn, had evidence that no such separation in fact existed. ESDC only made this admission on the eve of disclosing, in response to Tuck-It-Away's FOIL request, certain billing records of the kind it had been ordered by the Supreme Court, in prior litigation with Tuck-It-Away, to disclose. Those records showed the same AKRF personnel billing for hours worked on both sides of the alleged "Chinese wall". ESDC's admission, moreover, was only partial. In fact 16 ESDC staff persons had worked on the blight study when only four had been sworn by Mincielli to constitute the team working on the blight study.

8. Among the methodological biases explicit in AKRF's blight study, and of which ESDC had actual notice, was its reliance overwhelmingly upon the condition and occupancy status of Columbia owned buildings to conclude that the area was blighted. Columbia at the time owned or controlled buildings constituting approximately 75% of the lots in the proposed project area. Together with the City-owned buildings, these were the only ones to which AKRF had interior access. AKRF and Earthtech failed to correlate the conditions they catalogued with Columbia ownership and causal responsibility. AKRF and Earthtech failed to identify vacancy and job loss in the area as the result of Columbia's refusal to renew leases with tenant businesses. AKRF and Earthtech photographed piles of garbage and moveable obstructions to fire exits without noting Columbia's responsibility for maintaining such conditions. They cited obsolete building code violations that Columbia failed to clear. They documented water damage that increased over the course of Columbia's ownership without assessing the extent to which it was due to Columbia's failure to maintain roofs and exterior walls.

9. Upon oral argument that presaged the July 15th 2008 decision of the Appellate Division finding a conflict of interest in ESDC's reliance on AKRF for the blight study, ESDC hired a firm Earthtech, Inc., that had no apparent experience in urban planning, economic development, or blight remediation. ESDC hired the firm to "review" AKRF's blight study, but no critical review of AKRF's methodology or Data was ever written and sent to ESDC. At the ESDC board meeting of July 17, 2008, ESDC Deputy General Counsel Maria Cassidy described the assignment given to Earthtech as to "replicate" the AKRF study. Critical review of the two studies shows no critical evaluation of AKRF's methodology, and the differences between the two mostly consist of downgrading of certain Columbia owned properties due to further deterioration over the two years between AKRF's Thornton Tomassetti survey and the Earthtech survey, which further deterioration was due exclusively to Columbia's failure to maintain its own buildings.

10. On July 17, 2008, before ESDC's board voted on the adoption of the GPP, ESDC Deputy General Counsel Maria Cassidy reported that the proposed finding of blight was based in part upon both the AKRF study and the Earthtech study. ESDC voted to find the area blighted, even though the Appellate Division, First Department, on July 15, 2008 had found AKRF's relationship with Columbia and ESDC to be a "tangled" one, and found AKRF to have been serving in all of its activities in relation to the Columbia project an advocacy role on behalf of Columbia University, and even though Earthtech's merely replicated the AKRF study and failed to critically evaluate or diverge from AKRF's methodology.

11. In response to a question from a board member before voting, on July 17, 2008, regarding litigation concerning the hiring of consultants in relation to this project, Maria Cassidy implied that the litigation was resolved, stated that ESDC had disclosed all records it was ordered to by the court. This was not truthful. ESDC had

not done so, and subsequently refused to do so, filing instead, on July 23, 2008, a motion for re-argument or in the alternative permission to appeal. That motion is still pending.

12. Columbia showed its awareness of the vulnerability of its blight finding when it appended the title "and Civic Project" to "Land Use Improvement Project". The Columbia plan was still described in a draft of the GPP prepared by Columbia's attorneys and dated April 18, 2006 as simply a land use improvement project, a designation requiring under UDCL Section 10 (c) a finding of blight. By that time, the project had taken essentially its final form, with its proposal to use eminent domain in order to obtain control of the entire Manhattanville industrial area, and its design around a 17 acre continuous basement or "bath-tub". By the next draft of the GPP, however, dated September 22, 2006, the designation "Civic Project" had been added, without any significant change in the design of the project. Though the project included a performance space to which public invitees might have access, public access to the planned athletic facilities limited to few hours a week, and possibly the incorporation of a junior high school in a few floors of one of the 16 towers of the project, more than 95% of the built area was still not planned to be open to any form of public use. To this day, the project is conceived for, designed around, and overwhelmingly dedicated to the needs and exclusive use of Columbia, a private corporation. The appended "Civic Project" designation was thus conceived at a late date and added without alteration of the nature of the project. It is reasonable to conclude that it was added as extra insurance, to add to the alleged public purposes of the project, in the event its original stated purpose, as a land use improvement project, proved vulnerable to challenge.

13. This obfuscation of the nature of the project is further evidenced by ESDC citing "further scientific research into neurological ailments and other diseases" as a public benefit or purpose. Not only is such furtherance purely speculative, and one to which Columbia is not contractually bound, but it is a purpose that is unattested in any precedent in connection with either a land use improvement project or a civic project.

14. The re-naming of this project, from the Columbia University *Academic* Mixed Use Development Plan to the more public sounding Columbia University *Educational* Mixed Use Land Use Improvement and Civic Project (emphasis added), without any change in the design of the plan or proposed program of uses, represents a further attempt to obscure the nature of the project. See point IV (C) (1) below. Should ESDC take final action on the Columbia GPP under that title, it would constitute further evidence of bad faith on its part in masking the primarily private purpose of the Columbia Plan.

B. ESDC's final adoption of Columbia's GPP and any determination to condemn Tuck-It-Away's Property would be outside ESDC's statutory authority in that it would be an illegal act, in violation of Sections 1983 and 1985 of the Civil Rights Act by conspiring

with Columbia University and various New York City agencies to make its determinations in bad faith, and to deprive Tuck-It-Away of its civil right to its private property.

1. When the New York City Economic Development Corporation in June of 2002 published its West Harlem Master Plan, it proposed re-zoning of the "up-land" area between 12th Avenue and Broadway for in-fill development, retention of existing uses, providing space for existing businesses to expand and for new business, and made no mention of eminent domain. At the same time, and in secret, EDC agreed with Columbia to hand over the "up-land re-zoning" to Columbia University, for it to tailor to its specification. By December, 2002, EDC was aware that the "dynamic" of Columbia's proposed expansion plan was the reverse of what was normal for the use of eminent domain: Columbia had already started investing in the area and acquiring property, and clearly needed no incentive to do so. Eminent domain was clearly not considered by EDC for the purpose of providing incentives to offset conditions that were deterring private investment. EDC offered Columbia in 2002 and 2003 the strategic choice between a Large Scale Plan re-zoning, a Special District re-zoning, or an ESDC General Project Plan with eminent domain to acquire exclusive control of the entire area. EDC supported Columbia's application to ESDC for a General Project Plan, as reflected in its ongoing participation in DCP and ESDC land use and project meetings. EDC also handed lead agency status for the up-land re-zoning off to the DCP, and the hiring and control of a consultant for environmental review of the up-land re-zoning to Columbia, even though it had already acquired funding commitments from the Upper Manhattan Empowerment Zone to lead such re-zoning and hire a consultant for the EIS itself. This hand-off of the up-land re-zoning phase of the West Harlem Master Plan was undertaken without notice to the public, and constitutes a decisive step in the diversion of a formerly public process to Columbia's private purposes, with the knowledge and participation of EDC, DCP and ESDC. EDC sought to further the pre-determination to use eminent domain on Columbia's behalf when in 2004 it commissioned Urbitran, Inc., to perform a study of blight conditions in Manhattanville. When that attempt to find blight in Manhattanville proved problematic as a basis for an ESDC land use improvement project, EDC shared that blight study with Columbia's contractor AKRF, as well as with ESDC. EDC, together with ESDC sought further evidence from Columbia to support a blight finding, before ESDC went on itself to commission a further blight study from Columbia's contractor AKRF. This record of intimate collaboration between EDC, Columbia, DCP, and ESDC to push through a project designed exclusively around Columbia's needs, designed to Columbia's specification, and for Columbia's essentially exclusive use, amounts to a conspiracy to deprive property holders in Manhattanville, including Tuck-It-Away, of their right to their property.

2. ESDC, DCP, EDC, the Office of the Deputy Mayor for Economic Development, and the New York City Law Department acted in concert to delay and restrict Tuck-It-Away's access to records to which it has a right under the Freedom of Information

Law, informing each other of every FOIL request that each agency received, when those FOIL requests were not binding upon any agency but the one to which it was addressed, engaging in extensive exchanges of e-mail communication following such requests, sharing novel and un-supported legal theories, for each other to advance in pleadings, such as the claim of exemption from disclosure of records under FOIL for applicants for agency action as consultants to the lead agency under SEQRA. ESDC and DCP based motions for stay of proceedings on ESDC's meritless motion to the Appellate Division for reconsideration of that court's lengthy and well reasoned final decision and order. The result was to maximize the delay and minimize the disclosures, and so run out the clock on Tuck-It-Away's opportunity to enter issues, facts and objections into the EDPL record. The FDNY and the Office of the Deputy Mayor for Economic Development simply refused to respond to initial FOIL requests and/or subsequent appeals.

3. ESDC structured its relationships with contractors, including AKRF and Earthtech, so as to make them subcontractors to its retained counsel, Carter Ledyard & Milburn. There is no apparent practical or technical advantage to this arrangement, beyond the effect of keeping communications with these contractors sheltered from disclosure under FOIL through FOIL's exemption for attorney/client privileged material.

4. The New York City Fire Department may have conspired with Columbia University and others to place markings on 615, 617, and 619-21 West 131st Street and 3233 Broadway, designating the buildings as in danger of collapse and a hazard to fire fighters in time for the AKRF blight study, and to remove such markings, or permitted Columbia to remove such markings after Tuck-It-Away filed a FOIL request with the Fire Department concerning the marking of these buildings.

C. In finally adopting, or taking any action based on, Columbia's GPP, ESDC would be acting outside its statutory authorization by violating its duty under SEQRA to only undertake actions that have had their environmental impacts adequately reviewed. In relying upon CPC's certification that Columbia's Environmental Impact Statement was complete and adequate, when the impacts of possible storm surge were not examined and alternatives were wrongly dismissed, and otherwise failing to comply with SEQRA as further enumerated in Section III below, ESDC would be acting illegally, and so outside its authority.

D. In determining the impracticality or infeasibility of compliance with local law regarding the re-mapping of publically owned land under city streets as private property transferred to Columbia, ESDC acted arbitrarily and capriciously, without reasoned basis. New York City provides procedures for the transfer of public property, and for amendment of the City Map. The only "practicality" and "feasibility" in question is the exposure to public review that such a public procedure entails. Such transfer of public land to private parties was not made explicit in the Uniform Land Use Review Process for Columbia's application for re-zoning of the area, and until now, public officials can plausibly deny

having approved such sale of public land. It was perfectly feasible to have made the re-mapping part of the ULURP review, but that would have frustrated Columbia's political strategy of getting the project past public review on only the more innocuous re-zoning issue. To incorporate the re-mapping into the GPP, which is subject to much more limited public review, is an act of deception, and an improper invocation of ESDC's "override powers". "Practical" and "feasible" do not mean "politically convenient".

E. ESDC would be acting beyond its statutory authorization if it finally adopts Columbia's GPP and takes Tuck-It-Away's property, in that it would be acting illegally in restraint of trade. ESDC conspired with Columbia University, NYC EDC, DCP, the New York City Law Department, the Office of the Assistant Mayor of New York, and others to create conditions preventing Tuck It Away from achieving full market value for its properties in private sale to parties other than Columbia, and to impede commercial rental of its properties.

III. ESDC's DETERMINATION AND FINDINGS WERE NOT MADE IN ACCORDANCE WITH THE PROCEDURES OF ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW.

A. If ESDC takes final action on Columbia's GPP and takes Tuck-It-Away's property, it will have violated its statutory mandate under EDPL § 207(C)(3) to render a determination and findings in accordance with the procedures of Article 8 of the Environmental Conservation Law by adopting Columbia's GPP, by relying upon the New York City Planning Commission's ("CPC's") deficient environmental review and by failing to take a "hard look" at the potential environmental impacts arising from the acquisition of Tuck-It-Away's property.

1. If ESDC takes final action on Columbia's GPP and takes Tuck-It-Away's property to create Columbia's proposed below-grade area spanning 17-acres with depths of over 100 feet in places known as the "Bathtub", and if ESDC relies upon CPC's Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) that failed to identify the scope and magnitude of the potential impacts upon which the final design of the Bathtub will be predicated, ESDC will have failed to identify potential impacts of its action and will have failed to consider measures to mitigate those impacts before rendering its SEQRA determination.

2. If ESDC relies upon CPC's findings that failed to consider the impacts of a storm surge on the Bathtub, and if it deferred analysis of the actual manner of digging, supporting and safeguarding the Bathtub from storm surges, ESDC will have failed to take a "hard look" at the potential environmental impacts and it will have failed to consider measures to mitigate these impacts.

3. If ESDC relies upon CPC's findings that accepted the underlying premise that the Bathtub was essential to the project it will have failed to consider alternatives, including the Community Board 9 197-A plan proposing the construction of interconnected, below-grade facilities (as was done at Rockefeller Center) that would be a safer alternative to the Bathtub's construction and would still allow substantial development by Columbia over a projected period of as much as 20 to 25 years without the same environmental, social and economic impacts as Columbia's plan calling for the construction of the Bathtub. By relying upon CPC's finding, ESDC will have failed to consider alternatives as required under SEQRA.

4. If ESDC relies upon CPC's findings that improperly segments the environmental review by failing to undertake the requisite studies or obtain the requisite information, ESDC will be deferring any consideration of impacts of the Bathtub before issuing its SEQRA findings.

5. If ESDC relies upon CPC's findings when CPC failed to identify potential impacts of use of eminent domain in Manhattanville on the self storage and moving services markets, gasoline and diesel prices, and the automobile repair and parking/storage markets for the West Side above 59th Street and all of Harlem, ESDC will have failed to take a "hard look" at the socio-economic impacts of its action and it will have failed to consider measures to mitigate these impacts.

6. If ESDC relies upon CPC's findings when CPC failed to consider impacts of the threatened use of eminent domain in driving sales to Columbia and consequent, loss of businesses and jobs, and in causing the neglect of building repairs, and in fueling speculative run up of real estate prices in the wider West Harlem area, ESDC will have failed to take a "hard look" at the socio-economic impacts of its action and it will have failed to consider measures to mitigate these impacts.

7. If ESDC fails to consider the potential impacts that the acquisition of Tuck-It-Away's properties will have on the environment by failing first to identify potential impacts of, including but not limited to: (1) the removal from the marketplace of Tuck-It-Away's storage space; (2) the elimination of jobs created by Tuck-It-Away in its properties; (3) the distances to which Tuck-It-Away's customers will now be forced to travel to fill their storage needs at other locations; (4) the proximity of other viable storage centers; and (5) all of the socioeconomic impacts of the foregoing, ESDC will have failed to take a hard look at the impacts of its action and it will have failed to consider measures to mitigate these impacts.

8. If ESDC relies upon CPC's certification of the Environmental Impact Statement for the project as complete and adequate, it will have failed in its own responsibility under SEQRA to determine whether its compliance was adequate.

IV. ESDC's FINAL ADOPTION OF COLUMBIA'S GPP AND ACQUISITION OF TUCK-IT-AWAY'S PROPERTY WILL NOT SERVE A PUBLIC PURPOSE.

A. The Columbia plan was initiated by, designed to the specification of, and in all respects controlled by the private purposes of a private corporation, Columbia University. The project is thus purely developer driven, and was from the outset intended to deliver its primary benefits to a particular class of one identifiable individual private corporation, Columbia University, or to a particular class of identifiable individuals associated with Columbia University.

1. Columbia took the lead in proposing text for every document and for every part of this plan, to which ESDC and other public agencies only responded reactively. Columbia's attorneys drafted the GPP, the er-zoning text, the covenants and restrictions. Columbia's contractor AKRF drafted the EIS and the City Map Override proposal. In every way this plan was initiated, defined, designed and driven by Columbia University, a private developer.

2. Any public benefits associated with the project are only incidental to the benefits to Columbia University, and are insufficient in themselves to constitute a public purpose. Alleged public benefits of the project were either benefits that could be accomplished by any of the competing development proposals for the area, such as the vestigial design goals of the diverted 2002 West Harlem Master Plan, such as enlivening West 125th Street, ground floor retail uses. Other alleged public benefits were merely appended to the project after Columbia's purposes had been met, such as the provision of an open space quadrangle inside the campus, the provision of performance and exhibition space open to public invitees, or the plan to include a junior high school in one of the buildings, or Columbia's declaration that it will provide 20 million for the creation of moderate income housing elsewhere in West Harlem. None of these public benefits necessarily requires the exercise of eminent domain, but rather could be achieved through any of a host of other development scenarios.

B. Columbia's insistence upon, and DCP's and ESDC's acceptance of, the contiguous two million square foot below grade "bath tub"development as an essential and indispensable feature of the plan shows ESDC's prior commitment to Columbia's plan and refusal to consider alternative means of achieving any public purpose independent of the benefit that Columbia proposed and sought. Creation of jobs, affordable housing, the vestigial design goals of the 2002 West Harlem Master Plan, and even the promotion of neurobiological research could all be achieved as public purposes without yielding to Columbia's wholly unsubstantiated insistence on its maximal demand. There is no evidence that ESDC ever tried to get Columbia to accept a project that did not involve eminent domain, as evidenced by ESDC's failure to show any record of answer to its question to Columbia at the August 1, 2005 meeting concerning alternative plans should eminent domain not be employed.

C. Without the purpose of remediating blight, the other benefits cited by ESDC do not constitute a public purpose sufficient to support the use of eminent domain.

1. The public purpose of generalized economic development as an end in itself, for the goal of creating jobs and generating income tax revenues, is not a public purpose under Kelo unless it is part of a "carefully considered" plan.

   The Columbia plan is not a carefully considered plan, but rather is the result of impermissible favoritism towards a particular private party, Columbia University. Unlike in Kelo, the public authority here did not determine the need for development of the target area in any open public process. What public process there was in the 2002 West Harlem Master Plan and the Community Board 9 197 (a) plan came to conclusions incompatible with the Columbia plan. There was no thorough deliberation because the planning for the Columbia expansion plan was conducted in secret without opposing voices or representation of community interests. In Kelo the condemning authority determined to develop the area prior to knowing who the private beneficiaries and users of the area would be. Here, the West Harlem Master Plan only proposed to re-zone the area to allow existing businesses to expand new businesses to enter the area. It specified in-fill development only, and foresaw no use of eminent domain. No comprehensive redevelopment plan was adopted prior to the identity of the private beneficiary and exclusive user of the area being known to ESDC. Here, unlike in Kelo, a variety of development plans from different applicants were not considered before picking out a transferee before hand.

   Instead, the Columbia plan was initiated by Columbia and designed exclusively around the self-identified needs of Columbia, an identifiable individual private corporation. Without an orderly, well-considered plan, a heightened standard of review of the alleged costs and benefits is warranted. No critical analysis of Columbia's claims has been considered by ESDC, with orderly opportunity to present and develop such criticism at an early stage of planning. The present proceedings do not constitute a thorough deliberation prior to adoption, but only a severely restricted opportunity for voicing objections after project planning is completed. Public comment to the EIS process does not constitute thorough deliberation either, but rather reflects three years of closed discussions between Columbia, its consultant ARKF, and the Department of City Planning. Tuck-It-Away has been impeded from even gaining access to records of those proceedings after the fact, despite appellate court decisions holding it is entitled to that material.

2. The generalized economic benefit of providing jobs and generating income tax revenues is not an adequate basis for the exercise of eminent domain because it renders impotent any constitutional limitation on the use of eminent domain, subjecting all property to the threat that it could possibly be used more profitably by another private entity.

3. The economic benefit of "maintaining and improving the status of the City and State of New York as centers for higher education and scientific research" is speculative, subject to no verifiable standard. It differs from the generalized economic benefit only in its restriction to a particular economic sector. It similarly renders all property subject to condemnation so long as it is proposed to be used for "higher education or scientific research."

4. Furthering research in neuroscience is not a precedented public purpose, and remains speculative, subject to no verifiable standard. There is no commitment on Columbia's part that the "neurobiological research" that is proposed to be conducted in its facilities will be for any other purpose than the minor modification of pharmaceuticals to prolong the rights of patent holders. No public purposes will govern the subject of research. Columbia has made no commitment to release the results of research into the public domain. Instead, the proposed research will likely have its agenda dictated by agreements between Columbia and private pharmaceutical investors, and the results of such research are likely to remain the intellectual property of such partnerships.

5. Columbia's incidental declaration that it will provide $20 million to a fund for developing moderate income housing does not expand the number of affordable housing units in West Harlem, when by Columbia's own admission the project will likely cause the secondary displacement of 6,000 low and moderate income residents from the surrounding area. Most of Columbia's proposed funding will most likely be absorbed simply in providing new housing for the residents that are directly displaced by the project, including a building it proposes to construct on West 148th Street to house those displaced from 604 West 132nd St.

6. The benefits of publically accessible open space, together with other design objectives from the 2002 West Harlem Master Plan, including the north south mid-block passage, widened sidewalks or improved sight lines to the Hudson park, "enlivening" of 125th Street and creating a 12th Avenue market area can not be purposes of the GPP, because they are already mandated by law in the Special District Zoning Text.

7. The publically accessible open space, remaining subject to Columbia's control and Columbia's private security patrol, will remain inaccessible to the surrounding West Harlem Community, because of psychological barriers implicit in Columbia's exclusive control of the entire Manhattanville area. Similar psychological barriers will in fact diminish public access to the newly constructed 125th street West Harlem Piers Park, amounting to a net loss in public access to open space.

8. The Columbia plan will not "enliven" 125th Street more than any other plan embodying that recommendation from the 2002 West Harlem Master Plan. It will most likely achieve this end less than a diversified development pursuant to the Community Board 9 197-A Plan. It will not be "helping draw residents to the West

Harlem Piers Park". Instead, because of the exclusive Columbia control of the area proposed in Columbia's GPP, pervasive cultural symbolism, and an intensive Columbia controlled private security presence, the Columbia Plan will more likely deter West Harlem residents from use of the West Harlem Piers Park. Interposing an exclusively Columbia controlled five block, 17 acre campus between West Harlem and the river front will most likely diminish effective access to and use of the West Harlem Piers Park by current West Harlem residents, whose race and class distinguish them clearly from the particular class of identifiable individuals associated with Columbia.

D. The Columbia Plan cannot stand on its own as a "Civic Project".

1. While civic purposes may include education, a purpose of education is civic only when the education is public, and the education provider is a public institution. The use of the designation "Civic Project" by ESDC for a private institution is unprecedented, and violates the legal and dictionary definitions of the term "civic".

2. Those components of the proposed Columbia Plan that could qualify as a "Civic Project" constitute only a small portion of the whole development, and the Columbia expansion plan as currently configured is not necessary to accomplish these limited public purposes.

   i. The proposed junior high school will occupy only a fraction of one of the 16 proposed buildings.

   ii. Performance and exhibition space open to invitees from the public will also constitute a minor fraction of one or two of the 16 buildings.

   iii. The "public space" of Columbia's enclosed and patrolled quadrangle is not a necessary or useful amenity when the West Harlem Piers Park has just been created a half a block to the west.

E. The proposed taking of Tuck-It-Away's property is under the mere pretext of a public purpose, when the actual purpose is to bestow a private benefit to a particular class of one identifiable individual corporation, or to a particular class of identifiable class of individuals associated with Columbia.

F. Land was not selected for condemnation in the Columbia University Academic Mixed Use Land Use Improvement and Civic Project on the basis of any facts of public significance independent of its desirability to Columbia University and usefulness to Columbia's private interests.

G. Use of eminent domain is not necessary or appropriate for the re-development of Manhattanville. There is no evidence that after the 2007 re-zoning by DCP that the land

would not be developed without governmental intervention, and indeed, in the re-zoning process it was subject to re-zoning proposals from multiple possible developers.

H. The use of eminent domain and the condemnation of the property of Tuck-It-Away in connection with the Columbia Plan is not for a public use, and so violates the Fifth Amendment to the Constitution of the United States, and Article I, Section 7 of the New York State Constitution.