Comments on the Draft Scope of Work for an Environmental Impact Statement
Proposed Domino Sugar Rezoning
August 9, 2007

The Municipal Art Society offers the following comments to the New York City Department of City Planning, the lead agency in the City Environmental Quality Review of the Proposed Domino Sugar Rezoning, with the intention of identifying where the Draft Scope may be improved in order to best describe the scope of the EIS for the project, the methodology for studying the project, and its impacts.

ENVIRONMENTAL REVIEW PROCESS

Discussion of irreversible and irretrievable commitments of resources to develop the project should, to the fullest extent possible, disclose the sources of the public funding that will be used to subsidize the affordable housing units; the total amount of the funding; and the percentage of that funding devoted to the projected site in relation to the total funding available citywide.

Task 1: Project Description

The reasonable worst case development scenario for the properties within the proposed M1-2 district should include a list of projected development sites. The list of projected development sites should be as realistically assessed as possible, using both field surveys and interviews with existing property owners and current renters. Information about projected development sites and property use trends and patterns in the area should also be gathered from the East Williamsburg Valley Industrial Development Corporation, which administers the Greenpoint-Williamsburg Industrial Area that abuts the site to the north and south. Identification of projected sites should take into account number of variances requested in the immediate area as well as number of infill construction projects in the immediate area. This analysis should be used, in turn, as the basis for calculation of the secondary business displacement. The impact of job loss on the neighborhoods should be re-evaluated accordingly, as should mitigation measures for loss of business and employment.

Task 2: Land Use, Zoning, and Public Policy

The EIS should examine the proposed development in light of PlaNYC 2030, especially; its conformance to recommendations for more transit-oriented development; more

sustainably-designed buildings; and reductions to demand for energy and waste removal. Given that the site abuts the Greenpoint-Williamsburg Industrial Area to both the north and south, the proposed rezoning should also be examined in respect to the Mayor's Industrial Policy and its emphasis on ensuring adequate industrial space as a means of keeping the city's industrial sector competitive.

Please see the "Alternatives" section for more suggested study options with regard to this impact category.

Task 3: Socioeconomic Conditions

Please refer to the comments regarding "project description," above.

Residential displacement
Analysis of secondary residential displacement should include displacement figures generated by local housing groups since 1990.

Economic Characteristics
Determination of approximate vacancy rate and rent levels for buildings in the area should be based in part on discussions with business owners, both those who own property and those who rent. Information from discussions with those currently occupying buildings will provide a fuller picture of current real estate values. Visual inspections to determine occupancy may not suffice in some situations.

Task 5: Open Space

If the study is to include the new park proposed for mapping in the calculation of the open space ratio, then an estimate of when the park will be available for use in relation to the estimate of build-out years should be included. The Waterfront Access Plan should be extended southward to incorporate Grand Ferry Park and to plan for the eventual expansion of Grand Ferry Park onto the adjacent New York Power Authority site.

With regard to the use of the open space, "publicly-accessible" but privately owned open space frequently fails to be a meaningful public amenity. Often, this is caused by inadequate programming, difficulty getting to the open space, and restricted hours of operation. This is particularly true of publicly accessible open space created under the waterfront zoning regulations. In the Alternatives section, MAS has outlined the examination of several different options to ensure the open space is as public as possible.

Task 6: Shadows

CEQR Technical Manual requires a study of whether that proposed action will result in a shadow being cast on a natural feature, among other places like open spaces and historic resources. The definition of a natural resource includes rivers.

The scope, as written, is not clear with regard to whether the study will include impacts of shadows cast on the East River. Given the proposed action's adjacency to the East River, such a study must be conducted. Furthermore, for the purposes of the shadow study, the East River should be considered not only a natural resource, but also an open space and recreational area.

Task 7: Historic Resources

The Municipal Art Society has advocated to the Landmarks Preservation Commission that the designated site include the Bin Tower, the connecting bridges and the Syrup Station, in addition to the refinery buildings. Preservation of these buildings and site features would document the sugar refining process and represent several significant periods of construction. This would in part mitigate the potential loss of National Register eligible resources. Williamsburg preservation organizations have requested the Landmarks Preservation Commission to designate the Adant House and Power House. The scope should consider alternatives that include the preservation of these buildings and site features.

According to the CEQR Technical Manual, for actions that are highly visible and can be perceived from more than 400 feet, the study area must to be extended. Given that the proposed buildings are significantly taller than any in this area of Brooklyn, they will be visible from more than 400 feet. Therefore, there is a potential for adverse visual impacts to historic resources and for shadows outside of the 400 foot perimeter. It is therefore necessary to identify resources beyond the 400 foot perimeter in order to assess any impacts. The study area should be extended from 400 feet to ½ mile.

All known and potential historic resources must be identified in the study area and project area, not only those that could be directly impacted.

Study of contextual impacts should include a study of the change in character of the neighborhood from industrial and manufacturing buildings to residential towers, as required by the CEQR Technical Manual.

If federal permits from the Army Corps of Engineers or other Federal agencies, or if there is federal funding used in the action, are required, the project would likely be subject to Section 106 of the National Historic Preservation Act, which requires Federal agencies to take into account the effects of their undertakings on historic properties. According to the Section 106 regulations,

> [t]he section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

In order to ensure compliance with Section 106 regulations, Section 106 review ought to be conducted simultaneously with the CEQR review and the findings and mitigation that results from Section 106 review ought to be included in the DEIS.

At this time, the Municipal Art Society formally requests consulting party status in Section 106 Review.

Mitigation for the loss of historic resources ought to be determined through Section 106 review. At the minimum, documentation of any National Register eligible building must be documented to HAER (Historic American Engineering Record) Level I standards. The machinery in the buildings should also be documented to HAER Level 1 standards.

Task 9: Neighborhood Character

The Draft Scope states that it will "[a]ssess and summarize the proposed project's impacts on neighborhood character using the analysis of impacts as presented in other pertinent EIS sections." The studies conducted in the other impact categories were not analyzed in light of neighborhood character—they were analyzed in light of that impact category. Therefore, it is insufficient to rely upon the "key findings" in the analyses of other impact categories. The EIS should analyze the project's impact upon neighborhood character in light of that impact category, and should not simply be a summary of other impact category analysis.

Task 10: Natural Resources

The EIS should explore materials for bulkheading that would encourage marine life, including oysters, which would mitigate the water quality (i.e. sewage) impact of the new development.

Tasks 13 and 14: Infrastructure; Solid Waste and Sanitation

The EIS should include a calculation of cumulative impact of the proposed development, new construction in the study area, and proposed construction in the study area.

When examining Combined Sewer Overflow ("CSO") events, the EIS should explore how the CSOs in the immediate area can be reduced or eliminated through enhanced stormwater management, green roofs and other sustainability strategies in the Domino development.

Task 15: Energy

The Draft Scope concludes that the added energy demand is not expected to create an adverse impact on the supply of energy with the new rezoning. The analysis will focus upon "descriptions of the capacity and existing demand of the entire systems, and of the distribution networks serving the project site." However, we cannot continue to rubber-

stamp the energy analysis of the EIS, simply because, in the past, the added demand has not caused environmental or economic harm. The effect of the demand from the new structures, the added car and truck traffic most certainly raise energy concerns, and must be fully detailed and studied in the EIS, examining the long term and cumulative impacts.

Because the site is currently unused, the current energy demand is not significant. By dramatically changing the site's uses to more energy-demanding uses, there is potential for significant transmission congestion because the area is not being used for such energy-intensive activities. The area's energy infrastructure and transmission capabilities may not be currently equipped for the change in energy usage, and a detailed assessment is needed in order to measure the demand increase and the potential for transmission congestion. In this same vein, the potential significant effects to need for additional generation of energy in the surrounding area must be studied as well.

By communicating with Con Edison early in the process, the lead agency should document and disclose the power mix (the fuels used to supply electricity and their resultant air pollutant emissions, including the emissions of carbon dioxide) for the project site. The lead agency should also analyze the transmission capacity and the likelihood of transmission congestion resulting from this project.

As mitigation for the added energy use brought by the proposed project, the lead agency should analyze methods in which to reduce energy demand, either through green building technologies, green roofs, greywater systems, or other infrastructure improvements. A greener alternative, which will be set out in more detail below, should be examined in order to curb the significant environmental and economic harm that added energy demand may cause our city. As part of this green alternative, the EIS should also explore the possibility of using alternative energy sources, such as solar, biomass, or hydro. For example, the project could generate energy in the East River adjacent to the site through turbines (similar to the Verdant Energy project adjacent to Roosevelt Island).

Tasks 16 and 17: Traffic and Parking; Transit and Pedestrians

The EIS should explore creating ferry landings for an array of different ferry operators to mitigate the transportation impact of the new development. For example, the scope should examine the feasibility of adding landings for front loading as well as side loading boats. In order to encourage water-borne transportation and reduce the impacts associated with car traffic, the EIS should explore creating landings for excursion boats and pleasure boats, uses not envisaged by the city's waterfront zoning.

The EIS should explore a "transit oriented" alternative that requires greatly reduced parking to encourage the use of public transit. In that same vein, the EIS should explore increasing the public transit capabilities in the area and should begin working with MTA to solve transit-related issues associated with the potential growth in this project area and surrounding neighborhoods.

Concerns regarding the further analysis of the environmental impact of traffic are discussed in the "Climate Change" section below.

Task 18: Air Quality

Concerns regarding the analysis of the environmental impact upon air quality are discussed in the "Climate Change" section below.

Task 22: Alternatives

These alternatives are in addition to the suggested study of alternatives and suggested mitigation measures listed within the body of these scoping comments.

Proposed Development Program Alternative
For the reasons articulated below, it is not necessary to include the rooftop addition to the refinery buildings in the proposed development program at this time. As indicated in the Draft Scope of work, the applicant will have to apply for a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC) for such an addition. A Certificate of Appropriateness is a discretionary permit given for applications that meet general standards of appropriateness. Landmarks permits are not subject to SEQRA (or CEQR) review because:

> an agency has some discretion, but that discretion is circumscribed by a narrow set of criteria which do not bear any relationship to the environmental concerns that may be raised in an EIS, its decision will not be considered 'actions' for the purposes of SEQRA's EIS requirements. *Citineighbors, 306 A.D.2d at 114.*

The LPC has criteria for determining the appropriateness of rooftop additions on individual landmarks. Generally, the Commission approves rooftop additions that are minimally visible from a public right of way related to designated individual landmarks. The appropriateness of an addition is decided at a public hearing by Landmarks Preservation commissioners, who are experts in historic preservation, architecture, history and planning. There is an opportunity for extensive public participation in the review process. It is important to allow the LPC to review this project unencumbered of the environmental review process.

Therefore, the lead agency should analyze the alternative in which the rooftop addition is not included in the proposed development program, and the anticipated square footage associated with such addition is transferred to an alternative location.

Land Use and Zoning Alternatives
Because the applicant will be entitled to additional floor area derived from the area between the shoreline and the bulkhead line, the actual density of the development will be significantly higher than typical R8 developments. For comparison, the EIS should therefore explore densities significantly lower than currently envisaged, such as an

entirely R6 development (or maximum FAR of 3.0). The EIS could also explore R7 as an alternative zoning designation for the waterfront.

The maximum height proposed by the applicant of 400 feet greatly exceeds the height of structures in the surrounding neighborhoods, which contains buildings of heights typically between the 30-50 feet. As an alternative, the EIS should explore the possibility of a drastically shorter height limit, such as 250 feet, in order to better respect the adjacent inland neighborhoods.

The EIS should explore alternatives that do not involve transferring floor area to the parcel bounded by South 3rd and 4th streets and Kent Avenue, to ensure the development on this parcel is not greatly in excess of the surrounding neighborhood.

This analysis should include a scenario in which the a) the M1-2 zoning district parking requirement is waived, in order to deter car traffic to retail destinations, and to restrict new retail to that which serves local need; b) a restriction prohibiting the construction of condo-hotels is enacted; and c) a ground-floor manufacturing use for new development is required (similar to the proposal under discussion for the Gowanus area.) Given that nearly 245,000 New Yorkers work in industrial and manufacturing jobs, making the industrial sector a larger employer than both the information and the real estate industries, it is important to thoroughly and thoughtfully examine this alternative. A healthy industrial sector adds stability to the local economy by diversifying the city's economic activities and bringing export dollars into the city.

Open Space Alternatives

The EIS should therefore study several different options to ensure the open space is as public as possible, including:

- Mapping the open space as public parkland and transferring jurisdiction to the NYC Parks Department;
- Ensuring a Memoranda of Understanding that would guarantee the handover of open space to a local conservancy that would administer and own the waterfront land
- Requiring commercial retail or a community facility at the base of the Domino Refinery Building facing the water, to provide a "magnet" to draw people to the water and increase the public quality of the space.
- Requiring retail frontage along the base of all the buildings facing the waterfront
- Creating a public street adjacent to the waterfront clearly separating the public open space from the private development

To maximize the public quality of the actual access to the waterfront esplanade and park space itself, the EIS should also explore the possibility of mapping streets all the way to the waterfront. This would be superior to providing "upland connections" which are liable to be privatized thereby restricting public access to the waterfront. Specifically the EIS should explore mapping the following streets all the way to the water's edge:

- South 4th Street
- South 3rd Street
- South 2nd Street
- South 1st Street

As an alternative to mapping the above streets to the water's edge, the land currently envisaged as "upland connections" could be deeded over to the parks department or local conservancy to be administered as public "ways."

Green Alternative

This analysis should also examine a Green Alternative, where the building specifications and land use design reach LEED-Gold standards or higher and renewable sources of energy are utilized. This alternative would help alleviate particular environmental concerns related to this proposed project and of the current environmental state of the area.

OTHER CONSIDERATIONS

Water Activity

The EIS should consider uses for the waterfront that would create an "active waterfront" including (but not limited to):

- Creating a "town-dock" – a dock that would accessible to the public to land boats and members of the public to utilize as a destination;
- Facilities to launch kayaks and canoes;
- Facilities for fishing;
- An appropriately-scaled marina.

Climate Change

Global climate change is a real environmental concern that is currently being raised and discussed at the international, national, statewide, and local level. While climate change is of global concern, we can act environmentally responsible on a local level in order to not exacerbate a growing problem.

Through PlaNYC 2030, the City has positioned itself to be a leader in the fight to curb the effects of global climate change by articulating the lofty goal of a 30 percent reduction in the City's "carbon footprint" by 2030. In a recent speech, Mayor Michael Bloomberg stated that "we soon realized that you can't formulate a land use plan without thinking about transportation and you can't think about transportation without thinking about air quality. You can't think about air quality without thinking about energy and you certainly can't think about energy – or any of this – without thinking about global warming." Clearly, the Mayor believes that any good land use plan should consider the impacts a project may have upon climate change. This is especially true in New York City, where, according to the New York Greenhouse Gas Emissions Inventory, citywide carbon dioxide equivalent emissions were approximately 58 million metric tons in 2005, with an astounding 79 percent coming from buildings. Therefore, when we plan, we must simultaneously assess a project's impact upon climate change and how best to reduce such impact.

With regard to this scope and an environmental review, an EIS under SEQRA/CEQR is required to examine a proposed project's effect upon energy, natural resources, air quality and air pollution. The main contributor to global climate change, carbon dioxide, was recently declared by the United States Supreme Court in the landmark case, *Massachusetts v. EPA*, to be an air pollutant. Under the current structure and mandate of SEQRA/CEQR, the lead agency not only has the ability to examine a project's impact upon climate change, but is under obligation to do so.

While the tools and methods for measuring 1) a building's output of greenhouse gases and 2) that output's impact on global climate change are still under development, the lead agency can nonetheless quantify the direct and indirect carbon dioxide emissions

resulting from a project by using existing energy modeling software. The inventory thus created can either be measured against the City's goal of reducing our carbon footprint by 30 percent or another defined goal for reducing a project's environmental impact.

Regardless of how the carbon dioxide emissions are measured, however, by disclosing the greenhouse gas emissions of a project, the lead agency can identify the opportunities to economically and practicably reduce such emissions through simple mitigation measures. Other mitigation measures can include reducing the traffic impacts, working with MTA early in the process to develop a better and more comprehensive transit system to serve this area, and working with Con Edison to provide the cleanest energy possible.

Cumulative Impacts

The Lead Agency must assess the impact the recent rezoning of a large section of Greenpoint/Williamsburg, in combination with the proposed rezoning here, will affect all the areas of concern. These two rezonings should not be examined independently of each other. In order to accurately analyze the significant environmental impacts of the proposed rezoning, this EIS should take into account the predicted and actual impacts resulting from the adjacent rezoning of Greenpoint/Williamsburg.