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December 27, 2018

***VIA HAND DELIVERY
& FIRST CLASS MAIL***

City of Utica Planning Board
c/o Department of Urban & Economic Development
1 Kennedy Plaza
Utica, New York 13502

RE: Comments on Draft Environmental Impact Statement (“DEIS”), dated November 2018, on Integrated Health Campus (“IHC”) Proposed by Mohawk Valley Health System (“MVHS” or “Applicant”)

Dear City of Utica Planning Board:

On behalf of our clients, Mr. Brett Truett and #NoHospitalDowntown, we submit the following comments on the DEIS provided by MVHS in support of its proposal to demolish culturally significant resources in downtown Utica in order to make way for the IHC.¹ As an environmental practitioner with more than four decades of experience under the State Environmental Quality Review Act (“SEQRA”), it is appalling to see how far the Applicant and its supporters have gone to subvert the purpose and intent of SEQRA. As a result, the SEQRA process is incomplete and procedurally and substantively defective. Under these circumstances, the SEQRA process should be reopened to correct these blatant defects.

Per the DEIS, the IHC is proposed to be located on 25 acres in the City of Utica’s Gateway Historic Canal District (the “Downtown Site” or “Project Area”). The proposed Project Area currently consists of over 80 individual properties (including businesses, community land and residences) and will result in the broad-scale displacement or destruction of 40 existing businesses and five not-for-profit organizations/facilities, as well as destruction of a host of historically significant buildings and the character of the Columbia-Lafayette neighborhood as a whole. The intrusion of the proposed nine-story, 165-foot medical institutional building (and associated uses and alterations on the Downtown Site) will stand out as a sore thumb, in marked conflict to the vision espoused for this area in the City’s Master Plan and as reflected in regulations pertinent to the City’s Historic Districts. Beyond that the DEIS’s evaluation of this proposal fails to adequately account for the project’s adverse impacts, the significant unavoidable, unmitigable adverse impacts that the DEIS actually does acknowledge could be readily avoided by selecting an alternative location, namely, the St. Luke Campus (which is owned by the Applicant).

¹ This letter supplements Mr. Truett’s personal comments.

With all due respect, for the reasons detailed below, we maintain that the City of Utica Planning Board (“Board”), as lead agency under Article 8 of the Environmental Conservation Law (“ECL”) and its implementing regulations, 6 NYCRR Part 617, (collectively, “SEQRA”), has engaged in a defective, incomplete and inadequate environmental review process, as to both timing and substance, thereby rendering the DEIS fatally defective.

A. Timing Deficiencies Regarding Public Review of and Comment on the DEIS

As reflected in the attached petitions requesting an extension of the public comment period (Exhibit A), as well as in comments from the Landmarks Society of Greater Utica, dated December 27, 2018 (Exhibit B), the Board has afforded the public, in effect, the bare minimum of notice and opportunity for comment on what is a massive, complex project with far-reaching, significant adverse environmental implications. *See, e.g.*, 6 NYCRR 617.9(a)(3), (a)(4)(iii). The Board has allowed the public only 39 days to comment (i.e., from November 19th to December 27th) – and this includes two major public holidays, one on a Thursday (Thanksgiving), and the other on a Tuesday (Christmas). By virtue of the holidays, at least four days were effectively eliminated from the public comment period, leaving only a mere 35 days (at the most), with comments due two days after Christmas. The timeframe set forth by the Board, therefore, is nothing more than a transparent attempt to limit meaningful public input. This conclusion is further highlighted when one observes that the DEIS is a complex document that exceeds 3,500 pages. Accordingly, we maintain that the 35-day review period allowed by the Board is patently insufficient to allow for meaningful public participation in the SEQRA process.

Adding insult to injury, not only is the timeframe for review of the DEIS inadequate for the DEIS as it stands, in addition, the DEIS is incomplete, as certain of its appendices contain only summaries, not complete studies. *See, e.g.*, Appendix A (site selection executive summary). Although the DEIS states that “complete reports” are provided in appendices (*see* DEIS, p. xi), such is not the case. The Board’s failure to have appended and made available to the public the entirety of supporting reports to the DEIS has likewise deprived the public of a meaningful opportunity to participate in this process.

Accordingly, the timeframe the Board has allotted for public review is inadequate to allow for meaningful public comment and must be extended. We request an extension of the public comment period by at least 60 days, and further request that the 60-day extension commence once all supporting documentation relative to the DEIS is made available to the public and the following procedural and substantive deficiencies have been corrected.

B. Substantive Defects and Deficiencies in the DEIS

In the limited time allowed for public review, the following details our preliminary comments on the major substantive defects and deficiencies in the DEIS:

1. The DEIS is Incomplete and Fatally Defective as to Evaluation of Impacts to Historical/Archaeological Resources and Mitigation

Section 3.6 and Appendix E of the DEIS conclusively document that the DEIS is woefully incomplete and, indeed, fatally defective relative to evaluation of adverse impacts to historical and archaeological resources. The DEIS documents that, pursuant to article 14 of the New York State Parks, Recreation and Historic Preservation Law (“PRHPL”): (1) consultation with the New York State Office of Parks, Recreation and Historic Preservation (also known as the State Historic Preservation Office) (“SHPO”) is in progress, but has not concluded; (2) more investigation is necessary (including subsurface testing); and (3) no letter of resolution has yet been obtained. *See generally*, DEIS, Section 3.6 and Appendix E (correspondence from SHPO, dated June 18, 2018, and July 17, 2018; correspondence from O’Brien & Gere, dated August 16, 2018). The DEIS also documents that the Applicant is attempting to bypass SEQRA’s requirement that practicable avoidance and mitigation measures be evaluated in a *public* forum (subject to public scrutiny and opportunity for comment) *prior* to decision-making. *See* Appendix E, Letter from O’Brien & Gere, dated August 16, 2018.

More specifically, a Phase IA archaeological investigation was completed for the Project Area, resulting in a finding that the Downtown Site is sensitive for pre-contact archaeological sites and a variety of historic archaeological resources, including a historic site (442 Lafayette Street). A Phase IA architectural survey of existing buildings within the Downtown Site was also conducted, resulting in a finding of 49 architectural resources, including a portion of the Downtown Genesee Street Historic District (which is listed in the State and National Register of Historic Places), three contributing buildings to that historic district, and ten other buildings eligible for inclusion in the State and National Registers. *See generally*, DEIS Section 3.6 & Appendix E.

By letter dated June 18, 2018, SHPO informed the Applicant that a Phase II Site Examination would be required for the 442 Lafayette Street Historic Site, and Phase IB subsurface testing would be required on certain specified locations. By letter dated July 17, 2018, SHPO did three things: SHPO (1) reserved its right to comment further on archaeological issues upon completion of the required Phase II and Phase IB testing; (2) determined that, based on the planned demolition of at least two contributing buildings within the historic district and ten eligible historic resources, “the project as designed will have an Adverse Impact on historic resources;” and (3) directed an assessment of alternatives to avoid or lessen impacts regarding building demolition (e.g., save structures in place or move buildings for adaptive re-use). *See* Appendix E (SHPO Letter, dated June 18, 2018).

In response, rather than performing the SHPO-directed testing, or addressing SHPO's mitigation recommendations, or developing an avoidance/mitigation plan as part of the SEQRA process, the Applicant sought a letter of resolution from SHPO, requesting that mitigation measures be developed after-the-fact. Appendix E (O'Brien & Gere Letter, dated August 16, 2018); *see also* DEIS, Section 3.6.3. The DEIS hypothesizes as to what the so-called after-the-fact "mitigation" measures ultimately might be – for example, providing SHPO with photographs of the historically significant buildings to be demolished, performing archaeological testing at some future date after the SEQRA process has terminated, and coming to terms on undisclosed/yet-to-be determined "treatment measures" (i.e., to be developed after termination of the SEQRA process and after deciding to utilize the Downtown Site for this project). *See* DEIS, Section 3.6.3.

In support of this request, the Applicant cites the alleged inability to gain full Project Site access (i.e., because the Applicant does not own/control all of the affected properties) and the alleged need to achieve a balance between historic resource preservation and providing health care. DEIS, Appendix E (Letter from O'Brien & Gere, dated August 16, 2018). Of course, not a scintilla of legal authority supports the proposition that health care supersedes the procedural and substantive requirements of SEQRA; nor is there any legal support for the Applicant's intimation that health care concerns (even if they were valid here, which they are not) trump the State's long-settled policies, statutory directives and regulations directing agencies to, among other things, mitigate adverse impacts to listed and eligible historic properties to the fullest extent practicable. *See, e.g.*, PRHPL § 14.09(1), (2); 9 NYCRR Part 428.8.

The Applicant's attempt to bypass the heart of SEQRA – which mandates evaluation of impacts *and* mitigation in a public process *prior* to decision-making – is unlawful, both procedurally and substantively. Further, neither of the Applicant's asserted reasons for attempting to side-step SEQRA's impact/mitigation evaluation requirement has any merit.

First, SEQRA requires meaningful evaluation of environmental impacts and mitigation in the DEIS, *as part of the public review process*; and historical, archeological, architectural and aesthetic resources are expressly considered part of the environment and are protected under SEQRA. *See* ECL 8-0105(6), ECL 8-0109(1), (2), (8); 6 NYCRR 617.7(c)(1)(v); 6 NYCRR 617.9(b)(5)(iii), (iv); *see also* *Orchards Assocs. v. Planning Bd. of Town of N. Salem*, 114 A.D.2d 850 (2d Dep't 1985). Given that the DEIS, itself, acknowledges that it does not contain the data necessary for full evaluation of impacts to historic/archaeological resources and mitigation as to same, the DEIS is fatally defective on its face, both procedurally and substantively. Accordingly, due to this material inadequacy, the SEQRA process should be immediately suspended and a supplemental EIS required that complies with the full procedures of the governing Part 617 regulations. *See* 6 NYCRR 617.9(a)(7)(i) & (iii).

Second, the Applicant's rationale for seeking to bypass meaningful public evaluation of impacts to, and mitigation regarding, historical/archaeological resources is fundamentally flawed. Unavailing is the Applicant's assertion that it should get a free pass as to data collection necessary for impact assessment (i.e., the Phase II and Phase IB studies directed by SHPO) until

after conclusion of the SEQRA process because of the alleged inability to obtain full site access now. The Applicant claims that it has the power of eminent domain. Assuming, without deciding if that is true, then the Applicant may avail itself of Eminent Domain Procedures Law § 404. Section 404 accords the condemnor the right of entry prior to acquisition (upon proper notice) in order to prepare studies necessary as a prerequisite to the condemnation process. In other words, the Applicant's site access excuse is utterly meritless. Moreover, to the extent the Applicant does not have eminent domain power, that merely highlights that its selection of the Downtown Site is fatally defective and that the Applicant should instead be pursuing the Applicant-owned St. Luke Campus (which has been found to be a feasible alternative site for the IHC). In other words, if the Applicant does not have the power to use Section 404 of the Eminent Domain Procedures Law, then the Downtown Site is fatally defective, because information cannot be gathered that is necessary to complete the SEQRA process.

2. The DEIS is Inadequate and Fatally Defective as to Evaluation of Cumulative Impacts (i.e., the Nexus Project and Re-Use of the St. Luke and St. Elizabeth Facilities/Campuses)

In two respects, the DEIS is also woefully inadequate relative to its evaluation of cumulative impacts – namely, (1) failure to include evaluation of impacts from the Nexus Project, and (2) failure to evaluate impacts from the planned alteration of current use and re-use of the St. Luke's and St. Elizabeth's facilities/campuses. SEQRA requires that the EIS consider all reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts. ECL 8-0109(2); 6 NYCRR 617.9(b)(5)(iii)(a). Here, the DEIS's failure to consider cumulative impacts from the afore-mentioned project plans renders the DEIS fatally defective. *See generally*, DEIS, Section 5 and 8.2; *see also Sun Co., Inc. v. City of Syracuse Industrial Dev. Agency*, 209 A.D.2d 34 (4th Dep't 1995).

More specifically, Section 5.1.1 of the DEIS gives short shrift to impacts from the Nexus Project/U District, stating that the project is currently speculative and, therefore, need not be addressed in the DEIS. This is simply untrue. Action has already been taken to make way for the Nexus Project (i.e., the recent demolition of the Tartan Textile Building), and State funding for the Nexus Project is imminent. Therefore, impacts associated with the Nexus Project (including, but not limited to, traffic/transportation, waste water/storm water, noise) are cumulative impacts that must be identified and evaluated in the DEIS. *See, e.g., Save the Pine Bush v. City of Albany*, 70 N.Y.2d 193, 206-07 (1987) (finding that the failure to consider cumulative impacts of other pending projects for the subject area violated SEQRA and invalidated ordinance approving the requested zoning change).

Likewise, the planned changes to operations at St. Luke's and St. Elizabeth's (which are discussed in DEIS Appendix A [Certificate of Need Application]) and the proposal to re-use parts of these properties for other types of community-related purposes need to be (but were not) evaluated as part of the cumulative impact analysis in the DEIS. *See* DEIS Section 8.2; *see also Sun Co., Inc.*, 209 A.D.2d at 46-49 (stating that the lead agency must consider the cumulative effect of other simultaneous or subsequent actions that are included in any long-range plan of

which the action under consideration is a part; invalidating agency's condemnation of property for development of a shopping center where agency limited the EIS to the shopping center and thereby impermissibly failed to assess the environmental impact of other development projects contemplated by the agency's master development plan for the area); *Teich v. Buchheit*, 221 A.D.2d 452 (2d Dep't 1995) (finding SEQRA's anti-segmentation principle violated where agency failed to consider impacts from a proposed parking lot as part of the overall development plan for the hospital expansion; observing that such was part of the certification of need application for the hospital's long-range plans). Given that the DEIS and the Certificate of Need for this project plainly acknowledge a significant change/downsizing of operations at St. Luke's and St. Elizabeth's, as well as re-use of these campuses for other purposes, such is part of the IHC project proposal and is required to be (but was not) evaluated in the DEIS. *See also* Exhibit B hereto (Comments from the Landmarks Society of Greater Utica, noting that the St. Elizabeth Campus is eligible for listing on the National Register of Historic Places and located in Utica's Scenic & Historic Preservation District, thus requiring local review and approval by the Scenic & Historic Preservation Commission prior to any exterior alterations or demolition of buildings); Utica Zoning Code, chapter 2-29.

Because the DEIS fails to address these matters, the SEQRA process should be immediately suspended, and a supplemental DEIS is required, subject to full SEQRA procedures. Absent that, were the Board to accept a final EIS without these evaluations and issue its approval for the IHC at the Downtown Site, the Board would have violated SEQRA's anti-segmentation principle. *See, e.g., Sun Co., Inc., supra; Teich, supra; see also Segal v. Town of Thompson*, 182 A.D.2d 1043 (3d Dep't 1992) (holding that SEQRA's anti-segmentation principle required an agency contemplating the establishment of a sewer district to consider the environmental impacts of any residential development made more likely by the creation of the district).

3. The DEIS is Inadequate and Fatally Defective as to Evaluation of Community Character and Consistency with Local Land Use Plans and Policies

Beyond being simplistic and inaccurate, the evaluation of community character (Section 3.12 of the DEIS) is nothing short of a slap in the face to the Columbia-Lafayette community and the long-term vision and policies set forth in the City's plans and regulations relative to the Gateway Historic Canal District of which the Downtown Site is a part.

Notwithstanding wide-scale destruction of buildings (including historic buildings), the putative use of eminent domain to take people's property, broad-based displacement of existing businesses and affordable housing, displacement of charitable facilities serving this environmental justice area, closure of several downtown streets and the intrusion into the area of a massive, nine-story, 165-foot high, modern, institutional building wholly out-of-proportion to and out-of-character with anything in the surrounding environs, the DEIS's evaluation of community character impacts effectively comes down to one paragraph, and, essentially, one line: namely, that while the magnitude of the impacts will be large, "most impacts are expected

to be beneficial because [the IHC project] will better position the hospital to serve... the population of Oneida County,” as well as create opportunities for secondary economic development. DEIS, Section 3.12. Stated another way, the DEIS takes the unsupported (in fact, bizarre) position that because the IHC project is a hospital, the community is benefitted, notwithstanding that the *existing* character of the community – including its unique historical character, its existing businesses and existing community fabric – is destroyed. *See, e.g.*, 6 NYCRR 617(c)(1)(iv) & (v) (respectively, identifying conflict with approved community plans/goals and impairment of historic, archeological, architectural, or aesthetic resources or of existing community or neighborhood character as indicators of significant adverse impact).

Under SEQRA, however, the impact to community/neighborhood character must be evaluated based on adverse impact to the “existing community or neighborhood character” (ECL 8-0105[6], 6 NYCRR 617.2[I]), and, thus, the DEIS wholly misses the mark. *See, e.g., Chinese Staff & Workers Ass’n v. City of New York*, 68 N.Y.2d 359, 366 (1986) (finding that the potential acceleration of the displacement of local residents and businesses is a secondary long-term effect on population patterns, community goals and neighborhood character that must be evaluated; discussing that such effects on the community in general must be examined in addition to looking to impacts directly on the project site); *Village of Chestnut Ridge v. Town of Ramapo*, 45 A.D.3d 74, 94 (2d Dep’t 2007) (“Community character is specifically protected by SEQRA”). Moreover, there is no exemption in SEQRA for consideration of adverse impacts to community character merely because a project involves health care. In addition to failing to adequately address these community character impacts, the DEIS fails to identify/evaluate a practicable avoidance/mitigation that would eliminate all of these impacts, but still more than adequately provide for Oneida County’s health care needs – namely, moving the IHC project to the St. Luke Campus.

In addition to the above, the DEIS fails to properly identify the special regulations applicable to the Downtown Site and the special policies, goals and implementation strategies pertaining to same. The DEIS states that the Downtown Site is in the Central Business District, but fails to substantively address that the Downtown Site is in the Gateway Historic Canal District² to which particular Design Standards apply, as do the related policies, goals and implementation strategies set forth in the City of Utica’s Master Plan (October 5, 2011) (“City Master Plan”). (And, as noted above, the Downtown Site also includes a portion of the Downtown Genesee Street Historic District, which is listed on the State and National Register of Historic Places, as well as a host of other eligible properties.)

As discussed in the City Master Plan, a revitalization plan was completed in 2003 for the Gateway District. As a result of that plan, the City Common Council adopted a form-based zoning code in 2005 to regulate development in the Gateway District. “The original intent behind the form-based code was the *preservation of the historic feel of the district*. City Master Plan, p. 17 (emphasis added). “The form-based code acknowledges the significant architecture that remains in the Gateway area and provides for a mix of uses *compatible with the historic*

² The Gateway Historic District is bounded by State Street to the west, Columbia Street to the south, Genesee Street to the east, and the CSX rail line to the north. *See* City of Utica Mater Plan (October 5, 2011).

development.” City Master Plan, p. 63 (emphasis added). The demolition of architecturally significant buildings, as proposed in the DEIS, is the antithesis of “preservation” or being “compatible” with historic development.

The City Master Plan also sets forth a discussion of general vision, as well as specific goals and policies, for downtown development, cultural/historic resources, and historic and preservation districts, all of which are not considered in the DEIS, and all of which are violated by locating the IHC on the Downtown Site. Illustrative excerpts from the City Master Plan follow:

Downtown Development

- City Master Plan, p.17 – “The buildings that remain within the [Gateway] District are some of the oldest in the City and are architecturally significant. With adherence to the strict design standards [of the form-based code], *new construction will echo the form and details of the older architecture.*” (Emphasis added.) This section also discusses extending the boundaries of the form-based code to more of downtown in order to “preserve and enhance the architecture of downtown.”
- City Master Plan, p.36 – “Through the master planning process, Utica residents and business leaders have described a vision for the City’s future that *builds on the architectural character and diversity of downtown.* For many in Utica, the success of downtown is the foundation for success within the City’s other neighborhoods. This vision is one that enhances the quality of life for existing residences as well as creates an attractive place for new residents, visitors and businesses. *Boosting historic and cultural resources located in downtown will serve to help strengthen Utica as a more exciting place for people and businesses.*” (Emphasis added.)
- City Master Plan, pp. 37-40 – This section discusses new commercial opportunities for downtown (including retail, restaurants, and residential), stating that the City is well-positioned to capture demand for downtown living, based, in part, on the arts, history and culture.
- City Master Plan, p. 44 – This section discusses strategies for downtown development, namely, to promote residential and mixed-use development downtown “consistent with Utica’s heritage and architecture” via, among other means, (1) utilizing public money to rehabilitate historic buildings and buildings that contribute to Utica’s historic character; and (2) developing design standards that complement and enhance predominant uses and architecture in each of the downtown neighborhoods and sub-districts.

Historic Preservation – Arts/Cultural and Historic Resources

- City Master Plan, p. 51 – “The City of Utica has something many other communities around the nation want – historic character and a strong sense of authenticity. Since appearance is fundamentally linked to economic success, these urban attributes are fundamentally tied to the City’s ongoing revitalization effort. The City recognizes this and *wants to protect these very important assets.*” (Emphasis added).
- City Master Plan, p.53 – This section discusses cultural and historical assets and impact on travel/tourism, stating that “Utica’s cultural and historic assets are key features to attracting visitors to the City and enhancing the quality of life offered to its residents.” This section also notes findings from Oneida County Tourism study, stating that the study’s findings “are a compelling reason to continue to *build on the City’s recreation, arts, cultural and historic amenities.*” (Emphasis added.)

Goals and Strategies for Historic Preservation, including the Gateway District

- City Master Plan, p. 55 – Goal 4: formalize protection, and enforcement of that protection, for historic buildings, historic districts and historic neighborhoods; expand historic districts, and enforce standards applicable to them.
- City Master Plan, p. 63 – This section notes the objective of the form-based zoning code for Gateway District, stating that such code acknowledges the significant architecture that remains in the Gateway area and provides for a mix of uses “*compatible with historic development.*” (Emphasis added.)
- City Master Plan, pp. 65-66 – This section discusses goals for brownfield sites, including in the Gateway District: (1) Goal 1, attracting new businesses and industry; (2) Goal 2, facilitate retention and expansion of local business and individuals; (3) Goal 3, create more sites for business development in the Gateway District; (4) Goal 7, expand and capitalize on Utica’s diverse historic and cultural fabric.

The DEIS does not even acknowledge, let alone address, the many material conflicts that use of the Downtown Site for the IHC poses to the City Master Plan and related plans and regulations. Notably, “material conflict[s] with a community’s current plans or goals as officially approved or adopted” are strong indicia of significant adverse environmental impacts that must be mitigated or avoided. 6 NYCRR 617.7(c)(1)(iv). The same is true for impairment of the character or quality of important historical, archeological, architectural or aesthetic resources. 6 NYCRR 617.7(c)(1)(v).

Indeed, the material conflicts with the City’s plans/goals, and the significant adverse impacts on historic resources and community character, resulting from use of the Downtown Site for the IHC is further underscored by commentary from the Landmarks Society of Greater Utica

earlier in this process. That commentary includes the following conclusions:

- (1) large-scale, multi-block demolition of a significant segment of the downtown area ... destroys the fabric, character and sense of place that defines the uniqueness of what makes Utica what it is;
- (2) the buildings that would be lost represent a lost opportunity for small-scale structures where ground floor commercial uses would complement upper floor residential uses in a walkable, urban setting, which would be in keeping with the tenets of the National Trust of Historic Places;
- (3) the IHC located at the Downtown Site would be “a huge, iconic structure surrounded by a sea of parking ... [which] would be the antithesis of what makes Utica unique;” and
- (4) locating the IHC on the St. Luke Campus is far more suitable than locating it on the Downtown Site.

And, these conclusions and concerns relative to significant deleterious, irreversible impacts on historic resources (which the Applicant and its supporters have ignored) are reiterated and further discussed in the comment letter of the Landmarks Society of Greater Utica, dated December 27, 2018 (Exhibit B hereto) (noting, *inter alia*, impacts to historic resources in historic district on National Register; inadequate SHPO process; violations of City Master Plan, Gateway Historic Canal District design guidelines, New York State Historic Preservation Plan; and impacts to community character and authenticity of the Erie Canal era neighborhood).

The failure of the DEIS to identify these conflicts, substantially assess them, and attempt to mitigate them renders the DEIS fatally defective.

4. The DEIS is Incomplete, Inadequate and Fatally Defective as to the Site Selection Process

As noted in Part A above, the DEIS is incomplete for failure to append the entire site selection study. *See* DEIS, Appendix D (containing only the executive summary). This omission, in conjunction with the brief public comment period (with the comment deadline two days after Christmas), appears to be a calculated measure to preclude meaningful public review.

As fully detailed in the comments submitted by Frank Montecalvo, Esq., dated December 26, 2018 (Part I.K), selection of the Downtown Site for the IHC long preceded the commencement of any type of SEQRA review, rendering the site selection process described in the DEIS a total sham. As reflected in Mr. Montecalvo’s comments, the site selection process was designed to have a pre-determined outcome; that is, (1) the Downtown Site was selected and promoted prior to any site study, (2) the consultants hired later to perform the site study were hired with the expectation and aim of designing the study to result in selection of the Downtown

Site, and (3) the Applicant was strong-armed into approving the Downtown Site as its preferred choice. For this reason alone, the DEIS is fatally defective, and further analysis and a supplemental DEIS are required relative to site selection.

As for the substance of the executive summary, this, too, shows that the site selection process was anything but objective and impartial, as criteria were highly subjective and of questionable validity, and scoring of sites and the ultimate selection of the Downtown Site are suspect at best. In this regard, we adopt and incorporate herein by reference the comments of Mr. Montecalvo.

5. The DEIS is Inadequate and Fatally Defective as to Evaluation of Alternative Sites and Practicable Mitigation, Particularly Relative to the St. Luke Campus

The DEIS is fatally defective for failing to identify the St. Luke Campus as a practicable avoidance/mitigation measure relative to a host of significant adverse impacts associated with the Downtown Site, hence making the St. Luke Campus the alternative that avoids or mitigates adverse impacts to the maximum extent practicable. These impacts include, but are not limited to, the following:

- Impacts from contaminated soils due to prior industrial use of the Downtown Site (land, air [fugitive dust], surface water, ground water) would be avoided by developing the IHC on the St. Luke Campus.
- Massive impacts to community character, aesthetic resources and historic/archaeological resources would be avoided by developing the IHC on the St. Luke Campus.
- Material conflicts with community plans/goals would be avoided by developing the IHC on the St. Luke Campus, as the proposed uses are fully consistent with New Hartford zoning and plans, and the St. Luke Campus is currently being used for medical/health-related purposes.
- Impacts to human health from potentially catastrophic events related to the CSX rail line, and impacts to human health potentially resulting from excavation of contaminated soils on the Downtown Site, would be avoided by developing the IHC on the St. Luke Campus.
- Impacts to transportation/traffic (due to street closures/destruction of a portion of the Street Grid) would be avoided by developing the IHC on the St. Luke Campus.
- Impacts relative to environmental justice – i.e., the displacement of this entire neighborhood and the charitable services located there – would be avoided by moving

the IHC to the St. Luke Campus, as this site is already being used for an institutional use and would not require the displacement of any environmental justice area.

- The need to develop information on cumulative impacts relative to the Nexus Project would be avoided by developing the IHC on the St. Luke Campus.
- Were the IHC developed at the St. Luke Campus, it would result in a negligible increase of approximately 27 beds. Therefore, no new or significant increase in impacts should be expected at this site. That is, the nature and intensity of operational environmental impacts (e.g., surface water, groundwater, air, aesthetic resources, transportation, utilities, energy, noise, odor, human health and solid waste impacts) would be minimal and certainly far less than at the Downtown Site.
- Last, but not least, issues regarding site access or invoking eminent domain (and the resulting disruption) do not exist at the St. Luke Campus, given that the Applicant owns this property. Relative to the Downtown Site, if the Applicant has the power of eminent domain, invoking that power will adversely impact and be disruptive to affected property owners; of course, any such impacts would be avoided by utilizing the St. Luke Campus for the IHC project. If the Applicant does not have the power of eminent domain, the inability of the Applicant to complete the consultation process required under article 14 of the PRHPL (and adequately identify and explore practicable mitigation measures in the SEQRA process) demonstrates that the Downtown Site is a defective site that should be excluded from analysis.

At the end of the day, the DEIS does not provide an adequate impact evaluation or cogent support for locating the IHC at the Downtown Site. Reduced to its essence, developing the IHC at the Downtown Site will result in massive unavoidable, unmitigable environmental impacts – including the destruction of a vibrant, historically and culturally significant neighborhood, in contravention of the City Master Plan and other officially adopted protections for historic districts. And, all of this havoc will occur, for the net benefit of 27 hospital beds, which readily could be incorporated into the existing medical campus at St. Luke’s and, thereby, avoid the broad-scale destruction of the Columbia-Lafayette neighborhood.

We respectfully maintain, therefore, that, for the reasons set forth above, the SEQRA process must be reopened, a supplemental DEIS issued, and the aforementioned impacts seriously addressed in the public review process.

Very truly yours,

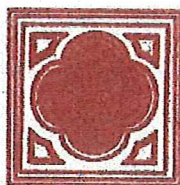


Thomas S. West

TSW/cmm
cc: Mr. Brett Truett

EXHIBIT A

EXHIBIT B



Landmarks Society Of Greater Utica

1124 State Street / Utica, NY 13502 / 315.732.7376 / www.uticalandmarks.org

December 27, 2018

VIA HAND DELIVERY AND E-MAIL

Mr. Fred Matrulli, Chairman- City of Utica Planning Board
c/o Department of Urban & Economic Development
1 Kennedy Plaza
Utica, New York 13502

RE: MVHS proposed IHC- Request for SEQRA DEIS public comment period extension

Dear Mr. Matrulli:

The Landmarks Society of Greater Utica (LSGU) supports an extension of the MVHS proposed IHC SEQRA DEIS public comment period by 60 days. We believe this is necessary given the complexity of the many interrelated issues being reviewed, the incomplete and inaccurate information currently included in the November 15 DEIS, and the need to distinguish between speculative conjecture on MVHS's part and fact. There are significant contradictions present in the submitted project which intends to demolish all buildings in the proposed campus footprint including 2 National Register of Historic Places (NRHP) listed properties-301 & 401 Columbia St.- and 9 NRHP eligible properties. The current US Secretary of the Interior guidelines discourage demolition only as a last resort after all other options have been exhausted. Since the St. Luke's campus is a viable 2nd site, as determined by MVHS, another option to explore exists. Three properties are also in the expanded NRHP listed Downtown Genesee Street Historic District which represents an obstacle to removal as demolition in the district is also restricted. NYSHPO requires investigation and documentation of the above mentioned historically & culturally significant properties, which in many cases has not yet commenced, and is required as part of the SEQRA process. Such demolitions also violate the goals of the adopted Utica Master Plan, the Gateway Historic Canal District design guidelines, NYS Historic Preservation Plan, and compromise the community character and authenticity of this legacy Erie Canal era neighborhood.

DASNY requires additional clarification from MVHS as to what functions are remaining at the various campuses and how this would promote a consolidation/integration of the health care system. The NRHP eligible St. Elizabeth campus, which MVHS is proposing to repurpose, is located in Utica's Scenic & Historic Preservation District and subject to review/approval of any exterior alterations or proposed demolition.

Given the amount of information, 3500+ pages, with which a reviewer would need to become familiar, the truncated time frame of the minimal designated comment period during Thanksgiving and Christmas, and incomplete cart-before-the-horse MVHS submissions, we do not believe that sufficient time has been allotted for stakeholders to fully process the information. An opportunity for meaningful public input has not been provided for this very important project which will have an irreversible, long term, and far reaching impact on Utica and the Mohawk Valley. Please do not hesitate to contact me at LSGU should you require additional information.

Thank you for your careful consideration and deliberation regarding this matter.

Sincerely,

Steven Grant, President and the Board of Trustees of the Landmarks Society of Greater Utica

Cc: Thomas S. West- The West Firm