

**FOR PUBLIC RELEASE**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of Jessie McNab, The  
Emergency Coalition to Save Washington Square Park, Inc,  
Ray Brizzi, Susan Furman, and Daniel Weinberg,

Petitioners,

For an Order and Judgment Pursuant to Article 78 of the Civil  
Practice Laws and Rules,

AFFIDAVIT  
OF  
EXPERT  
WITNESS

-against-

The City of New York, Michael Bloomberg, in His Capacity as  
Mayor of the City of New York, New York City Department  
of Parks and Recreation, Adrian Benape in His Capacity as  
Commissioner of the Department of Parks and Recreation,  
William Castro in His Capacity as Manhattan Borough  
Commissioner of the Department of Parks and Recreation.

Respondents.

-----X

Reference: Washington Square Park Reconstruction Project (Contract # M098-105M)  
NYCDPR Negative Declaration of Significant Impacts (CEQR # 06DPR001M)

CITY OF NEW YORK )  
)ss. :  
STATE OF NEW YORK )

I, BRUCE L. McINNES, being duly sworn, deposes and says:

Qualifications

1. I, Bruce L. McInnes, being a Certified Arborist under the procedures of the International Society of Arboriculture, attest that the following affidavit is true and accurate to the best of my belief.
2. As an Arborist, and Consulting Arborist, and Member of the American Society of Consulting Arborists (ASCA), I have practiced in my field in NYC since 1977. I have significant experience with NYC Agency-sponsored construction projects,

and have performed as Arborist / Consulting Arborist / Tree Consultant on projects performed by NYC DPR, NYC and NYS Departments of Transportation (DOT), NYC Department of Design and Construction, NYC Department of Environmental Protection, Port Authority of NY and NJ, Triborough Bridge and Tunnel Authority, *et. al.* I believe I was the first Arborist to be selected as a Tree Consultant on a NYC DOT project (HWK 228B, Reconstruction of Fulton Street, Brooklyn in 1991).

#### Scope of Examination

3. I visited and examined Washington Square Park on two occasions, January 10<sup>th</sup> and January 13<sup>th</sup>, 2007 for several hours.
4. The purpose of these visits was to assess as possible the impacts, or absence of impacts described in NYCDPR's (DPR) Negative Declaration dated November 8, 2006 relating to the proposed reconstruction work in Washington Square Park, especially, but not solely as pertains to the fountain, plaza, and northwest quadrant of the park.
5. I have also had an opportunity to perform an initial review of the CEQR Environmental Assessment Statement, Ref. # 06DPR001M (EAS), DPR's Negative Declaration of Significant Impacts related to the EAS (NegDec), and portions of NYCDPR's Capital Projects Division plans and bid documents (Contract M098-105M).

#### Preliminary Statement

6. It is my opinion that the project as proposed and the process of construction in the manner proposed will result in vast degradation of tree resources in the park. My position is based not only on the intent to remove and / or transplant trees –

which operations in and of themselves may be legitimate – but of the apparent indifference, through lack of both process and protection, to the continued good health of the trees that are proposed to remain.

7. The fact of DPR's having issued a NegDec after considering, as required by CEQR, the potential impacts to the planted environment (among other impacts) is inexplicable. In my opinion DPR, more so than any other agency of NYC government, should recognize the inescapable fact that the trees in this park will be damaged (in part because there are apparently no plans to adequately protect them and in part because of the severity and cumulative nature of the negative impacts which will be a part of this project as proposed).
8. **THE LARGE TREES IN THIS PARK ARE, IN FACT, THE ONLY PART OF THE PARK WHICH CANNOT BE REPLACED.** All other features and infrastructure, including paths, buildings, playgrounds, the fountain – even the arch itself – can be replaced with enough money, design and application of appropriate methodology. It is the nature of these large (veteran) trees in urban settings that they often cannot be replaced with equals. Removal of large trees in such settings, especially where significant landscape elements exist, can very much trigger a net loss of canopy, an unfortunate (and often unnecessary) consequence.
9. This is supported by the conclusion of a USDA Forest Service expert, Dr. David J. Nowak, in “Assessing Environmental Functions and Values of Veteran Trees”. This assessment concludes, in part: “On a per tree basis, veteran trees typically contribute significantly more environmental benefits and value to society than

smaller trees. These beneficial functions provided by veteran trees require that these trees be healthy, functioning elements in the urban landscape.”

[Attachment BLM 1]

10. The fact is that Washington Square Park contains many veteran trees. This is noted in the EAS (p. 29), which says “The park has over 350 trees, many of which are between 80 and 100 years old.”
11. The EAS states that “DPR is completing a detailed arbor survey, using guidance from the National Society of Arboriculture, to assess existing tree and root system health” (P. 29).
12. This intention to survey the trees flies in the face of CEQR requirements as clearly stated in the CEQR Manual (Page 31-18, Item 324 (Tree survey), which states “[a] tree survey should be conducted when trees are present on site and would be cleared or otherwise impacted (for example, by soil compaction, which can adversely affect the root system) due to project-related activities.”...”The results of a tree survey are used to determine what trees would be impacted by project-related activities and, if appropriate, to develop compensatory mitigation for those impacts”.
13. The CEQR Manual further states (Page 31-13, Item 320) that ...”absent any specific information, the resource is usually presumed to be important and valuable.”
14. IT IS MY OPINION THAT CEQR CLEARLY AND SPECIFICALLY REQUIRES THAT A TREE SURVEY, INCLUDING A ROOT SYSTEM ANALYSIS MUST BE CONDUCTED PRIOR TO THE COMPLETION OF AN EAS, AND THAT THE EAS MUST TAKE INTO CONSIDERATION THESE FINDINGS. FAILURE TO

DO SO SABOTAGES THE EAS CONCLUSIONS (Item 9, P. 6) that “The proposed project will not result in any adverse impacts on natural resources.”

15. This being the case, several general comments about tree growth / health are appropriate:
16. Trees in park settings may have roots in an area 2-3 times the drip line (crown diameter).
17. Excavation, no matter how carefully accomplished, within the root zones of trees is injurious. Sometimes damage is unavoidable. Sometime it is not. Damage is never, however, unnoticed by the tree. One could make the analogy that tree roots are the equivalent of a person’s toes. One must ask how many can be cut off before one starts to complain? How many before one suffers? How many before one becomes physically (structurally) unstable? The same type of questions must be asked about the trees in Washington Square Park *vis a vis* the inevitability of construction impacts.
18. Construction injury to large trees takes, dependent on a number of things, as much as 8 – 10 years to be fully expressed. The conclusory statement in the EAS (Natural Resouces, P. 29) that “...the proposed action includes soil removal and replacement. However, these direct effects are temporary as they are construction-related.” In fact, the adverse consequences of construction injuries to tree roots, and therefore to tree health, will persist long after project completion.
19. Compacted soil is not remedied by ‘decompaction’. Injury / disruption to root health takes place beginning at the moment of compaction, and is never

completely corrected. Often, corrective measures bring only greater injury (See Project Plans [hereinafter “Plans”], Sheet 4).

20. Pruning to compensate for root damage is a practice which is no longer acceptable within the tree maintenance industry. One should avoid removing live limbs from trees. Even an expertly placed pruning cut is an injury to which the tree must send protective resources – for years (See Bid Contract [hereinafter “Contract”], P. 268C). A proper tree survey is necessary to determine which trees may actually need pruning and the degree to which pruning will be required, The absence of such a survey risks the pruning of trees unnecessarily.
21. Fertilizing trees under stress is widely known to be not only misguided but damaging. Further, amending soil in any way should not be undertaken unless determination has been made, through soil analysis, of a need. Unfortunately, the demands of the plans for inclusion of nitrogen in wood chips is potentially damaging to trees. (See Item # 12, Pg. 262 of the Contract).
22. Planting of Asian-longhorned beetle (ALB) host trees should never be allowed within the ALB quarantine zone (which includes Washington Square Park). In fact, DPR policy prohibits this (although ALB-host species are on the planting list for this project). (See Item # 118 ‘plant (8) *Ulmus parvifolia*’ “Allee” and Item # 124 ‘plant (3) *Aesculus parviflora*’ of the Contract). (Attachment BLM 2)
23. Planting of more trees is not necessarily of benefit to a park or its surrounding community. For example, the project plans call for the planting of trees which are inappropriate choices for the sites designated. In once case, trees which are genetically predisposed to be 75’ tall and 50’ wide (See *Liquidambar styraciflua*

locations on P. 5 of the Plans) are designated for planting in an area which cannot accommodate their mature size due to the presence of existing trees. Sites should be selected according to tree size at maturity. This is a glaring example, in my opinion, of the failure of the project to appropriately assess and evaluate resources and conditions as they currently exist.

24. Transplanting a tree with a root ball (the amount of root-containing soil which is prepared, dug, protected and moved with the tree) too small for its trunk size is a waste of time, money and the public trust. To profess otherwise is misleading and should not be tolerated. It is my opinion that the two trees greater than 20" diameter (See item # 17 of the Contract) cannot be successfully moved due to the restrictions of their current growing site, which will eliminate preparatory measures such as root-pruning. Preparation for transplanting is standard, minimal procedure and is consistent with Best Practices. Failure to properly prepare a tree in advance, or failure to allow sufficient lead time for preparation prior to transplanting reduces the likelihood of success. The project fails to adequately address these issues.
25. Anything which changes moisture levels upon which trees have become dependent will result in adverse impacts –and possibly death – to trees. Such changes include replacement of cracked or decrepit (pervious) surfaces such as old asphalt walkways with surfaces installed on a concrete base. Such changes are called for in this project(See Plans, Sheet 10). It is safe to assume that many trees have roots under existing pathways. The reduction in available moisture (should the plans allow for drainage through the surface instead of away in piping?) will certainly impact trees adversely, not to mention the additional root

loss / compaction injury from excavation and compacting. An appropriate assessment of tree root areas and the impacts of this work should be completed.

26. 'Structural soil' is a material (stone, organic matter and a binding agent) sometimes used under paved surfaces to enable root growth. It is better than stone, but not better than soil. Even structural soil, which may entertain root habitation, will not do so without moisture inputs (See Plans, Sheet 10).
27. Trees are systems. They grow when they have access to the resources they need in the quantities required. They do this as possible despite the adversity of certain insect and disease pathogens. When we interact with the environment of a tree, whether it be related to soil, moisture, temperature, light or air quality, we do so at the peril of the tree, which often cannot accommodate to our actions, and slowly (often unnoticeably at first) declines. We then wind up with trees which are not as healthy, and often not as sturdy as they should be to exist in public spaces. It is critical that these factors all be considered in the design of a project, not during its implementation. Failure to properly assess, IN ADVANCE, the degree of impacts and their consequences in a construction project may doom the trees (especially the larger trees) to decline and death.
28. There are some similarities in behavior between trees and people. For example, younger, juvenile trees can withstand a lot of damage, as can young people. A child who breaks a leg might mend so easily that he or she grows up unable to remember which leg it was. An older person who breaks a finger might learn that they are never able to mend correctly and entirely. Older trees are unable to quickly replace roots lost to construction. Given time, uncompacted soil, moisture and the absence of too many other stressors, root generation may

occur. This means that the period of stress and deprivation for older trees is a long one. We should remember this when we plan for impacts. Large trees do not take these stresses lightly, nor do they resolve them quickly.

29. Energy which a tree must devote to wound resolution (or other construction impacts) is not available for other uses. Therefore, stressed trees become more vulnerable to damage from insects, disease, drought, etc.
30. If a tree cannot (or will not) be adequately protected, it should be considered for removal. Of course, sometimes a project fails to recognize (or recognizes but fails to admit) how many trees will ultimately be (or from a public safety or amenity viewpoint, should be) lost. When this is the case, the public suffers as a result of the under-representation of the significance of the losses. This is the case in Washington Square Park.
31. Unfortunately, NYCDPR's Capital Projects Division has a long history of failing to follow DPR's own specifications as they pertain to tree protection during Capital projects. I have been given a wide range of excuses over the years as to why DPR's Capital Division has been allowed to operate in this manner. These excuses (from DPR personnel, of course) have ranged from 'not enough money to really protect the trees' to "Well, I told them to protect the trees' to 'Oh, those Capital Division people – they just do what they want'. I find this history – and the present proposal in the context of this history, (with its failure to properly evaluate, in advance of construction, potential impacts and need for tree protection even to the minimum DPR standards) – to be totally unrealistic and unacceptable.

32. The IRREVERSIBILITY of many types of construction injury to large trees should – and is required by CEQR to be – taken into consideration when considering the range of impacts and the requisite investigation of alternatives and mitigations.

As to the EAS and the resultant Negative Declaration:

33. The NegDec and EAS fail to recognize – or worse, fail to acknowledge – the great number of negative impacts, both direct and indirect to trees (and other aspects of the retained and ‘improved’ landscape). now in Washington Square Park
34. The EAS fails to adequately identify adverse impacts, both primary and secondary, to park trees and other landscape elements.
35. The EAS fails to make accommodation for the known consequences of certain construction impacts, both in the short and long terms.
36. The EAS has been issued despite the absence of a current, valid and complete inventory and survey of park trees and other landscape elements. The general descriptions and measurements as shown in the plans are inadequate in assessing impacts. A proper survey must describe a number of aspects, including but not limited to: Type, size, condition; perceived critical root zone area; proximity to different types of construction; types and degrees of potential injury; potential for mitigation; details and definitions as to such mitigation; appropriate (often per tree) tree protection measures required, etc. (See CEQR Manual, Page 31-18, ‘Tree Survey’)
37. Terminology such as ‘a tree protection plan shall be formulated and finalized...’ (Contract Article 14, Tree Work) is inadequate to the task and violates the

concept of recognizing (and admitting) that there will be adverse impacts to tree systems.

38. I note here a number of objections I have to the issuance of the NegDec and EAS by DPR .
39. Item # 1. LAND USE AND ZONING: Based on the bid items relating to tree removals (See item # 16 of the Contract ('Remove 32 trees 6" – 18" DBH [Diameter, breast height, which 4.5 ' above grade]), plantings, additional turf areas, the changes in the treed environment and degree of tree canopy will bring significant change in the uses of the park space, both by people and wildlife using the tree canopy for habitat.
40. Item #4 OPEN SPACE: The declaration that the project 'will not result in any adverse impacts to open space' is patently false. Reducing through removal (or unrealistic transplanting intentions) some of the large tree resources in the park will significantly change the open space character of the park. The addition of three new lawns verifies this. Further, the NegDec states that 'the plan improves existing uses without eliminating any of them'. Removal of large trees is a loss of green elements to the park. No amount of planting of turf, flower beds, shrubs or smaller trees will replace the loss of the large trees. There simply is not room in the park for the removal of large trees to represent anything but a net loss. This is a significant negative impact.
41. Item #7. URBAN DESIGN / VISUAL RESOURCES: The NegDec statement that no adverse visual changes will occur is misleading. The visual loss of shade, textured / filtered light will be sizeable and should not be ignored.

42. Item #9. NATURAL RESOURCES: The statement that soil removal and replacement are temporary and therefore a non-issue is incorrect. Root systems of trees will be adversely, perhaps fatally affected by soil removal. Further, the statement that 20% more greenery will be created is based on plans which apparently have been processed without a complete survey of the current tree, shrub and landscape palette. Considering the ill-advised placement of some of the new trees, this 20% increase may be very damaging to the existing landscape (Planting large trees under other large trees – while a common failing of DPR Capital Projects – is simply the wrong thing to do (e.g., the sweetgums and dawn redwoods near the northern border of the northwest quadrant (See Sheet # 5 of the Plans) – are all too close to existing trees and to each other)
43. Item #14. ENERGY: The NegDec declares that the ‘project will not result in any adverse energy impact’. This statement ignores the energy resources which are developed and generated within tree systems.
44. Item #16. TRANSIT AND PEDESTRIANS: The very redesign of park pathways and curbs utilizing more concrete as base under pavers and curbs GUARANTEES a huge amount of damage to critical root systems of many (if not most) of the large trees in the park.
45. Item #17. AIR QUALITY: Perhaps the most egregious of misstatements contained in the NegDec, this statement declares that air quality will be improved by increasing open and green space. Oxygen generation by turf is not comparable to that of large trees and the importance of the contributions by large trees should be neither ignored nor downplayed.

46. Item #18. NOISE: Large trees (and other smaller landscape elements as well) serve as noise buffers. Their removal will decrease canopy mass and increase ambient noise levels, both within and outside of the park.
47. Item #19. CONSTRUCTION IMPACTS: The addition / replacement of curbs, walkways, fencing, playground expansion, etc. all bring with them impacts which are adverse to tree health. Some of these impacts can be mitigated, but the plan notes do an inadequate job of providing for this. Other impacts cannot be mitigated, and for the NegDec to state that there will be 'minimal' impacts to natural resources is both incorrect and misleading. Some curbs are on footings as much as 30" below soil grade (plus the over-excavation necessary to install and remove the necessary formwork)(See Sheet # 20 of the Plans). The size and depth of these curbs and their footings, and their proximity to existing root systems GUARANTEES great amounts of damage to extant trees.
48. Item #20. PUBLIC HEALTH: The plan as presented will produce a reduction in the amount of generated oxygen and shade-providing tree canopy. This is certainly an adverse impact, unacceptably discounted by the NegDec.

As to the Plan Drawings, Bid Contract and their disparity with the EAS:

49. I note a number of objections to the plans and intended methodology. The failure of the plans and bid language to properly recognize the importance of the extant trees to the park and the surrounding community, and the inadequacy of the effort that is made to address tree protection result in a huge number of objections, more than can be listed here. Please note that I have tried to take into consideration (as DPR has not) the totality of impacts from a number of operations, some of which are simultaneous, some of which are consecutive, but

all are cumulative. Many are of significant consequence. Some are of huge consequence. *To wit:*

50. Removals of existing elements: Without an appropriate Tree /Landscape Protection Plan (T/LPP) and appropriate oversight by an Arborist, soil compaction, excavation injury and other impacts may quickly or eventually reach deadly levels. (See Contract Item # 14);
51. Movement and placement of monuments to areas within critical root zone areas (even if these are under existing paved surfaces) may effect the adjacent 36” diameter and 28” diameter trees as well as other proximate trees . (See locations on Plan Sheets- Exhibit \_\_\_\_\_);
52. Installation of curbs on concrete footings and pathways on concrete bases: Larger installations mean greater excavation, including excavation for forms into which to pour concrete. It is quite common for tree roots to have grown up to and be in contact with existing curbs and walls, with grievous injury resulting from curb removal and replacement with larger elements. (See Paving details on Plan Sheets). Even the mere potential for this poses a significant negative impact considering the amount of curb and pathway work proposed;
53. Electrical lines and their associated excavation pose an additional threat to the . trenching through roots posed by the water lines. (See Electrical drawings in the Plan Sheets);
54. Water lines, and their associated excavation including drywells near trees: A brief review of the plans prioritizes one water fountain over a 40” diameter tree (See Sheet M7 of the Plans);

55. Repair / replacement of drainage systems always entails a large excavation. This presents impact issues throughout the park, but is of great concern relative to the large historic elm ('the hanging elm') in the northwest corner. The EAS does not account for the certain damage that drainage work next to the large elm poses. Detailed steps to prevent the damage is lacking.. (See, e.g., Sheets M4, M5 of the Plans);
56. Additionally, the following aspects of the plan pose significant  
ENDANGERMENT TO THE HEALTH OF THE EXISTING TREES:
- a. Relocation of facilities (e.g. playgrounds) to the perimeter of the park where there are trees which will be impacted. These impacts will be significant, as there are extant large trees in the areas proposed (See EAS, Page 10);
  - b. Expansion of certain park elements (e.g., playgrounds, dog runs) into areas now containing trees which will be removed or adversely impacted (See EAS, Pg 10).
  - c. Installation of irrigation, and its concomitant excavation, often across critical roots immediately proximate to large trees. (See Sheets M11 and M12 of the Plans);
  - d. Installation of (and excavation related to) footings for fences, railings, posts, etc. This work, and the concomitant excavation required to perform it, will result in significant negative impacts due to the volume of elements to be installed (See Drawings 10, 18, 19, 20, 21, 22 of the Plans).

Other Examples of Potential Adverse Effects

57. The following are some of the more glaring examples of potential adverse effects to trees that the EAS failed to address:
58. ELM IN THE NORTHWEST CORNER: Perhaps the most historic tree in lower Manhattan, this elm will be unavoidably, and perhaps fatally, compromised by the construction plans as they now exist. Multiple impacts are planned, including: electrical work (See Sheet E2 of the Plans); drainage (See Sheet M4 of the Plans); curb and pathway removal (See Page 3 [Removals] of the Plans); paving; Installation of irrigation (See Sheet M11 of the Plans) etc. I note with alarm that the installation of curb, fence, posts, footings, etc. all take place less than 8' from the trunk of this 65" diameter (the plans say 60") tree.
59. The haphazard or imprudent planting of more trees in every open space is not necessarily beneficial . In fact, poor choices have been made in the instant plan in at least a number of locations, with an intention to plant large trees in spaces where there is not sufficient room for them to develop to their genetic potential.
60. One glaring example is the proposed planting of two *liquidambar styraciflua* (American sweetgum) near the northwest corner of the park. This is a tree which wants to be 60' – 75' in height, with a branch spread equal to 2/3 its height (See Manual of Woody Landscape Plants, Michael A. Dirr, Stipes Publishing Company, Champaign, Ill. Rev. 1990, Pg. 486) but is proposed for planting perhaps 25' on center, and perhaps 10' from the present crown extension of existing trees (Planting Plan, Sheet 5 of the Plan). Planting these trees as drawn in the plans will not only deny them the ability to reach their mature size and form, but will crowd out neighboring trees. (Had a proper and current survey been conducted, this planting error would have been avoided).

61. In my professional opinion, after a primary examination of the Plans, Bid Contract Documents and physical examination of the park, I predict that there is a major probability that almost all of the trees in the park will be threatened by some, – and some by many – of the construction activities or the resultant changes. There is inadequate detail regarding the standards and methods to protect these trees. Without tightly drawn tree protection standards (the type that DPR routinely demands of other non-park related projects in advance) there will be inadequate protection.
62. Some of the protective measures noted in the plans are inadequate (*e.g.*, Contract Item # 12, “Protect existing tree roots with wood chips 6” depth”.) Best Practices do not allow for the addition of ‘wood chip mulch’ over protected roots without some delineator of the surface, such as geotextile fabric. Without such delineation, the chips cannot be removed without damaging soil surface and nearby roots. Also, 6” of ‘mulch’ is inadequate to prevent compaction if activities take place and will serve as a smothering layer. Further, if no activities are to take place on the root zone, there is no need to cover it with any material. The better method is to surround the targeted area with a fence to avoid any type of dilatory contact.
63. The haphazard addition of soil amendments such as fertilizer, lime, superphosphate, etc. without prior soil testing and determination of need is inappropriate and dangerous to the health of trees and other plants.
64. Plywood alone does not protect tree roots (See Contract Item # 13). I am incredulous that this item and its description “The Contractor shall place...as directed by the Engineer. The Landscape Architect shall inspect the work and

approve the work as required to assure tree root protection.” It is frightening to learn that those involved in the preparation of the plans for this project have such a minor understanding of tree protection, soil compaction and mitigation methodology. Plywood only encourages use of areas which are theoretically to be protected. Fences protect tree root areas, not plywood. Exception: If a pedestrian pathway is unavoidable, 6” of wood chips may be a remedy. If heavier activity is involved, the industry standard minimum is 12” of wood chips on a geotextile or equal surface covered by 1” steel plates.

65. Excavation methodology in proximity to trees is not adequately spelled out. Improper excavation methods will result in unnecessary root loss or damage, and possible tree loss.
66. In my experience, ambiguous terminology such as ‘the contractor shall exercise extreme care’ is not sufficient. (Contract P. 221). Protective measures not clearly identified and clarified in the plan documents are likely to be meaningless and provide no protection at all (or worse, provide a false sense of security). All such protocols are required to be defined in the specifications that are included in the contract to be let.
67. Trees should never be pruned unnecessarily. Contract Item # 109 calls for eighty trees to receive ‘preparatory pruning’ . This contradicts standard and current industry practice, and even DPR’s own standards. Any detailed reasoning or substantiation of the need for such pruning is lacking in the Contract and EAS. Which trees are these? Where is the survey which not only identifies these trees but describes why they need pruning? And why others do not.

68. The plans call for the planting of Asian Longhorned Beetle host species in the Park (Contract items # 118 and # 124). This violates DPR's own policies. (See 'Street Trees for NYC', published by DPR Central Forestry, which clearly states when describing Asian longhorned beetle host species: "Planting Prohibited in Brooklyn, Manhattan, and Queens". (See Attachment BLM #2)
69. The plans call for 1400 cubic yards of topsoil for sodded areas (See Contract Item # 102) and 1000 cubic yards of topsoil for planting beds (See Contract Item # 111), yet DPR indicates that there are no grade changes except as relates to the fountain area. In reality, it seems that: Either grades will be raised in the park to absorb this much material (in which deadly smothering of tree roots is likely) or substantial (read 'significant') excavation of existing tree root systems will result. Either result will be a significant adverse impact.
70. I could go on, but would like to simply say that the work and methodology outlined and occasionally specified in the plans and bid documents for this project cannot be accomplished without grievous injury to the tree resources in Washington Square Park.
71. The plan needs to be qualified, clarified and designed to provide adequate protection to park trees. Since we don't generally see the full extent of construction injury to mature trees for 8 – 10 years, it is entirely inappropriate to approach this (or any) project without first ensuring that adequate protective measures are in place. It is extremely imperative for these protective measures (beginning with a complete and current survey) to be in place before the project is bid.

72. One would think that the large, sheltering trees of Washington Square Park deserve the same planning consideration and priority as, for example, a game table or a bench (No bid would ever go out without these elements nailed down, not only to placement but to size, color and materials. Our large (veteran) trees) deserve equal standing with a game table. As stated earlier, these trees are irreplaceable and face irreparable harm.
73. I recommend that an independent Arborist be engaged to assist with this project, since the current plan seems to indicate that neither the DPR Director of Landscape Design nor his / her design team are intimately conversant with matters relating to tree health. It is my opinion that, were DPR committed to the trees of this park, there would be no existing NegDec and I would not be writing this affidavit.
74. It is safe to say that the Negative Declaration was an incorrect position for DPR to take. Even the CEQR manual dictates that a complete tree survey must be undertaken. The CEQR manual language should have been sufficient to drive DPR to a different declaration of impacts. In fact, failure to properly plan for and protect existing trees violates the very premise of CEQR and the publicly stated values of DPR).
75. I believe that DPR's Negative Declaration of adverse impacts, based on their EAS was incorrect, inappropriate, misleading, and was an attempt to downplay or ignore the very significant impacts of the project to the tree resources of Washington Square Park.
76. It is my opinion that DPR should be required to change its Negative Declaration to a positive declaration and that a complete Environmental Impact Statement be

undertaken to fully understand the extent of damage posed by the present plan, the efficacy of possible mitigation and the high probability of net loss of the ecological value of the trees and other flora at Washington Square Park.

77. In summary, the Parks Department in its EAS failed of identify the effects the proposed plan actions may have on the Washington Square environment.



Bruce L. McInnes, ASCA

ISA Consulting Arborist

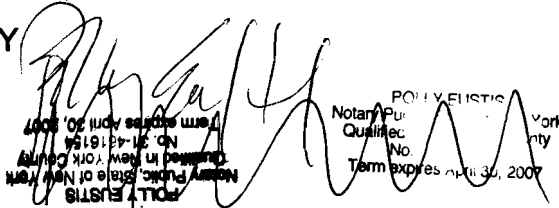
TREE CARE CONSULTANCY OF NEW YORK, INC.

Dated: January 18, 2007

New York, NY

**POLLY ELUSTIS**  
Notary Public, State of New York  
Qualified in New York County  
No. 31-4616154  
Term expires April 30, 2007

Notary:



**POLLY ELUSTIS**  
Notary Public, State of New York  
Qualified in New York County  
No. 31-4616154  
Term expires April 30, 2007

Sworn before me on the 18<sup>th</sup> of January 2007.