

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

THE CITY CLUB OF NEW YORK, INC., ROBERT
BUCHANAN, and TOM FOX,

Petitioners,

-against-

HUDSON RIVER PARK TRUST and PIER55, INC.,

Respondents.

Index No. 101065-2015

**AFFIDAVIT OF
MADELYN WILS**

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

MADELYN WILS, being duly sworn, deposes and says:

1. I am the President and Chief Executive Officer of the Hudson River Park Trust (the "Trust" or "HRPT"). I submit this affidavit in opposition to Petitioners' Verified Petition and in support of Respondents' motion for partial summary judgment in the above-captioned proceeding.

2. I have been President and CEO of the Trust since June 2011. In addition to my current role at HRPT, I have served in different capacities in the development of Hudson River Park. Within the time frame between 1996 and 1998, I served as chair of the Hudson River Park Conservancy Advisory Board, and from 1998-2007, I was a founding board member of the Trust as a representative of the Manhattan Borough President, during which time I also served on the Design Committee. The Design Committee participated with HRPT staff on the development of plans for public park areas, including earlier plans for Pier 54. Additionally, I was a member of Manhattan Community Board 1 from 1985-2005, including five years as chair, from 2000-2005. In that capacity, I worked as a volunteer for the community and advocated for the creation of

Hudson River Park. I also participated in or led various discussions about park programming and policies including discussion about the proposed Hudson River Park Act prior to its passage in 1998. As such, I have personal knowledge of the facts and circumstances surrounding the proposed redevelopment of Pier 54 (the “Project”).

Hudson River Park

3. The New York State Legislature created Hudson River Park (the “Park”) in 1998, through the Hudson River Park Act, Chapter 592 of the Laws of 1998, as amended (the “Park Act”). The Legislature created the Park to encourage, promote and expand public access to the Hudson River through an enumerated list of “park uses,” which the Legislature defined to include “public recreation and entertainment, including the arts and performing arts, on open spaces.” *Id.* §3 (h) (ii).

4. The Park covers approximately 550 acres, extending from the northern edge of Battery Park City to 59th Street, an approximate length of four miles. The Park generally comprises the lands and water west of the Route 9A corridor out to the United States Pierhead Line, and includes an approximately 400-acre Estuarine Sanctuary designated and owned by New York State.

5. The Park adjoins an area of New York City that historically has had very little open park space. When the Park was created in 1998, the shoreline on the west side of Manhattan where the Park is currently located consisted largely of abandoned, poorly maintained and underutilized piers, with very little green space.

6. New York State and New York City retained ownership of their portions of the Park when it was created. Park Act § 7(3)(a). The City owns the piers and inland portions of the Park above 35th Street, and the State owns the piers and land below 35th Street as well as all of

the underwater lands. A true and correct copy of the relevant section of the State's Ground Lease to the Trust, describing the state-owned lands within the Park, is annexed hereto as Exhibit "A". The area where the Project would be built and the Pier 54 pile field would be created is state property and is under the jurisdiction of the New York State Department of Environmental Conservation.

7. The Park is operated by the Trust, a public benefit corporation and 501(c)(3) non-profit organization created by the Park Act. Park Act § 5. The Trust is governed by a 13-member board that comprises five members appointed by the Governor, five by the Mayor of New York City, and three by the Manhattan Borough President. *Id.* § 5(2)(a)-(c). The Legislature created the Trust to plan, design, develop, construct, operate and maintain the Park pursuant to the Act's requirements. *Id.* § 6(a).

8. In accordance with the Park Act's declaration that the Park should be financially self-sufficient to the extent practicable, the Trust works to raise its operating and maintenance funding through a mix of revenues from leases, permits and concessions, as well as occasional government grants and private fundraising. Fundraising was anticipated as a Trust function when it was originally established in 1998, and as a result the Trust was formed as both a public benefit corporation and a 501(c)(3) organization. *Id.* §§ 1(2) (e), 6(e)-(g).

9. One longstanding source of revenue for the Park's operating budget has been paid public guest events such as concerts, fundraisers, walks/runs and select corporate partnerships for which the Trust charges a fee. Revenues from these events help support the Trust's operating budgets, but they do not provide the funds necessary for capital improvements.

10. Construction of the Park has been undertaken incrementally, as capital funding becomes available. To date, most capital funding has been from city, state or federal grants and

allocations. The Park is now approximately 73 percent complete, and the Trust has directly rebuilt 15 piers, along with public esplanades, gardens, ballfields, boating facilities, recreational courts, a classroom for environmental education, comfort stations, and concession buildings.

11. Although not yet complete, the Park has been enormously successful, attracting 17 million visits a year and offering a myriad of recreational and educational activities for local residents and visitors alike. The Park has been a catalyst for economic development and job creation in the far west side of Manhattan, attracting billions of dollars in new construction and contributing greatly to the area's desirability as a fantastic place to live and work. More than 135,000 people enjoyed free concerts, movies and dances here in the summer of 2014. Over 200,000 people of all ages play on the Park's athletic fields and courts, while almost 25,000 children and adults participate in free educational programming each year.

12. Nonetheless, there is a great deal of work left to be done. Several areas of the Park, including the area between the Gansevoort Peninsula and Pier 57 at West 15th Street, within which Pier 54 is located, are in need of improvement so that these areas can become as scenic, enjoyable and attractive as other areas of the Park.

Environmental Review of the Park

13. The Park as a whole was the subject of an environmental review process completed in 1998. The Final Environmental Impact Statement ("FEIS"), prepared in accordance with the State Environmental Quality Review Act ("SEQRA"), evaluated the potential environmental impacts associated with development of the Park as originally conceived, including the mix of uses -- public park piers and upland areas, ecological piers, municipal and commercial -- prescribed in the Park Act. Art and performance spaces were expressly listed among the project's goals in the FEIS, as were assorted commercial uses. R.

120¹ (FEIS) at 1-6. The FEIS identified over 20 piers, including Pier 54, where in-water construction would occur, either to rebuild partial or entire piers, or to stabilize existing piers. *Id.* at 10-36 to 10-37. The FEIS also identified several other areas where overlooks, expanded esplanade platforms, beaches, and docks would be built where no piers historically were located. *Id.* at 10-34.

14. Following completion of the environmental review process, HRPT obtained the authorizations and permits needed to proceed with development of the Park. The New York State Department of Environmental Conservation (“NYSDEC”) issued a permit for the Park in 1999 (R. 116), relying on the analysis and conclusions in the FEIS. The U.S. Army Corps of Engineers (the “ACOE”) issued a federal permit for the Park in May 2000 (R. 113). Before issuing its permit, the ACOE undertook a separate and independent environmental analysis pursuant to the National Environmental Policy Act. The ACOE’s analysis resulted in a 126-page “Statement of Findings and Environmental Assessment” (R. 114) that concluded that no federal EIS was needed for the Park. The ACOE did not identify any special aquatic sites within the Park; it applied the same permit conditions to all geographic areas of the Park including its 400 water acres.

15. When the NYSDEC and ACOE permits were issued, construction documents and funding were only available for a section of the Park in Greenwich Village. As a result, the permits require the Trust to submit detailed construction drawings for each subsequent Park segment to obtain agency authorization before work begins. These drawings are then compared to the original permits. In 2005, the Trust sought construction authorization for “Segment 5,” of which Pier 54 is a part. In order to obtain these approvals, the Trust submitted construction

¹ References to documents in the Certified Return of Record (the “Record”) are designated by “R.” followed by the number of the document in the Index to the Record.

documents for Segment 5 (a true copy of the relevant portion of which is annexed hereto as Exhibit “B”); they included a flat, reconstructed Pier 54 resembling its original form and footprint. The ACOE and NYSDEC issued the permits authorizing Segment 5 including the full reconstruction of Pier 54 in 2005. R. 111; R. 112.

16. After obtaining these approvals, the Trust commenced construction on most elements of Segment 5, but the Trust did not have sufficient funding to rebuild Pier 54 at that time. However, because the regulatory agencies have renewed the Trust’s parkwide permits several times since their original issuance, the Trust could proceed with the previously authorized construction on Pier 54 today, without the need for additional or amended permits from NYSDEC or the ACOE. R.1 (ACOE renewal); R. 110 (NYSDEC renewal).

Pier 54

17. Pier 54 is located just south of West 14th Street in Manhattan. It is one of the piers designated as a “park use” pier in the Park Act. Park Act § 7(9)(a).

18. The Park Act defines “park use” to mean: “(i) public park uses, including passive and active public open space uses; (ii) public recreation and entertainment, including the arts and performing arts on open spaces; (iii) public recreation and entertainment, including the arts and performing arts within enclosed structures,” subject to certain limitations on the size of such enclosed structures relative to the overall surface area of the pier; “(iv) small-scale boating for recreational and educational purposes . . . ; (v) environmental education and research . . . ; (vi) historic or cultural preservation . . . ; (vii) wildlife and habitat protection; and (viii) facilities incidental to public access to, and use and enjoyment of park uses” *Id.* § 3(h).

19. Between 1998 and 2011, the Trust used Pier 54 for small and large-scale public events, including concerts, art exhibits, movies and fundraisers. Prior to that, Pier 54 was also

used for park events, such as movies. Pier 54's location, condition relative to other park piers prior to their reconstruction, and flat, unobstructed configuration made it the Trust's most-used space for large-scale public and private events, some of which attracted crowds of 5,000 attendees. While open outside of events, Pier 54 was not landscaped, so it was not a popular place for passive enjoyment or recreational activities compared to other piers. The photographs at Figure D-2 of the Environmental Assessment Form and Supplemental Studies prepared for the Project (the "EAF"), demonstrate Pier 54's dilapidated condition prior to recent removal of its deck pursuant to previous approvals. R. 12 at Figure D-2.

20. Although the pier structure dates from 1906, its piles were extensively rehabilitated in 1932, and the building that sat atop the pier and bulkhead was removed by the New York State Department of Transportation in the early 1990s. In 2000, the Trust removed 105 feet from the pier's western end as well as 12-foot-wide strips along its northern and southern edges because they had deteriorated beyond cost effective repair. To maintain some ability to keep the pier open including for hosting both free and revenue generating events, limited pile rehabilitation work was performed almost annually from 2003 to 2011. In 2013, the Trust was forced to close most of Pier 54 because of its dilapidated condition.

21. The gradual loss of Pier 54's usable footprint meant that we were losing park space and the ability to continue hosting large public events there. When I became President of the Trust in June 2011, because of the pier's singular importance, I decided to focus efforts on the pier's reconstruction. The City and State were not in a position to increase capital construction allocations in the years following the financial crisis to fund the pier's reconstruction. Accordingly, I began considering whether private contributions could help support the construction of the Park, and Pier 54 in particular.

22. When I reviewed the 2005 design for Pier 54 with 2011 eyes and experience, I concluded that it would not provide the community with the amenities that it needed and that the site deserved, and that a better plan should be pursued offering higher-quality amenities for the public. The 2005 plan suffered from several problems. First, the pier was designed as almost entirely hardscape. There were no significant green spaces, little quality seating areas or park furniture, and just five small planters. Finally, the pier was very narrow – 20 feet narrower than other newer piers – which limits the types of performances that could be offered, and precluded the simultaneous use of the pier for events and passive enjoyment. Figure D-1 of the EAF demonstrates the relatively narrow width of the former Pier 54. R. 12 at Figure D-1.

23. In November 2011, Trust Board Chair Diana Taylor and I met with Barry Diller, who, with his wife Diane Von Furstenberg, had previously donated \$35 million to The Highline. The Diller Von Furstenberg Family Foundation also has supported the Signature Theater, Central Park, Carnegie Hall, the Culture Shed and The Whitney. Given their philanthropic spirit and their love of parks, culture, and the far west side, we believed they might be receptive to a discussion about providing significant support for the Park.

24. Although our initial request for support for rebuilding the pier was not met with great interest, after several meetings, Mr. Diller and the Trust came to agree that a pier should be constructed with an improved design that could offer performances and events of the type Pier 54 traditionally held and also offer enhanced space for passive enjoyment and recreation. As talks continued, he envisioned forming a not-for-profit organization that would commission new works and develop cultural education programs for the community, all in a spectacular park setting. Since the pier was designated as a public park pier, there was never any question that all revenues from ticket sales would be used to support the pier's maintenance, operations and non-

profit programming. Given the Trust's desire to rebuild Pier 54 as a public park pier, the fact that other areas of the Park were still unfunded, and Pier 54's history of events and the Park's mission of supporting cultural programming, including the arts and performing arts, the Trust welcomed this idea.

25. As discussions about design continued collaboratively with the Trust, a newly-formed non-profit organization, Pier55, Inc. (discussed below), hired designer Thomas Heatherwick to work on a new concept. To ensure the park design would function well within New York City, the Trust, in consultation with Pier55, Inc., separately sought an experienced landscape architect and engineering firms through a Request for Proposals. Ultimately, we selected Mathews Nielsen Landscape Architects and Arup and Mueser Rutledge Engineers to join the team (the "Consultant Team"), which has since that time worked in partnership with all parties to achieve the design and programming goals.

26. The Trust and Pier55, Inc. worked closely with the Consultant Team to conceptualize a version of Pier 54 that would accomplish the goals of building an extraordinary park that would provide a world-class amenity for the community and, indeed, the City. The Consultant Team was instructed to: (1) consider the Hudson River Estuarine Sanctuary habitat in all planning; (2) determine the best configuration for performance spaces that would still maximize the public's ability to use other spaces on the pier while events were occurring; (3) improve ingress and egress and access for emergency services, (4) minimize the potential for noise concerns during events; and (5) minimize the extent of enclosed structures on the pier.

27. When Hurricane Sandy hit New York City in October 2012, the Park was completely flooded and sustained over \$32 million in damage. The storm underscored the need for any new pier to incorporate elements addressing sustainability and resilience. A plain, flat

pier can be washed over, but an intensely landscaped pier with performance spaces and the utilities needed to support them would need to be further protected. When it became clear that the Federal Emergency Management Agency was going to raise the flood plain more than eight feet, elevating the new pier above the likely future flood plain was necessary for protection against future storms.

28. Another important consideration was minimizing any potential impacts on the River's habitat. Together with Pier55, Inc. and the Consultant Team, the Trust spent a significant amount of time analyzing how to minimize the extent of shading and structure under the pier, because from previous pier planning, we were aware of regulatory concerns for the Hudson River. For this reason, we rejected an earlier concept for an elevated pier design that would have required an extensive pile support bracing system within the water column, as well as other ideas that called for larger diameter piles and more in-water construction. Eventually, after considering several alternatives, including a smaller pier, a lower pier, and a pier located further to the south so that it overlapped more with the original Pier 54 footprint, a design concept emerged.

29. The Project's design is described in vivid detail in the accompanying Affidavit of Signe Nielsen. In short, the design involves an impressively landscaped square-shaped pier with rolling topography. The pier's southwest corner is higher than the rest of the pier in order to maximize sunlight that reaches beneath it. In order to elevate the pier above the anticipated future flood plain of 15 feet and still achieve handicapped access without elevators, the designers proposed setting the pier back off the bulkhead by at least 186 feet and then creating two ramps to connect the pier to the shore. Having two ramps was key to addressing safety and access issues, and also would help improve ingress and egress of the public during events.

30. The Project's design is thus unlike traditional "finger" piers and would need to be built outside of Pier 54's original footprint. As a result, it required an amendment to the Park Act allowing for this unique configuration and placement.

2013 Amendment to the Park Act

31. The Park Act prohibits placing new pilings or structures in the "water section," except for floating structures, bulkheading and platforms for esplanades, and the repair or reconstruction of bulkheads and piers in existence on the effective date of the Act or as depicted in the 1998 FEIS for the Park. Park Act §§ 3(1), 8(3)(b)-(c). The Act also contains a variety of other limitations on other park piers, uses, and operational requirements.

32. When it became clear that a pier in a different shape would better serve both passive recreational park users and event attendees, we began discussing the need to amend the Park Act to allow the pier to be reconstructed outside of its historic footprint.

33. In December 2011, I convened the first meeting of a Legislative Task Force (the "Task Force"), a group comprising elected officials, community board members, and representatives from a variety of civic and environmental organizations, to discuss the Trust's financial status and consider changes to the Park Act that would improve the Park and enhance its revenue sources. Over the course of several meetings, Task Force members worked with HRPT staff and Board members to consider a variety of topics, ranging from longer lease terms, to greater flexibility of permissible uses on revenue-generating piers, to changes in Park boundaries and insurance obligations. The Pier 54 amendment was discussed during at least five Task Force meetings. My recollection of the earliest discussions was describing the increasing burdens from the New York City Department of Buildings with respect to managing ingress and

egress during events, and our desire to have a wider pier with two egress points to better accommodate events.

34. Discussions with local elected officials and the leadership at Community Board 2 (“CB2”) about prospective changes to the Park Act, including with respect to the redevelopment of Pier 54, began in early 2012, when the Trust also began discussing the Diller family’s potential interest in making a large donation to reconstruct Pier 54 as park open space with the capacity to host performances and events. In fact I met with CB2’s Waterfront Committee three times in 2012 to discuss the potential legislative changes, including allowing Pier 54 to be built outside of its historic footprint to facilitate the Trust’s planning for public events.

35. For example, at a June 2012 meeting of CB2’s waterfront and parks committee, I distributed a handout listing potential amendments to the Park Act, a true and correct copy of which is annexed as Exhibit “D”. Regarding Pier 54, the handout described how the amendment would allow Pier 54 to be reconstructed outside of its original footprint, within certain limitations on its dimensions and overall square footage. It also explained that “The intent is to allow for a layout that can better accommodate Trust concerts and other programming,” as well as emergency egress requirements. Among the many potential legislative amendments that were under discussion, the one about Pier 54 was never controversial.

36. An Albany-based online news blog, *Capital New York*, reported on our discussions in November 2012 and again in February 2013, which report included a rendering of an earlier Trust concept of a pier designed outside the historic footprint. True and correct copies of these articles are annexed hereto as Exhibit “C”.

37. In addition to community outreach with the Task Force and community boards, which continued before and after the amendment was introduced in 2013, the Trust engaged in

extensive discussions and email correspondence with legislative members and staff. Throughout these discussions, the Trust made clear that the intended use of a reconstructed Pier 54 was to continue the pier's historic uses as a performance and event space with park open space. For example, on June 18, 2013, I sent an email to elected officials and park advocates urging passage of the Amendment and detailing each of our proposals. A true and correct copy of this email and attachments is annexed hereto as Exhibit "E". Regarding Pier 54, I explained that allowing the pier to be built outside of its footprint "will allow for securing [a] significant donation to be used toward development of Pier 54 as a world-class public programming space."

38. The amendment passed in June 2013. It addresses several fiscal and operational issues that had emerged as the Trust planned and operated the Park. Among the changes is the provision in Section 9 of the Amendment, which says that "pier 54 may be reconstructed outside of its historic footprint," provided that it meets certain requirements with respect to its dimensions, total square footage "including any adjacent platform areas or access ways," and the preservation of the White Star Line iron arch. The Project meets all of these requirements.

39. I have reviewed the legislative "Bill Jacket," relevant excerpts of which are annexed hereto as Exhibit "F", and I am aware that after the Legislature passed the Amendment, the Governor received various communications expressing views about whether he should sign the Amendment into law. Among them was a letter from the Trust's General Counsel, Laurie Silberfeld, urging the Governor to sign the letter and noting, among other things, that "it would allow HRPT to redevelop Pier 54 outside its historic footprint, enabling HRPT to secure a significant private donation and facilitate a public-private partnership for redevelopment of the pier into a world class public open space and performance venue." A letter from the City of New York's legislative representative, Joseph Garba, made the identical point.

40. Additionally, some opponents urged the Governor not to sign the amendment. They expressed concerns about environmental impacts, asserting that construction in the Pier 54 area would disturb aquatic habitat, and that the new pier would create a hazard susceptible to hurricanes and other violent storms.

41. Despite these objections, which are similar if not identical to those advanced in this lawsuit, Governor Cuomo signed the Amendment into law in November 2014.

42. The 2013 Amendment authorizing the Project's configuration and location paved the way for the Trust and Pier 55, Inc. to finalize the design and enter into lease negotiations and eventually the Lease Agreement that would facilitate the Diller family's donation and the relationship between HRPT and Pier55, Inc.

Pier55, Inc. and the Lease Agreement

43. Pier55, Inc. is a single-purpose entity and 501(c)(3) non-profit organization. It would assume responsibility for fundraising, programming, and maintenance of the Project. While the Trust would retain responsibility for maintaining the infrastructure below the pier dock, Pier55, Inc. would be responsible for everything above the pier dock. This arrangement would decrease the Trust's financial and operational burdens, because in a traditional public park pier, the Trust must bear the maintenance responsibilities for the structure above and below the deck.

44. Pier55, Inc. would be managed by an extraordinary team of accomplished artists, visionaries, and managers, including Scott Rudin, a leading film and theater producer/director; Stephen Daldry, the award-winning director; and George C. Wolfe, the Broadway director and former head of the Public Theater. Kate Horton, the former Associate Director of the National Theater of Great Britain, would be the Executive Director for Programming. As expressed in the

accompanying Affirmation of Kate Horton (“Horton Aff.”), all of these individuals are deeply committed to public service and bringing a rich array of programming to the broadest audience possible. Horton Aff. ¶¶ 9-11.

45. The relationship between Pier 55, Inc. and the Trust is defined by a “Lease Agreement” (the “Lease”). The Lease reflects Pier55, Inc.’s mantra, “park first.” It requires Pier55, Inc. to provide a minimum number of events each year, and requires that the majority of events be offered to the public on a free or low cost basis. The Lease also requires that the pier remain open to the general public to the maximum extent possible in accordance with the “park first” principle. It reserves the Trust’s right to ensure public access and limits the number of occasions during which the pier may be partially or entirely closed for events.

46. The Lease was extensively negotiated for about a year before the parties agreed on a form of lease that was sufficient to submit to the Trust’s Board of Directors for final consideration. Following a public process, the Board approved the proposed form of lease, along with an amendment to the Park’s General Project Plan (“GPP”), on February 11, 2015, after the public participation process for the Project was completed.

Public Participation and Environmental Review for the Project

47. The Park Act imposes public participation requirements when the Trust proposes to undertake a “significant action.” The Act defines “significant actions” to include “the adoption of, and any amendment to, the general project plan,” and “[a]ny proposed lease, concession agreement, license or other agreement by the trust for a period in excess of ten years.” Park Act §§ 7(6), (11).

48. The GPP is defined as “the Hudson [R]iver park concept & financial plan, dated May, 1995, as modified in the May 20, 1998 final environmental impact statement, and any

successor plan or statement of findings created thereafter consistent with [SEQRA]; provided that the general project plan shall be consistent with this act.” *Id.* ¶ 3(d). Because of the proposed lease and previously unanticipated pier concept, a GPP amendment was required for the Project.

49. For “significant actions,” including the Lease and the GPP amendment, the Park Act requires that the Trust publish notice of the action, hold a public hearing, and provide a 60-day comment period in which it must “solicit and consider the views” of various parties before the Trust’s Board of Directors can vote on the action. *Id.* § 7(6)(a)-(c).

50. Accordingly, after a year of discussions and negotiations regarding design, budget, maintenance responsibilities, and the balancing of different park uses, the Trust began the Significant Action process for the proposed lease and the GPP Amendment on November 17, 2014 by publishing a Notice of Hearing and Public Comment Period. R. 105. The public comment period was extended by a week to accommodate requests from CB2 and elected officials.

51. In addition, although the Trust was not required to do so, the Draft EAF prepared in accordance with SEQRA also was made available for public review and comment during this period. In the accompanying Affidavit of Edward Applebome, dated July 29, 2015 (“Applebome Aff.”), of the environmental consulting firm AKRF, he explains the comprehensive analyses they prepared on behalf of the Trust.

52. The Trust also presented the proposed Project at two public hearings of the CB2 Parks and Waterfront Committee, on December 3, 2014 and January 7, 2015, during which the Trust and representatives of Pier55, Inc. responded to questions from community board members and the general public. At a subsequent meeting on January 22, 2015 CB2 passed a resolution in

support of the Project, with some qualifications. (Those qualifications have since been addressed through written responses and follow-up meetings with the Trust and Pier55, Inc.) The Trust also presented the proposed Project to the Hudson River Park Advisory Council on December 15, 2014.

53. On January 12, 2015, the Trust held its own public hearing on the proposed Lease and GPP amendment, as required by the Act. Comments on the Draft EAF also were accepted. Between the public hearing, CB2 meetings, and written comments, the Trust received 100 comments from elected officials, organizations and individuals. Notably, there were no comments submitted by The City Club or on its behalf.

54. Many of the comments received were requests for the Trust to keep the arch located in front of Pier 54. However, as the EAF makes clear, the arch will remain in its current location.

55. The Trust considered all of the comments and, with Pier55, Inc., made substantive changes to the draft Lease and the EAF. Those changes included language that clarified limitations regarding closure of the pier to members of the public not attending an event, and lowering the pier's height to make the entire pier compliant with the Americans with Disabilities Act. R. 9 (showing changes between Draft Lease and form of Lease approved by HRPT Board); *compare* R.109 (Draft EAF) at 4 (reflecting proposed maximum height of 75 feet) to R.12 (Final EAF) at 4 (62 feet). The Trust also prepared a summary of comments with responses to each, which was made publicly available and which was submitted to HRPT's Board prior to its vote. R.11.

56. Following closure of the public comment period, the Draft EAF was revised and then finalized. HRPT staff reviewed the extensive analysis in the Final EAF and concluded that

the Project would have no significant adverse environmental impacts in any of the areas of potential environmental impact, including transportation, air quality, open space, shading, and community facilities, and that the Project would enhance the existing and future streetscape and pedestrian environment of the Park and West Street. As a result, the Trust issued a Negative Declaration. See the Applebome Affidavit for additional information about the environmental review.

HRPT's Board of Directors

57. At its February 11, 2015, meeting, the Board approved the Lease and the proposed amendment to the GPP, and it ratified the Negative Declaration.

58. In order to accommodate the new Pier 54 project, which has public open space and space for cultural programming, the GPP now reads:

Pier 54 would be rebuilt between the currently existing Pier 54, whose pile field would remain, and the existing Pier 56 pile field. Pier 54 would remain a public pier with opportunities for diverse park activities in a green landscape setting. Outdoor spaces for cultural programming would also be incorporated into the landscape.

59. In other words, the pier would remain a park pier allowing for a wide range of activities, from active recreation to passive enjoyment of the waterfront, and also would feature three performance spaces for entertainment including the arts and performing arts. Of course, as discussed below, entertainment and the performing arts have always been an integral part of park use in New York and elsewhere. This would be a welcome improvement to the simpler version of Pier 54 that the Trust would build if the Project did not exist: a narrow, rectangular, hardscape pier, with almost no green space, that can support only a limited range of events.

60. HRPT is now working with the ACOE and NYSDEC to obtain the permits and approvals needed to commence construction of the Project. In-water construction cannot begin

until May 1, 2016 at the earliest, due to the regulatory moratorium on pile driving in this area of the Hudson from November 1 to April 30.

61. I understand that the Petitioners have expressed some concerns about the number of construction projects occurring in the vicinity of the Project at the same time. However, it appears that they are misinformed regarding the nature and construction schedules of the upcoming projects in that area.

- The 13th Street Crosswalk Project, a project primarily funded through a public transportation grant administered through the NYS Department of Transportation, consists of a new crosswalk across Route 9A at 13th Street. It involves no in-water construction.
- The removal of the former Pier 54 structural deck, which was accomplished within the parameters of the construction authorizations of the ACOE and NYSDEC in 2005, is already complete.
- The Pier 54 Connector Project, also known as the Esplanade Project, will build a new, wider pedestrian esplanade between the Gansevoort Peninsula and approximately West 14th Street within the footprint limits of the original ACOE and NYSDEC permits issued in 2000 and 1999, respectively. By widening the pedestrian platform, an existing choke point on the Route 9A bikeway near the Gansevoort Peninsula can be eliminated, and a new lay-by for a possible future public bus along the Route 9A corridor could be created. The Trust submitted a grant application through the federal Congestion Mitigation and Air Quality Improvement Program to secure the funding for this project, which is administered through the NYS Department of Transportation. The in-water work for the Pier 54 Connector Project was previously

permitted and will be completed in 2015, before construction of the Project would begin.

- The Pier 57 project is a large, mixed use commercial development within a historic pier that will also include landscaped public access and park areas on its roof and perimeter. Because of the extent of planned commercial development on this pier and the need for zoning changes to allow the built form and uses, Pier 57 was the subject of an EIS. *See* Applebome Aff., ¶ 22. Regulatory approvals for the very limited in-water construction were secured in 2013. There will be some overlapping construction with the Pier 57 project, but that was considered in the EAF prepared for the Project.

62. As explained in further detail in the EAF and the accompanying affidavits submitted by Edward Applebome, Justin Krebs, and Sandy Collins of AKRF, there would be no significant adverse cumulative impacts associated with the Project and other development in the area, including those projects identified in the preceding paragraph.

Public Trust

63. I understand that the Petitioners in this action have argued that the proposed use of portions of the pier as a performance space that would feature both paid and unpaid events is not a “park use.” However, this argument is wrong for several reasons.

64. Hudson River Park is unusual in that the uses permitted and prohibited in different areas of the Park are set forth in the Park Act. The Legislature recognized that Hudson River Park is different, and the Park Act provides the Park and the Trust with a degree of flexibility and ability to act in the marketplace and within the non-profit sectors that other parks may not have. For example, the Trust can and does enter into leases, and, where permitted by

the Act, the Trust's tenants may engage in purely commercial uses. The Trust was created as both a New York State entity and a 501(c)(3) intended to seek private donations.

65. The powers given to the Trust by the Park Act are designed to further the Park's mission to provide green spaces for rest, recreation and entertainment to all New Yorkers and visitors. The Park Act simply recognizes the reality that the Park covers an area over four miles of Manhattan shoreline that hosted industrial and commercial uses for over 150 years. Indeed, the shoreline itself is an artificial creation that resulted from over a century of landfill and re-shaping by private and government actors. *See* the accompanying Affidavit of Sandy Collins, dated July 29, 2015, ¶¶ 13-15 for a further discussion of the area's history.

66. The Park has always featured events and performances, and while most of these have been free or low-cost, some of them have required paid admission.

67. This is not an unusual park practice. Using parkland for concerts, theater and other performances, with and without admission costs, is standard in many park venues. Attached as Exhibit "G" is a list of venues from New York City, New York State, and across the country that feature similar performances and events as those envisioned for the Project. Attached as Exhibit "H" are figures showing the locations of parks in New York City and New York State with entertainment venues. The accompanying Affidavit of Adrian Benepe, former Commissioner of the New York City Department of Parks and Recreation ("City Parks Department"), dated July 28, 2015, and Affirmations of Allesandro Olivieri, General Counsel of the City Parks Department, dated July 28, 2015, and Paul Laudato, General Counsel of the New York State Office of Parks, Recreation and Historic Preservation, dated July 27, 2015, further explain the history and ubiquity of these activities in parks across the City and State. Indeed, as mentioned above, Pier 54 held similar events in the past as well.

HRPT's Plans for Pier 54 Without the Project

68. The Trust's statutory duty is to build the Park under the parameters provided by the Act. HRPT has been working tirelessly since 1998 to build the Park as funding allows.

69. Another of the Trust's purposes, expressly mandated by the Legislature, is "to provide a place for recreation, reflection, education, and cultural expression for the public." Park Act § 6(b). The Trust has done this since 1998 as well, offering hundreds of concerts, movies, exhibits, art installations and other events. Pier 54 was essential to these activities until 2011, when it was no longer in a condition to accommodate events.

70. Pier 54 was the most frequently programmed pier in the Park from 1998 to 2011. It hosted a wide range of events including the "Ashes and Snow" art installation, a skateboard exhibition, the NYC Wine & Food Festival, multiple Pride Week dance parties, the Jay-Z Carnival, a Marc Jacobs fashion show, and a regular program of summer movies.

71. It is essential to the Park's mission that Pier 54 be reconstructed as a venue for cultural events, and for additional park open space. The Trust has been planning to rebuild Pier 54 since 2001, and it now has the resources and intent to reconstruct Pier 54 in accordance with the design formulated and the permits initially obtained in 2005 and now extended to 2018.

72. While HRPT is willing and has the resources to reconstruct the version of Pier 54 designed and approved in 2005, that is not the desirable course. Building and maintaining the Park requires a significant level of funding that always has been a challenge. The Diller family's generous donation would enable the Trust to allocate public funds to other important capital projects and emergency repairs. The Project also would be an unprecedented, extraordinary gift that would benefit the Park, the City, and the public for years to come.

Bid Prospectus

73. I understand that the Petitioners have alleged that the Trust violated the Park Act because it did not issue a “bid prospectus” in connection with the Diller family’s generous donation.

74. This allegation ignores the distinction between a commercial transaction and a charitable contribution. The Legislature provided the Trust with the power to receive private donations. Park Act § 7(1)(d)(xii). The Diller family has offered to donate over \$140 million to the Trust through Pier55, Inc.

75. Neither Pier55, Inc., nor the Diller family will derive any financial gain from this transaction. As a result, the donation is not a “capital investment” that would trigger a bid prospectus requirement under the Trust's regulations. 21 NYCRR Part 752. A capital investment involves the expenditure of funds used to purchase an asset with the hope that it will generate income or appreciate in value in the future. The Lease requires that all of Pier55, Inc.'s revenues be returned directly to the non-profit to support its operation, construction, administrative, and maintenance costs. Because none of the parties to the Lease can enjoy any hope of generating income or commercial assets that will appreciate, the donation is not a “capital investment” within the meaning of the Trust's lease regulations, and therefore does not require a bid prospectus.

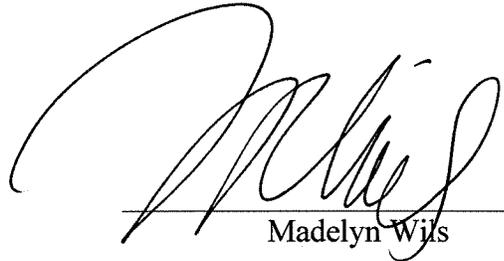
76. In my extensive experience raising funds on behalf of the Trust and for other organizations, a bidding process is not a logical or appropriate approach for soliciting a large charitable donation. Further, this is not a situation (like the RFP issued for a landscape architect and engineering firm for the Project) where competition would help ensure that the Trust gets the best deal; there is no pool of potential donors willing to compete to make the largest gift.

77. In short, the bid prospectus requirement for capital investments simply does not apply to charitable contributions.

Conclusion

78. Throughout the public process, the Project received strong public support from members of the community, particularly parents with children in the adjoining communities who are yearning for more arts programming and public open space. Along with CB2, the Project has also been embraced by the Municipal Arts Society, NYers 4 Parks, and the New York League of Conservation Voters.

79. I believe that this incredibly generous donation and this extremely exciting programming endeavor would yield inestimable benefits for both Hudson River Park and the people of New York. Incontestably, the Project would provide multiple “park use” activities, including passive enjoyment of the waterfront and performances set to a beautiful Hudson River backdrop. The breadth of opportunities and programs would bring a great number of people to the waterfront, which is precisely what the Legislature intended when it created Hudson River Park.



Madelyn Wils

Sworn to and subscribed before me
this 30th day of July, 2015


Notary Public

LAURA A. BLACKMAN
Notary Public - State of New York
No. 02BL6065040
Qualified in Bronx County
My Commission Expires March 22, 2018

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

THE CITY CLUB OF NEW YORK, INC., ROBERT
BUCHANAN, and TOM FOX,

Petitioners,

-against-

HUDSON RIVER PARK TRUST and PIER55, INC.,

Respondents.

Index No. 101065-2015

**AFFIDAVIT OF
MADELYN WILS**

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

MADELYN WILS, being duly sworn, deposes and says:

1. I am the President and Chief Executive Officer of the Hudson River Park Trust (the "Trust" or "HRPT"). I submit this affidavit in opposition to Petitioners' Verified Petition and in support of Respondents' motion for partial summary judgment in the above-captioned proceeding.

2. I have been President and CEO of the Trust since June 2011. In addition to my current role at HRPT, I have served in different capacities in the development of Hudson River Park. Within the time frame between 1996 and 1998, I served as chair of the Hudson River Park Conservancy Advisory Board, and from 1998-2007, I was a founding board member of the Trust as a representative of the Manhattan Borough President, during which time I also served on the Design Committee. The Design Committee participated with HRPT staff on the development of plans for public park areas, including earlier plans for Pier 54. Additionally, I was a member of Manhattan Community Board 1 from 1985-2005, including five years as chair, from 2000-2005. In that capacity, I worked as a volunteer for the community and advocated for the creation of

Hudson River Park. I also participated in or led various discussions about park programming and policies including discussion about the proposed Hudson River Park Act prior to its passage in 1998. As such, I have personal knowledge of the facts and circumstances surrounding the proposed redevelopment of Pier 54 (the “Project”).

Hudson River Park

3. The New York State Legislature created Hudson River Park (the “Park”) in 1998, through the Hudson River Park Act, Chapter 592 of the Laws of 1998, as amended (the “Park Act”). The Legislature created the Park to encourage, promote and expand public access to the Hudson River through an enumerated list of “park uses,” which the Legislature defined to include “public recreation and entertainment, including the arts and performing arts, on open spaces.” *Id.* §3 (h) (ii).

4. The Park covers approximately 550 acres, extending from the northern edge of Battery Park City to 59th Street, an approximate length of four miles. The Park generally comprises the lands and water west of the Route 9A corridor out to the United States Pierhead Line, and includes an approximately 400-acre Estuarine Sanctuary designated and owned by New York State.

5. The Park adjoins an area of New York City that historically has had very little open park space. When the Park was created in 1998, the shoreline on the west side of Manhattan where the Park is currently located consisted largely of abandoned, poorly maintained and underutilized piers, with very little green space.

6. New York State and New York City retained ownership of their portions of the Park when it was created. Park Act § 7(3)(a). The City owns the piers and inland portions of the Park above 35th Street, and the State owns the piers and land below 35th Street as well as all of

the underwater lands. A true and correct copy of the relevant section of the State's Ground Lease to the Trust, describing the state-owned lands within the Park, is annexed hereto as Exhibit "A". The area where the Project would be built and the Pier 54 pile field would be created is state property and is under the jurisdiction of the New York State Department of Environmental Conservation.

7. The Park is operated by the Trust, a public benefit corporation and 501(c)(3) non-profit organization created by the Park Act. Park Act § 5. The Trust is governed by a 13-member board that comprises five members appointed by the Governor, five by the Mayor of New York City, and three by the Manhattan Borough President. *Id.* § 5(2)(a)-(c). The Legislature created the Trust to plan, design, develop, construct, operate and maintain the Park pursuant to the Act's requirements. *Id.* § 6(a).

8. In accordance with the Park Act's declaration that the Park should be financially self-sufficient to the extent practicable, the Trust works to raise its operating and maintenance funding through a mix of revenues from leases, permits and concessions, as well as occasional government grants and private fundraising. Fundraising was anticipated as a Trust function when it was originally established in 1998, and as a result the Trust was formed as both a public benefit corporation and a 501(c)(3) organization. *Id.* §§ 1(2) (e), 6(e)-(g).

9. One longstanding source of revenue for the Park's operating budget has been paid public guest events such as concerts, fundraisers, walks/runs and select corporate partnerships for which the Trust charges a fee. Revenues from these events help support the Trust's operating budgets, but they do not provide the funds necessary for capital improvements.

10. Construction of the Park has been undertaken incrementally, as capital funding becomes available. To date, most capital funding has been from city, state or federal grants and

allocations. The Park is now approximately 73 percent complete, and the Trust has directly rebuilt 15 piers, along with public esplanades, gardens, ballfields, boating facilities, recreational courts, a classroom for environmental education, comfort stations, and concession buildings.

11. Although not yet complete, the Park has been enormously successful, attracting 17 million visits a year and offering a myriad of recreational and educational activities for local residents and visitors alike. The Park has been a catalyst for economic development and job creation in the far west side of Manhattan, attracting billions of dollars in new construction and contributing greatly to the area's desirability as a fantastic place to live and work. More than 135,000 people enjoyed free concerts, movies and dances here in the summer of 2014. Over 200,000 people of all ages play on the Park's athletic fields and courts, while almost 25,000 children and adults participate in free educational programming each year.

12. Nonetheless, there is a great deal of work left to be done. Several areas of the Park, including the area between the Gansevoort Peninsula and Pier 57 at West 15th Street, within which Pier 54 is located, are in need of improvement so that these areas can become as scenic, enjoyable and attractive as other areas of the Park.

Environmental Review of the Park

13. The Park as a whole was the subject of an environmental review process completed in 1998. The Final Environmental Impact Statement ("FEIS"), prepared in accordance with the State Environmental Quality Review Act ("SEQRA"), evaluated the potential environmental impacts associated with development of the Park as originally conceived, including the mix of uses -- public park piers and upland areas, ecological piers, municipal and commercial -- prescribed in the Park Act. Art and performance spaces were expressly listed among the project's goals in the FEIS, as were assorted commercial uses. R.

120¹ (FEIS) at 1-6. The FEIS identified over 20 piers, including Pier 54, where in-water construction would occur, either to rebuild partial or entire piers, or to stabilize existing piers. *Id.* at 10-36 to 10-37. The FEIS also identified several other areas where overlooks, expanded esplanade platforms, beaches, and docks would be built where no piers historically were located. *Id.* at 10-34.

14. Following completion of the environmental review process, HRPT obtained the authorizations and permits needed to proceed with development of the Park. The New York State Department of Environmental Conservation (“NYSDEC”) issued a permit for the Park in 1999 (R. 116), relying on the analysis and conclusions in the FEIS. The U.S. Army Corps of Engineers (the “ACOE”) issued a federal permit for the Park in May 2000 (R. 113). Before issuing its permit, the ACOE undertook a separate and independent environmental analysis pursuant to the National Environmental Policy Act. The ACOE’s analysis resulted in a 126-page “Statement of Findings and Environmental Assessment” (R. 114) that concluded that no federal EIS was needed for the Park. The ACOE did not identify any special aquatic sites within the Park; it applied the same permit conditions to all geographic areas of the Park including its 400 water acres.

15. When the NYSDEC and ACOE permits were issued, construction documents and funding were only available for a section of the Park in Greenwich Village. As a result, the permits require the Trust to submit detailed construction drawings for each subsequent Park segment to obtain agency authorization before work begins. These drawings are then compared to the original permits. In 2005, the Trust sought construction authorization for “Segment 5,” of which Pier 54 is a part. In order to obtain these approvals, the Trust submitted construction

¹ References to documents in the Certified Return of Record (the “Record”) are designated by “R.” followed by the number of the document in the Index to the Record.

documents for Segment 5 (a true copy of the relevant portion of which is annexed hereto as Exhibit “B”); they included a flat, reconstructed Pier 54 resembling its original form and footprint. The ACOE and NYSDEC issued the permits authorizing Segment 5 including the full reconstruction of Pier 54 in 2005. R. 111; R. 112.

16. After obtaining these approvals, the Trust commenced construction on most elements of Segment 5, but the Trust did not have sufficient funding to rebuild Pier 54 at that time. However, because the regulatory agencies have renewed the Trust’s parkwide permits several times since their original issuance, the Trust could proceed with the previously authorized construction on Pier 54 today, without the need for additional or amended permits from NYSDEC or the ACOE. R.1 (ACOE renewal); R. 110 (NYSDEC renewal).

Pier 54

17. Pier 54 is located just south of West 14th Street in Manhattan. It is one of the piers designated as a “park use” pier in the Park Act. Park Act § 7(9)(a).

18. The Park Act defines “park use” to mean: “(i) public park uses, including passive and active public open space uses; (ii) public recreation and entertainment, including the arts and performing arts on open spaces; (iii) public recreation and entertainment, including the arts and performing arts within enclosed structures,” subject to certain limitations on the size of such enclosed structures relative to the overall surface area of the pier; “(iv) small-scale boating for recreational and educational purposes . . . ; (v) environmental education and research . . . ; (vi) historic or cultural preservation . . . ; (vii) wildlife and habitat protection; and (viii) facilities incidental to public access to, and use and enjoyment of park uses” *Id.* § 3(h).

19. Between 1998 and 2011, the Trust used Pier 54 for small and large-scale public events, including concerts, art exhibits, movies and fundraisers. Prior to that, Pier 54 was also

used for park events, such as movies. Pier 54's location, condition relative to other park piers prior to their reconstruction, and flat, unobstructed configuration made it the Trust's most-used space for large-scale public and private events, some of which attracted crowds of 5,000 attendees. While open outside of events, Pier 54 was not landscaped, so it was not a popular place for passive enjoyment or recreational activities compared to other piers. The photographs at Figure D-2 of the Environmental Assessment Form and Supplemental Studies prepared for the Project (the "EAF"), demonstrate Pier 54's dilapidated condition prior to recent removal of its deck pursuant to previous approvals. R. 12 at Figure D-2.

20. Although the pier structure dates from 1906, its piles were extensively rehabilitated in 1932, and the building that sat atop the pier and bulkhead was removed by the New York State Department of Transportation in the early 1990s. In 2000, the Trust removed 105 feet from the pier's western end as well as 12-foot-wide strips along its northern and southern edges because they had deteriorated beyond cost effective repair. To maintain some ability to keep the pier open including for hosting both free and revenue generating events, limited pile rehabilitation work was performed almost annually from 2003 to 2011. In 2013, the Trust was forced to close most of Pier 54 because of its dilapidated condition.

21. The gradual loss of Pier 54's usable footprint meant that we were losing park space and the ability to continue hosting large public events there. When I became President of the Trust in June 2011, because of the pier's singular importance, I decided to focus efforts on the pier's reconstruction. The City and State were not in a position to increase capital construction allocations in the years following the financial crisis to fund the pier's reconstruction. Accordingly, I began considering whether private contributions could help support the construction of the Park, and Pier 54 in particular.

22. When I reviewed the 2005 design for Pier 54 with 2011 eyes and experience, I concluded that it would not provide the community with the amenities that it needed and that the site deserved, and that a better plan should be pursued offering higher-quality amenities for the public. The 2005 plan suffered from several problems. First, the pier was designed as almost entirely hardscape. There were no significant green spaces, little quality seating areas or park furniture, and just five small planters. Finally, the pier was very narrow – 20 feet narrower than other newer piers – which limits the types of performances that could be offered, and precluded the simultaneous use of the pier for events and passive enjoyment. Figure D-1 of the EAF demonstrates the relatively narrow width of the former Pier 54. R. 12 at Figure D-1.

23. In November 2011, Trust Board Chair Diana Taylor and I met with Barry Diller, who, with his wife Diane Von Furstenberg, had previously donated \$35 million to The Highline. The Diller Von Furstenberg Family Foundation also has supported the Signature Theater, Central Park, Carnegie Hall, the Culture Shed and The Whitney. Given their philanthropic spirit and their love of parks, culture, and the far west side, we believed they might be receptive to a discussion about providing significant support for the Park.

24. Although our initial request for support for rebuilding the pier was not met with great interest, after several meetings, Mr. Diller and the Trust came to agree that a pier should be constructed with an improved design that could offer performances and events of the type Pier 54 traditionally held and also offer enhanced space for passive enjoyment and recreation. As talks continued, he envisioned forming a not-for-profit organization that would commission new works and develop cultural education programs for the community, all in a spectacular park setting. Since the pier was designated as a public park pier, there was never any question that all revenues from ticket sales would be used to support the pier's maintenance, operations and non-

profit programming. Given the Trust's desire to rebuild Pier 54 as a public park pier, the fact that other areas of the Park were still unfunded, and Pier 54's history of events and the Park's mission of supporting cultural programming, including the arts and performing arts, the Trust welcomed this idea.

25. As discussions about design continued collaboratively with the Trust, a newly-formed non-profit organization, Pier55, Inc. (discussed below), hired designer Thomas Heatherwick to work on a new concept. To ensure the park design would function well within New York City, the Trust, in consultation with Pier55, Inc., separately sought an experienced landscape architect and engineering firms through a Request for Proposals. Ultimately, we selected Mathews Nielsen Landscape Architects and Arup and Mueser Rutledge Engineers to join the team (the "Consultant Team"), which has since that time worked in partnership with all parties to achieve the design and programming goals.

26. The Trust and Pier55, Inc. worked closely with the Consultant Team to conceptualize a version of Pier 54 that would accomplish the goals of building an extraordinary park that would provide a world-class amenity for the community and, indeed, the City. The Consultant Team was instructed to: (1) consider the Hudson River Estuarine Sanctuary habitat in all planning; (2) determine the best configuration for performance spaces that would still maximize the public's ability to use other spaces on the pier while events were occurring; (3) improve ingress and egress and access for emergency services, (4) minimize the potential for noise concerns during events; and (5) minimize the extent of enclosed structures on the pier.

27. When Hurricane Sandy hit New York City in October 2012, the Park was completely flooded and sustained over \$32 million in damage. The storm underscored the need for any new pier to incorporate elements addressing sustainability and resilience. A plain, flat

pier can be washed over, but an intensely landscaped pier with performance spaces and the utilities needed to support them would need to be further protected. When it became clear that the Federal Emergency Management Agency was going to raise the flood plain more than eight feet, elevating the new pier above the likely future flood plain was necessary for protection against future storms.

28. Another important consideration was minimizing any potential impacts on the River's habitat. Together with Pier55, Inc. and the Consultant Team, the Trust spent a significant amount of time analyzing how to minimize the extent of shading and structure under the pier, because from previous pier planning, we were aware of regulatory concerns for the Hudson River. For this reason, we rejected an earlier concept for an elevated pier design that would have required an extensive pile support bracing system within the water column, as well as other ideas that called for larger diameter piles and more in-water construction. Eventually, after considering several alternatives, including a smaller pier, a lower pier, and a pier located further to the south so that it overlapped more with the original Pier 54 footprint, a design concept emerged.

29. The Project's design is described in vivid detail in the accompanying Affidavit of Signe Nielsen. In short, the design involves an impressively landscaped square-shaped pier with rolling topography. The pier's southwest corner is higher than the rest of the pier in order to maximize sunlight that reaches beneath it. In order to elevate the pier above the anticipated future flood plain of 15 feet and still achieve handicapped access without elevators, the designers proposed setting the pier back off the bulkhead by at least 186 feet and then creating two ramps to connect the pier to the shore. Having two ramps was key to addressing safety and access issues, and also would help improve ingress and egress of the public during events.

30. The Project's design is thus unlike traditional "finger" piers and would need to be built outside of Pier 54's original footprint. As a result, it required an amendment to the Park Act allowing for this unique configuration and placement.

2013 Amendment to the Park Act

31. The Park Act prohibits placing new pilings or structures in the "water section," except for floating structures, bulkheading and platforms for esplanades, and the repair or reconstruction of bulkheads and piers in existence on the effective date of the Act or as depicted in the 1998 FEIS for the Park. Park Act §§ 3(1), 8(3)(b)-(c). The Act also contains a variety of other limitations on other park piers, uses, and operational requirements.

32. When it became clear that a pier in a different shape would better serve both passive recreational park users and event attendees, we began discussing the need to amend the Park Act to allow the pier to be reconstructed outside of its historic footprint.

33. In December 2011, I convened the first meeting of a Legislative Task Force (the "Task Force"), a group comprising elected officials, community board members, and representatives from a variety of civic and environmental organizations, to discuss the Trust's financial status and consider changes to the Park Act that would improve the Park and enhance its revenue sources. Over the course of several meetings, Task Force members worked with HRPT staff and Board members to consider a variety of topics, ranging from longer lease terms, to greater flexibility of permissible uses on revenue-generating piers, to changes in Park boundaries and insurance obligations. The Pier 54 amendment was discussed during at least five Task Force meetings. My recollection of the earliest discussions was describing the increasing burdens from the New York City Department of Buildings with respect to managing ingress and

egress during events, and our desire to have a wider pier with two egress points to better accommodate events.

34. Discussions with local elected officials and the leadership at Community Board 2 (“CB2”) about prospective changes to the Park Act, including with respect to the redevelopment of Pier 54, began in early 2012, when the Trust also began discussing the Diller family’s potential interest in making a large donation to reconstruct Pier 54 as park open space with the capacity to host performances and events. In fact I met with CB2’s Waterfront Committee three times in 2012 to discuss the potential legislative changes, including allowing Pier 54 to be built outside of its historic footprint to facilitate the Trust’s planning for public events.

35. For example, at a June 2012 meeting of CB2’s waterfront and parks committee, I distributed a handout listing potential amendments to the Park Act, a true and correct copy of which is annexed as Exhibit “D”. Regarding Pier 54, the handout described how the amendment would allow Pier 54 to be reconstructed outside of its original footprint, within certain limitations on its dimensions and overall square footage. It also explained that “The intent is to allow for a layout that can better accommodate Trust concerts and other programming,” as well as emergency egress requirements. Among the many potential legislative amendments that were under discussion, the one about Pier 54 was never controversial.

36. An Albany-based online news blog, *Capital New York*, reported on our discussions in November 2012 and again in February 2013, which report included a rendering of an earlier Trust concept of a pier designed outside the historic footprint. True and correct copies of these articles are annexed hereto as Exhibit “C”.

37. In addition to community outreach with the Task Force and community boards, which continued before and after the amendment was introduced in 2013, the Trust engaged in

extensive discussions and email correspondence with legislative members and staff. Throughout these discussions, the Trust made clear that the intended use of a reconstructed Pier 54 was to continue the pier's historic uses as a performance and event space with park open space. For example, on June 18, 2013, I sent an email to elected officials and park advocates urging passage of the Amendment and detailing each of our proposals. A true and correct copy of this email and attachments is annexed hereto as Exhibit "E". Regarding Pier 54, I explained that allowing the pier to be built outside of its footprint "will allow for securing [a] significant donation to be used toward development of Pier 54 as a world-class public programming space."

38. The amendment passed in June 2013. It addresses several fiscal and operational issues that had emerged as the Trust planned and operated the Park. Among the changes is the provision in Section 9 of the Amendment, which says that "pier 54 may be reconstructed outside of its historic footprint," provided that it meets certain requirements with respect to its dimensions, total square footage "including any adjacent platform areas or access ways," and the preservation of the White Star Line iron arch. The Project meets all of these requirements.

39. I have reviewed the legislative "Bill Jacket," relevant excerpts of which are annexed hereto as Exhibit "F", and I am aware that after the Legislature passed the Amendment, the Governor received various communications expressing views about whether he should sign the Amendment into law. Among them was a letter from the Trust's General Counsel, Laurie Silberfeld, urging the Governor to sign the letter and noting, among other things, that "it would allow HRPT to redevelop Pier 54 outside its historic footprint, enabling HRPT to secure a significant private donation and facilitate a public-private partnership for redevelopment of the pier into a world class public open space and performance venue." A letter from the City of New York's legislative representative, Joseph Garba, made the identical point.

40. Additionally, some opponents urged the Governor not to sign the amendment. They expressed concerns about environmental impacts, asserting that construction in the Pier 54 area would disturb aquatic habitat, and that the new pier would create a hazard susceptible to hurricanes and other violent storms.

41. Despite these objections, which are similar if not identical to those advanced in this lawsuit, Governor Cuomo signed the Amendment into law in November 2014.

42. The 2013 Amendment authorizing the Project's configuration and location paved the way for the Trust and Pier 55, Inc. to finalize the design and enter into lease negotiations and eventually the Lease Agreement that would facilitate the Diller family's donation and the relationship between HRPT and Pier55, Inc.

Pier55, Inc. and the Lease Agreement

43. Pier55, Inc. is a single-purpose entity and 501(c)(3) non-profit organization. It would assume responsibility for fundraising, programming, and maintenance of the Project. While the Trust would retain responsibility for maintaining the infrastructure below the pier dock, Pier55, Inc. would be responsible for everything above the pier dock. This arrangement would decrease the Trust's financial and operational burdens, because in a traditional public park pier, the Trust must bear the maintenance responsibilities for the structure above and below the deck.

44. Pier55, Inc. would be managed by an extraordinary team of accomplished artists, visionaries, and managers, including Scott Rudin, a leading film and theater producer/director; Stephen Daldry, the award-winning director; and George C. Wolfe, the Broadway director and former head of the Public Theater. Kate Horton, the former Associate Director of the National Theater of Great Britain, would be the Executive Director for Programming. As expressed in the

accompanying Affirmation of Kate Horton (“Horton Aff.”), all of these individuals are deeply committed to public service and bringing a rich array of programming to the broadest audience possible. Horton Aff. ¶¶ 9-11.

45. The relationship between Pier 55, Inc. and the Trust is defined by a “Lease Agreement” (the “Lease”). The Lease reflects Pier55, Inc.’s mantra, “park first.” It requires Pier55, Inc. to provide a minimum number of events each year, and requires that the majority of events be offered to the public on a free or low cost basis. The Lease also requires that the pier remain open to the general public to the maximum extent possible in accordance with the “park first” principle. It reserves the Trust’s right to ensure public access and limits the number of occasions during which the pier may be partially or entirely closed for events.

46. The Lease was extensively negotiated for about a year before the parties agreed on a form of lease that was sufficient to submit to the Trust’s Board of Directors for final consideration. Following a public process, the Board approved the proposed form of lease, along with an amendment to the Park’s General Project Plan (“GPP”), on February 11, 2015, after the public participation process for the Project was completed.

Public Participation and Environmental Review for the Project

47. The Park Act imposes public participation requirements when the Trust proposes to undertake a “significant action.” The Act defines “significant actions” to include “the adoption of, and any amendment to, the general project plan,” and “[a]ny proposed lease, concession agreement, license or other agreement by the trust for a period in excess of ten years.” Park Act §§ 7(6), (11).

48. The GPP is defined as “the Hudson [R]iver park concept & financial plan, dated May, 1995, as modified in the May 20, 1998 final environmental impact statement, and any

successor plan or statement of findings created thereafter consistent with [SEQRA]; provided that the general project plan shall be consistent with this act.” *Id.* ¶ 3(d). Because of the proposed lease and previously unanticipated pier concept, a GPP amendment was required for the Project.

49. For “significant actions,” including the Lease and the GPP amendment, the Park Act requires that the Trust publish notice of the action, hold a public hearing, and provide a 60-day comment period in which it must “solicit and consider the views” of various parties before the Trust’s Board of Directors can vote on the action. *Id.* § 7(6)(a)-(c).

50. Accordingly, after a year of discussions and negotiations regarding design, budget, maintenance responsibilities, and the balancing of different park uses, the Trust began the Significant Action process for the proposed lease and the GPP Amendment on November 17, 2014 by publishing a Notice of Hearing and Public Comment Period. R. 105. The public comment period was extended by a week to accommodate requests from CB2 and elected officials.

51. In addition, although the Trust was not required to do so, the Draft EAF prepared in accordance with SEQRA also was made available for public review and comment during this period. In the accompanying Affidavit of Edward Applebome, dated July 29, 2015 (“Applebome Aff.”), of the environmental consulting firm AKRF, he explains the comprehensive analyses they prepared on behalf of the Trust.

52. The Trust also presented the proposed Project at two public hearings of the CB2 Parks and Waterfront Committee, on December 3, 2014 and January 7, 2015, during which the Trust and representatives of Pier55, Inc. responded to questions from community board members and the general public. At a subsequent meeting on January 22, 2015 CB2 passed a resolution in

support of the Project, with some qualifications. (Those qualifications have since been addressed through written responses and follow-up meetings with the Trust and Pier55, Inc.) The Trust also presented the proposed Project to the Hudson River Park Advisory Council on December 15, 2014.

53. On January 12, 2015, the Trust held its own public hearing on the proposed Lease and GPP amendment, as required by the Act. Comments on the Draft EAF also were accepted. Between the public hearing, CB2 meetings, and written comments, the Trust received 100 comments from elected officials, organizations and individuals. Notably, there were no comments submitted by The City Club or on its behalf.

54. Many of the comments received were requests for the Trust to keep the arch located in front of Pier 54. However, as the EAF makes clear, the arch will remain in its current location.

55. The Trust considered all of the comments and, with Pier55, Inc., made substantive changes to the draft Lease and the EAF. Those changes included language that clarified limitations regarding closure of the pier to members of the public not attending an event, and lowering the pier's height to make the entire pier compliant with the Americans with Disabilities Act. R. 9 (showing changes between Draft Lease and form of Lease approved by HRPT Board); *compare* R.109 (Draft EAF) at 4 (reflecting proposed maximum height of 75 feet) to R.12 (Final EAF) at 4 (62 feet). The Trust also prepared a summary of comments with responses to each, which was made publicly available and which was submitted to HRPT's Board prior to its vote. R.11.

56. Following closure of the public comment period, the Draft EAF was revised and then finalized. HRPT staff reviewed the extensive analysis in the Final EAF and concluded that

the Project would have no significant adverse environmental impacts in any of the areas of potential environmental impact, including transportation, air quality, open space, shading, and community facilities, and that the Project would enhance the existing and future streetscape and pedestrian environment of the Park and West Street. As a result, the Trust issued a Negative Declaration. See the Applebome Affidavit for additional information about the environmental review.

HRPT's Board of Directors

57. At its February 11, 2015, meeting, the Board approved the Lease and the proposed amendment to the GPP, and it ratified the Negative Declaration.

58. In order to accommodate the new Pier 54 project, which has public open space and space for cultural programming, the GPP now reads:

Pier 54 would be rebuilt between the currently existing Pier 54, whose pile field would remain, and the existing Pier 56 pile field. Pier 54 would remain a public pier with opportunities for diverse park activities in a green landscape setting. Outdoor spaces for cultural programming would also be incorporated into the landscape.

59. In other words, the pier would remain a park pier allowing for a wide range of activities, from active recreation to passive enjoyment of the waterfront, and also would feature three performance spaces for entertainment including the arts and performing arts. Of course, as discussed below, entertainment and the performing arts have always been an integral part of park use in New York and elsewhere. This would be a welcome improvement to the simpler version of Pier 54 that the Trust would build if the Project did not exist: a narrow, rectangular, hardscape pier, with almost no green space, that can support only a limited range of events.

60. HRPT is now working with the ACOE and NYSDEC to obtain the permits and approvals needed to commence construction of the Project. In-water construction cannot begin

until May 1, 2016 at the earliest, due to the regulatory moratorium on pile driving in this area of the Hudson from November 1 to April 30.

61. I understand that the Petitioners have expressed some concerns about the number of construction projects occurring in the vicinity of the Project at the same time. However, it appears that they are misinformed regarding the nature and construction schedules of the upcoming projects in that area.

- The 13th Street Crosswalk Project, a project primarily funded through a public transportation grant administered through the NYS Department of Transportation, consists of a new crosswalk across Route 9A at 13th Street. It involves no in-water construction.
- The removal of the former Pier 54 structural deck, which was accomplished within the parameters of the construction authorizations of the ACOE and NYSDEC in 2005, is already complete.
- The Pier 54 Connector Project, also known as the Esplanade Project, will build a new, wider pedestrian esplanade between the Gansevoort Peninsula and approximately West 14th Street within the footprint limits of the original ACOE and NYSDEC permits issued in 2000 and 1999, respectively. By widening the pedestrian platform, an existing choke point on the Route 9A bikeway near the Gansevoort Peninsula can be eliminated, and a new lay-by for a possible future public bus along the Route 9A corridor could be created. The Trust submitted a grant application through the federal Congestion Mitigation and Air Quality Improvement Program to secure the funding for this project, which is administered through the NYS Department of Transportation. The in-water work for the Pier 54 Connector Project was previously

permitted and will be completed in 2015, before construction of the Project would begin.

- The Pier 57 project is a large, mixed use commercial development within a historic pier that will also include landscaped public access and park areas on its roof and perimeter. Because of the extent of planned commercial development on this pier and the need for zoning changes to allow the built form and uses, Pier 57 was the subject of an EIS. *See* Applebome Aff., ¶ 22. Regulatory approvals for the very limited in-water construction were secured in 2013. There will be some overlapping construction with the Pier 57 project, but that was considered in the EAF prepared for the Project.

62. As explained in further detail in the EAF and the accompanying affidavits submitted by Edward Applebome, Justin Krebs, and Sandy Collins of AKRF, there would be no significant adverse cumulative impacts associated with the Project and other development in the area, including those projects identified in the preceding paragraph.

Public Trust

63. I understand that the Petitioners in this action have argued that the proposed use of portions of the pier as a performance space that would feature both paid and unpaid events is not a “park use.” However, this argument is wrong for several reasons.

64. Hudson River Park is unusual in that the uses permitted and prohibited in different areas of the Park are set forth in the Park Act. The Legislature recognized that Hudson River Park is different, and the Park Act provides the Park and the Trust with a degree of flexibility and ability to act in the marketplace and within the non-profit sectors that other parks may not have. For example, the Trust can and does enter into leases, and, where permitted by

the Act, the Trust's tenants may engage in purely commercial uses. The Trust was created as both a New York State entity and a 501(c)(3) intended to seek private donations.

65. The powers given to the Trust by the Park Act are designed to further the Park's mission to provide green spaces for rest, recreation and entertainment to all New Yorkers and visitors. The Park Act simply recognizes the reality that the Park covers an area over four miles of Manhattan shoreline that hosted industrial and commercial uses for over 150 years. Indeed, the shoreline itself is an artificial creation that resulted from over a century of landfill and re-shaping by private and government actors. *See* the accompanying Affidavit of Sandy Collins, dated July 29, 2015, ¶¶ 13-15 for a further discussion of the area's history.

66. The Park has always featured events and performances, and while most of these have been free or low-cost, some of them have required paid admission.

67. This is not an unusual park practice. Using parkland for concerts, theater and other performances, with and without admission costs, is standard in many park venues. Attached as Exhibit "G" is a list of venues from New York City, New York State, and across the country that feature similar performances and events as those envisioned for the Project. Attached as Exhibit "H" are figures showing the locations of parks in New York City and New York State with entertainment venues. The accompanying Affidavit of Adrian Benepe, former Commissioner of the New York City Department of Parks and Recreation ("City Parks Department"), dated July 28, 2015, and Affirmations of Allesandro Olivieri, General Counsel of the City Parks Department, dated July 28, 2015, and Paul Laudato, General Counsel of the New York State Office of Parks, Recreation and Historic Preservation, dated July 27, 2015, further explain the history and ubiquity of these activities in parks across the City and State. Indeed, as mentioned above, Pier 54 held similar events in the past as well.

HRPT's Plans for Pier 54 Without the Project

68. The Trust's statutory duty is to build the Park under the parameters provided by the Act. HRPT has been working tirelessly since 1998 to build the Park as funding allows.

69. Another of the Trust's purposes, expressly mandated by the Legislature, is "to provide a place for recreation, reflection, education, and cultural expression for the public." Park Act § 6(b). The Trust has done this since 1998 as well, offering hundreds of concerts, movies, exhibits, art installations and other events. Pier 54 was essential to these activities until 2011, when it was no longer in a condition to accommodate events.

70. Pier 54 was the most frequently programmed pier in the Park from 1998 to 2011. It hosted a wide range of events including the "Ashes and Snow" art installation, a skateboard exhibition, the NYC Wine & Food Festival, multiple Pride Week dance parties, the Jay-Z Carnival, a Marc Jacobs fashion show, and a regular program of summer movies.

71. It is essential to the Park's mission that Pier 54 be reconstructed as a venue for cultural events, and for additional park open space. The Trust has been planning to rebuild Pier 54 since 2001, and it now has the resources and intent to reconstruct Pier 54 in accordance with the design formulated and the permits initially obtained in 2005 and now extended to 2018.

72. While HRPT is willing and has the resources to reconstruct the version of Pier 54 designed and approved in 2005, that is not the desirable course. Building and maintaining the Park requires a significant level of funding that always has been a challenge. The Diller family's generous donation would enable the Trust to allocate public funds to other important capital projects and emergency repairs. The Project also would be an unprecedented, extraordinary gift that would benefit the Park, the City, and the public for years to come.

Bid Prospectus

73. I understand that the Petitioners have alleged that the Trust violated the Park Act because it did not issue a “bid prospectus” in connection with the Diller family’s generous donation.

74. This allegation ignores the distinction between a commercial transaction and a charitable contribution. The Legislature provided the Trust with the power to receive private donations. Park Act § 7(1)(d)(xii). The Diller family has offered to donate over \$140 million to the Trust through Pier55, Inc.

75. Neither Pier55, Inc., nor the Diller family will derive any financial gain from this transaction. As a result, the donation is not a “capital investment” that would trigger a bid prospectus requirement under the Trust's regulations. 21 NYCRR Part 752. A capital investment involves the expenditure of funds used to purchase an asset with the hope that it will generate income or appreciate in value in the future. The Lease requires that all of Pier55, Inc.'s revenues be returned directly to the non-profit to support its operation, construction, administrative, and maintenance costs. Because none of the parties to the Lease can enjoy any hope of generating income or commercial assets that will appreciate, the donation is not a “capital investment” within the meaning of the Trust's lease regulations, and therefore does not require a bid prospectus.

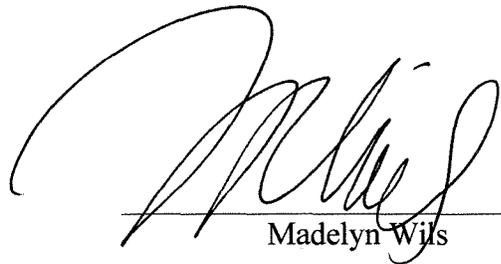
76. In my extensive experience raising funds on behalf of the Trust and for other organizations, a bidding process is not a logical or appropriate approach for soliciting a large charitable donation. Further, this is not a situation (like the RFP issued for a landscape architect and engineering firm for the Project) where competition would help ensure that the Trust gets the best deal; there is no pool of potential donors willing to compete to make the largest gift.

77. In short, the bid prospectus requirement for capital investments simply does not apply to charitable contributions.

Conclusion

78. Throughout the public process, the Project received strong public support from members of the community, particularly parents with children in the adjoining communities who are yearning for more arts programming and public open space. Along with CB2, the Project has also been embraced by the Municipal Arts Society, NYers 4 Parks, and the New York League of Conservation Voters.

79. I believe that this incredibly generous donation and this extremely exciting programming endeavor would yield inestimable benefits for both Hudson River Park and the people of New York. Incontestably, the Project would provide multiple “park use” activities, including passive enjoyment of the waterfront and performances set to a beautiful Hudson River backdrop. The breadth of opportunities and programs would bring a great number of people to the waterfront, which is precisely what the Legislature intended when it created Hudson River Park.



Madelyn Wils

Sworn to and subscribed before me
this 30th day of July, 2015



Notary Public

LAURA A. BLACKMAN
Notary Public - State of New York
No. 02BL8065040
Qualified in Bronx County
My Commission Expires March 22, 2018