

Supreme COURT OF THE STATE OF NEW YORK
COUNTY OF New York

The City Club of New York, Inc.,
Robert Buchanan, and Tom Fox Plaintiffs,

- against -
Hudson River Park Trust and Pier 55
Inc., Defendants.

Index No. 101068-15
(J.)

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Date: 6/11/15

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

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

Petitioners/Plaintiffs, : **NOTICE OF PETITION**
- against - : Index No. 101068-15

HUDSON RIVER PARK TRUST and PIER55, : **ORAL ARGUMENT REQUESTED**
Inc., :

Respondents/Defendants. :
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PLEASE TAKE NOTICE that, upon the annexed Verified Petition, the accompanying Memorandum of Law in Support of Petitioners' Verified Petition, the Affirmation of Jeffrey A. N. Kopczynski with attached exhibits, the Affidavit of Tom Fox, the Affidavit of Robert Buchanan, and the Affidavit of Greg M. Fleischer, an application pursuant to Article 78 of the Civil Procedure Law and Rules ("C.P.L.R.") and/or § 6301 of the C.P.L.R. and/or § 3001 of the C.P.L.R. will be made to this Court at the Clerk's Office at the Courthouse located at 60 Centre Street, Room 130, New York, New York, on July 9, 2015, at 9:30 a.m. or as soon thereafter as counsel can be heard, for an order and judgment:

- (a) Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Defendants fully comply with the public trust doctrine;
- (b) Declaring that any approvals made by the Hudson River Park Trust, without compliance with the public trust doctrine, are null and void *ab initio*;
- (c) Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Respondents fully comply with the requirements of SEQRA/CEQR;

- (d) Declaring that any approvals made by the Hudson River Park Trust, without compliance with SEQRA/CEQR, are null and void *ab initio*.
- (e) Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Respondents fully comply with the requirements of the Hudson River Park Act and its accompanying regulations;
- (f) Declaring that any approvals made by the Hudson River Park Trust, without compliance with the Hudson River Park Act and its accompanying regulations, are null and void *ab initio*;
- (g) Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Respondents fully comply with the requirements of the public trust doctrine, SEQRA/CEQR, and the Hudson River Park Act;
- (h) Awarding Petitioner costs, disbursements and reasonable attorney's fees incurred in prosecuting this proceeding, in an amount to be determined by this Court; and
- (i) Granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 7804(c), and unless otherwise agreed to by the parties or ordered by the Court, answering papers, if any, must be served five (5) days before the return date of this petition, and reply papers, if any, shall be served one (1) day before the return date of this petition.

Dated: New York, New York
June 11, 2015

Respectfully submitted,

O'MELVENY & MYERS LLP

By: 

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

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In the Matter of the Application of
City Club of New York, Robert Buchanan, and :
Tom Fox, :
 :
Petitioners, :
 :
- against - :
 :
Hudson Park River Trust, Inc. and Pier55, Inc., :
 :
Respondents, :
 :
for a Preliminary Injunction, Judgment and :
Order Pursuant to Article 78 and CPLR § 6301, :
and Declaratory Judgment Pursuant CPLR § :
3001. :
----- X

VERIFIED PETITION

Index No.

PRELIMINARY STATEMENT

1. In this combined proceeding, Petitioners seek (1) an injunction under Article 78 of the Civil Practice Law and Rules (“CPLR”) and CPLR § 6301 directing the Respondents to stop construction of a new island-pier and connecting walkways in the area between Piers 54 and 57 (the “Pier 55 Project”) until they comply with the New York State (the “State”) and New York City (the “City”) environmental and land-use laws and regulations that govern this proposed construction project in the Hudson River, specifically, the State Environmental Quality Review Act (“SEQRA”) and regulations thereunder, the City Environmental Quality Review (“CEQR”) and regulations thereunder, and the Hudson River Park Act (the “Park Act”) and its accompanying regulations; and (2) declaratory judgment pursuant to § 3001 of the CPLR declaring that using City parkland for the non-park purpose of constructing a concert venue, without explicit statutory authorization, is a violation of the public trust doctrine.

PARTIES

2. Petitioner The City Club of New York, Inc. (“City Club”) is a not-for-profit corporation with its offices located at 249 W. 34th Street, New York, NY 10001. The City Club was founded in 1892 to promote effective and honest government in New York City. Its mission today is to promote thoughtful urban land use policy that responds to the needs of all New Yorkers. Its advocacy has included promoting the protection of New York City parks from commercial development, notably in Flushing Meadows-Corona Park, where it opposed the construction of a mega-shopping mall.

3. Petitioner Robert Buchanan is a resident of New York and is employed by the New York Water Trail Association.

4. Petitioner Tom Fox is a resident of New York and is a member of the City Club.

5. Upon information and belief, Respondent Hudson River Park Trust (the “HRPT” or “Trust”) is a partnership between the State and City charged with the design, construction, and operation of the five-mile Hudson River Park (the “Park”) spanning the west side of Manhattan. Both the Trust and Park are governed by the Park Act, a 1998 state law that established both the Park and its governing requirements.

6. Upon information and belief, Respondent Pier 55, Inc. is a nonprofit corporation established by the Diller-von Furstenberg Family Foundation for the sole purpose of building and operating the Pier 55 Project.

JURISDICTION AND VENUE

7. The New York State Supreme Court has jurisdiction over Petitioners’ declaratory judgment and injunctive relief causes of action pursuant to CPLR §§ 3001 and 6301.

8. The New York State Supreme Court has jurisdiction over Petitioners’ Article 78 causes of action under CPLR Article 78 § 7804(b).

9. Under CPLR §§ 506(b) and 503(a), this proceeding is brought in New York County as the county in which Respondent HRPT’s offices are located and where the material events occurred and are proposed to occur.

FACTS RELEVANT TO ALL CLAIMS

10. Petitioners repeat and reallege the allegations set forth in paragraphs 1 through 9 of this Verified Petition as if fully stated herein.¹

History of The Hudson River Park and Trust

11. The Park spans approximately five miles² along Manhattan's west shore. The Park's southern boundary is Battery Place, and the Park's northern boundary is 59th Street. The Park's western boundary is the United States pierhead line, and the Park's eastern boundary varies from point-to-point, and includes West Street, Eleventh Avenue, and Twelfth Avenue (whichever boundary is more westerly at any point).³ The Park consists of piers, upland, and water areas.

12. The Park was conceived and developed in concert with the State's and City's environmental protection statutes. In May 1998, in conjunction with the design and development of the Park, and pursuant to the above-referenced environmental statutes, the Empire State Development Corporation and Hudson River Park Conservancy (Respondent HRPT's predecessor) issued an Environmental Impact Statement consisting of more than 900 pages (the "1998 EIS"). The 1998 EIS analyzed many potential and actual environmental impacts resulting from the Park's planned development, and set out required mitigation measures. On July 16, 1998, the Hudson River Park Multi-Purpose Project General Park Plan (the "GPP") was adopted in accordance with the Park Act, which set out the specific projects and operation parameters for the Park.⁴

¹ Unless otherwise indicated, citations to "Ex. ___" are to exhibits, true and accurate copies of which are attached to the Affirmation of Jeffrey Kopczynski.

² *What is the Hudson River Park Trust*, HUDSON RIVER PARK (last visited Mar. 22, 2015), <http://www.hudsonriverpark.org/about-us/hrpt> (Ex. II).

³ Hudson River Park Act (1998), N.Y. Sess. Laws 592 (McKinney), §3(e). (the "Hudson River Park Act") (Ex. R).

⁴ See Hudson River Park Multi-Purpose Project General Park Plan, dated July 19, 1998 ("GPP") (Ex. J).

13. The Park provides critical recreation and entertainment opportunities for City residents and visitors and, equally as important, serves as a vital habitat for the Hudson River's flora and fauna—including fish (over 200 species), birds (85 identified species within the Park's boundaries), mammals, crabs, and more. Many of the referenced indigenous species are threatened or in danger of extinction.⁵

14. The HRPT was established under the Park Act “to design, develop, operate, and maintain” the Park.⁶ The HRPT is a thirteen member board charged with governing the Park. Five members are appointed by the Governor, five are appointed by the Mayor, and three by the Manhattan Borough President.

15. In 2013, the Hudson River Park Act was amended to allow the rebuilding of Pier 54 “outside of its historic footprint.”⁷ This amendment ostensibly allowed the HRPT to build Pier 54 in a slightly different shape, though the term “outside of its historic footprint” is not defined anywhere in the Park Act. In fact, the HRPT board meeting minutes from July 25, 2013 show that the HRPT pushed this amendment through in order “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.”⁸ This amendment began the HRPT's process of allowing Diller's project to be approved for building.

The Pier 55 Project

16. On November 16, 2014, the HRPT and the Diller-von Furstenberg Family Foundation “announced plans to build ‘Pier55’ – a river-side, public park and performance space rising seven stories above the water on Manhattan's lower west side,” with construction

⁵ See *Events: Hudson River Park Wild!*, Hudson River Park, <http://www.hudsonriverpark.org/events/hudson-river-park-wild-2015> (last visited Mar. 10, 2015) (Ex. S); *Habitat: Water*, Hudson River Park, <http://www.hudsonriverpark.org/education-and-environment/hudson-river-ecosystem/habitat-water> (last visited Mar. 10, 2015) (“Habitat”) (Ex. L).

⁶ Hudson River Park Act §2(e) (Ex. R).

⁷ 2013 Amendment to Hudson River Park Act § 9(e) (Ex. B).

⁸ HRPT Board meeting minutes, July 25, 2013 at 7 (Ex. P).

“expected to commence in 2016 at a cost in excess of \$130 million, to which the City of New York will contribute \$17 million.”⁹ The project has received significant press coverage, with media outlets nicknaming the project Diller’s “Fantasy Island”; “billionaire’s island”; and “Diller’s Island.”¹⁰

17. The Pier 55 Project is to be constructed in conjunction with two other Park improvement projects. One project consists of widening the pedestrian walkway between the Gansevoort Peninsula and Pier 57 (running from Bloomfield Street to 14th Street) (the “Pier 54 Connector”). The widened walkway will “include a widened overwater pedestrian platform, improvements to the Route 9A bikeway alignment, new lay-by area for a future public bus stop, and landscaping.”¹¹ The other related project will “create an at-grade pedestrian crossing across Route 9A at West 13th Street” (the “Crosswalk Project”).¹²

18. As described in the HRPT’s planning documents, the combined projects will result in 547 new pilings being driven into the Hudson River bed in an area where there have never been pilings before. In addition, the project will result in up to three acres of overwater shading (depending on the sun’s position) where no such shading previously existed. Further, approximately 1.94 river acres will be subject to nighttime water-facing spotlights, in an area which has never been subject to such night illumination. For six months per year, the Pier 55 Project area will be home to a floating barge, adding to the overshadowed area, and adding

⁹ See Press Release, *Exciting News About Pier 54!*, (Nov. 16, 2014)

<http://www.hudsonriverpark.org/news-and-updates/exciting-news-about-pier-54> (Ex. I).

¹⁰ See Benjamin Snyder, *Barry Diller planning a fantasy island on New York’s Hudson River*, FORTUNE (Nov. 17, 2014), <http://fortune.com/2014/11/17/barry-diller-planning-a-fantasy-island-on-new-yorks-hudson-river/> (Ex. F); David Callahan, *The Billionaires’ Park*, THE NEW YORK TIMES (Nov. 30, 2014), <http://www.nytimes.com/2014/12/01/opinion/the-billionaires-park.html> (Ex. FF); Inga Saffron, *America’s Billionaires Are Turning Public Parks Into Playgrounds for the Wealthy*, NEW REPUBLIC (Feb. 2, 2015), <http://www.newrepublic.com/article/120909/barry-dillers-pier-55-park-how-money-changing-city-parks> (Ex. E); Lisa Foderaro, *How Diller and von Furstenberg Got Their Island in Hudson River Park*, THE NEW YORK TIMES (Apr. 3, 2015), <http://www.nytimes.com/2015/04/05/nyregion/how-diller-and-von-furstenberg-got-their-island-in-hudson-river-park.html> (Ex. M).

¹¹ *Id.*

¹² *Id.*

moorings and other disturbances (this is slated to be an “actor’s barge,” which will be the size of some mansions).¹³

19. The Pier 55 Project’s location will result in reduced water access to the interpier area between the current Pier 54 and Pier 57. Currently this area is used by recreational boaters, but the construction of this island well outside the footprint of the existing Pier 54 will drastically reduce access for the boaters.¹⁴

The Pier 55 Project Notice, Comment Period, and Hearing

20. The week before Thanksgiving, on November 17, 2014, the HRPT issued a notice of a public hearing and the opening of a comment period (the “Notice”) regarding: (i) a draft lease between the HRPT and Pier55, Inc. (the “Draft Lease”¹³, and upon approval on February 11, 2015 by the HRPT Board of Directors, the “Form Lease”¹⁵); (ii) a proposed amendment to the GPP to reflect the proposed redevelopment under the Draft Lease (the “GPP Amendment”); and (iii) an Environmental Assessment Form prepared by the HRPT in connection with the Draft Lease (the “EAF”).¹⁶ During the comment period, the public was supposed to review, analyze, and comment on those three documents (consisting of, collectively, well over 500 pages). The comment period closed on January 23, 2015, having overlapped with the Thanksgiving, Hanukkah, Christmas, and New Year holidays.¹⁷ In addition to affording limited comment time due to the noted holidays, the hearing was delayed from its initially scheduled date on

¹³ EAF at B-12, F-21, F-22, F-28, F-29, F-30 (Ex. H).

¹⁴ Buchanan Aff. ¶¶ 14-16.

¹⁵ See Proposed Lease Agreement Between Hudson River Park Trust and Pier55, Inc. [http://www.hudsonriverpark.org/assets/content/general/Lease_Draft_11.17.14_\(FINAL\).pdf](http://www.hudsonriverpark.org/assets/content/general/Lease_Draft_11.17.14_(FINAL).pdf) (Ex. CC).

¹⁶ See Amended Notice of Public Hearing and Public Review and Comment Period regarding both a Proposed Lease Between Hudson River Park Trust and Pier55, Inc. and a Proposed Amendment to Hudson River Park’s General Project Plan, Dec. 17, 2014, http://www.hudsonriverpark.org/assets/content/general/Public_Notice_for_Pier_54-11.17.14.pdf (Ex. D).

¹⁷ See The City Record, Nov. 18, 2014, at 4240–41 <http://www.nyc.gov/html/dcas/downloads/pdf/cityrecord/cityrecord-11-18-14.pdf> (Ex. G); Amended Notice at 1 (Ex. D); the original deadline was extended from January 16, 2015 to January 23, 2015.

December 17. Finally occurring on January 12th, 2015, there were only eight business days provided to finalize any comments in consideration of information provided at the hearing.

21. The public hearing was held in the Eisner and Lubin Auditorium at New York University's Kimmel Center, located at 60 Washington Square South, New York, New York 10012 (the "Hearing").¹⁸

22. The November 17 Notice states that the Hearing was intended to satisfy "the requirements of the Hudson River Park Act regarding significant actions,"¹⁹ which includes "timely and reasonable notification" to the public for any "significant plans or proposed actions with respect to the [P]ark."²⁰

23. At the Hearing, which lasted several hours, various stakeholders (including individual community members) expressed a wide range of concerns, including without limitation concerns relating to: (i) responsible environmental impact management; (ii) preservation of the existing Pier 54 structure, including its historically significant landing arch and Pier 54's proposed use by historic ships; (iii) public access to piers in the Park as required under the GPP; (iv) foot traffic; (v) lack of a water dependent use for the project; and (vi) accessibility of the theater proposed to operate on Pier 55 by persons of all incomes.²¹

The Pier 55 Lease

24. The Form Lease includes a minimum 20-year term, with a renewal option making the maximum term 30 years. The leasing parties are the Respondents: Landlord HRPT and tenant Pier55, Inc. The Form Lease specifies the parties' intent in entering into the Lease as for "the redevelopment of Pier 54 and subsequent operation of a public open park space with cultural programming." The Notice more specifically states that the HRPT intends to construct a

¹⁸ See Amended Notice at 1 (Ex. D).

¹⁹ See *Id.* at 3.

²⁰ See Hudson River Park Act §7(1)(f)(ii) (Ex. R).

²¹ See Public Hearing Transcript, Jan. 12, 2015 (Ex. DD).

new pier “between the existing Pier 54 footprint and the Pier 56 pile field,” with the existing Pier 54 to be converted into a pile field.²²

Petitioners Submitted Comments in Person and in Writing

25. Both individual Petitioners raised concerns about the proposed Pier 55 Project. Tom Fox raised his concerns in person at the public hearing, and both he and Robert Buchanan submitted comments in writing.²³ Their concerns were never addressed.

The HRPT Issued a Negative Declaration, Approved the Draft Lease, and Approved the GPP Amendment The Same Day and Only One Day After Publishing Its Responses to Comments

26. On February 10, 2015, the HRPT published its responses to public comments.²⁴

27. Late in the afternoon on February 11, 2015, only one day after issuing its response to public comments (totaling 85 pages), the HRPT published a negative declaration of environmental significance (the “Negative Declaration”). Only two hours later, the HRPT Board met and approved the Draft Lease and GPP Amendment. Incredibly, the Board meeting had previously been scheduled for February 12, the day *after* the publication of the Negative Declaration—which would have at least afforded a day for public review, instead of mere hours. The result was that the public was not afforded any opportunity to comment on (or even reasonably review) the Negative Declaration before the Board met to approve the Draft Lease and GPP Amendment.

28. At the February 11 Board meeting, the President of the Hudson River Park Trust Corporation, Madelyn Wils, presented an overview of the Lease for the Board’s approval. Ms. Wils’s presentation contained significant misstatements. For example, Ms. Wils stated that the

²² Amended Notice at 1–2 (Ex. D); *see also* EAF at F-21 (Ex. H).

²³ Hearing Transcript at 49:12 (Ex. DD); ALLEE, KING, ROSEN AND FLEMING, INC., PIER 54 RESPONSE TO COMMENTS RECEIVED DURING PUBLIC REVIEW (PREPARED FOR HRPT). 2-3 (Ex. C).

²⁴ *See* PIER 54 RESPONSE TO COMMENTS (Ex. C).

Lease would require the new pier to be built “at the site of the current Pier 54.”²⁵ The plans for the Pier 55 Project already show that this is false (only a small fraction will overlap with the current Pier 54 site), and incredibly, the next sentence in the Board meeting minutes contradicts Ms. Wils’s comments by specifying that “[t]he new pier would be built between the current Pier 54 and the Pier 56 pile field.”²⁶

29. Ms. Wils’s presentation also did not specify that the Pier 55 Project would constitute a water-dependent use, as required by the Park Act. The minutes show that Ms. Wils stated that the project was being built in accordance with the Park Act, where Ms. Wils said that “[t]he uses permitted by the proposed lease are permitted and encouraged by the Park Act, which authorizes passive and active public open space uses and public recreation and entertainment, including the arts and performing arts.”²⁷ However, Ms. Wils made no mention of whether the Pier 55 Project was a water-dependent use.

30. Ms. Wils stated that the GPP “expressly envisions renovation [of Pier 54] as park space.”²⁸ But Ms. Wils did not explain why, if this were true, the GPP needed amending.

31. Ms. Wils stated that the building of the Pier 55 Project in its proposed location would be “[c]onsistent with the November 2013 amendment to the Park Act.”²⁹ But that amendment allowed for the rebuilding of Pier 54 “outside of its historical footprint.”³⁰ The amendment certainly did not allow building a new island on a new site only slightly overlapping with the current Pier 54’s footprint.

32. Several voting Board members, including Directors Stern, Silver, and Pegues, arrived after Ms. Wils began her presentation, and thus voted based on incomplete information.³¹

²⁵ HRPT Board Meeting Minutes, Feb. 11, 2015, at 4 (Ex. O).

²⁶ *Id.* at 5 (emphasis added).

²⁷ *Id.* at 11.

²⁸ *Id.*

²⁹ *Id.*

³⁰ 2013 Amendment to Hudson River Park Act § 9(e) (Ex. B).

³¹ HRPT Board Meeting Minutes, Feb. 11, 2015, at 6 (Ex. O).

33. The Hudson River Park Trust approved the Lease without issuing any bid prospectus or seeking competing bids for the design and operation of the new pier. All negotiations regarding the building of the Pier 55 Project were conducted behind closed doors with only one party.

The HRPT Violated the Public Trust Doctrine

34. State agencies in charge of public space are bound by the public trust doctrine, which requires state legislative approval before parkland can be alienated for private, non-park purposes.

35. The public trust doctrine is a common law principle, codified in New York State law,³² that certain resources, such as parkland, are held in trust by the government for public use, and the government must maintain these resources for such use. These “public uses” include the provision of free, open areas for recreation and community activities.

36. The HRPT’s actions violated the public trust doctrine by alienating public parkland to Pier55, Inc., a private entity. Pier55, Inc. retains tremendous discretion over the use of the new structure, including the power to charge whatever they may want to charge for tickets to 49% of events held in the structure’s two event spaces. The Lease between the HRPT and Pier55, Inc. also potentially allows for private memberships to the “island” for permitted events and shows that the new structure is in fact a semi-private event space.

37. The HRPT’s actions also violated the public trust doctrine by taking away an important part of protected navigable waters between Pier 54 and Pier 57, currently used by recreational boaters and kayakers.³³

38. Nothing in the Park Act allows the HRPT to alienate parkland in this manner or to build a large structure such as this one in the Estuarine sanctuary.

39. Nothing in the Park Act construes this amphitheater, with private ticketing for half of its events, as a proper “park use.”

³² N.Y. Gen. City Law § 20(2) (codifying the public trust doctrine).

³³ Buchanan Aff. ¶ 15.

*The HRPT Violated SEQRA and CEQR*³⁴

40. As a state agency considering a project with a potential environmental impact, the HRPT was required to follow SEQRA and its regulations. The EAF acknowledges that the Pier 55 Project is subject to environmental review under SEQRA regulations and guidelines.³⁵

41. Under SEQRA, a state agency must determine whether or not its proposed actions have the potential to cause a significant environmental impact. The agency must publish a declaration of significance in the form of a “positive declaration of significant impact” or “negative declaration of significant impact” before an application can be considered complete and approved by the designated agency.³⁶

THE PIER 55 PROJECT IS A TYPE I ACTION UNDER SEQRA, AND THUS PRESUMPTIVELY REQUIRES AN EIS

42. Under SEQRA and its regulations, an agency must determine whether its proposed action is classified as Type I, Type II, or Unlisted. A Type I action is one that is “more likely to require the preparation of an EIS than Unlisted actions.”³⁷ A Type II action is one that has “been determined not to have a significant impact on the environment or [is] otherwise precluded from environmental review under” SEQRA.³⁸ An action which is not of the type enumerated under NYCRR §§ 617.4 or 617.5 is deemed to be an Unlisted action.³⁹

43. The HRPT acknowledges that the proposed Pier 55 Project is a Type I action.

³⁴ CEQR is New York City’s process for implementing SEQRA, and “can be no less stringent than its state counterpart.” *See* New York City Mayor’s Office of Environmental Coordination, Frequently Asked Questions, http://www.nyc.gov/html/oec/html/ceqr/faq_general.shtml (Ex. V). CEQR differs from SEQRA in that its procedures pertain to proposed discretionary actions specifically taking place within the boundaries of New York City. Going forward, for ease of reference, we will refer to SEQRA and CEQR collectively as “SEQRA.”

³⁵ EAF at A-1 (Ex. H).

³⁶ 6 NYCRR § 617.3(a) (Ex. QQ); *see also* Hudson River Park Act § 7-4 (Ex. R).

³⁷ 6 NYCRR § 617.4(a)–(b) (Ex. QQ).

³⁸ *Id.* at § 617.5(a).

³⁹ *Id.* at § 617.2(ak).

44. Since the Pier 55 Project is a Type I action, it is likely to require the preparation of an environmental impact statement (“EIS”) under applicable law.⁴⁰ In fact, SEQRA regulations state that “the fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS.”⁴¹

THE PIER 55 PROJECT WILL LIKELY CAUSE SIGNIFICANT ENVIRONMENTAL IMPACTS, AND THUS REQUIRES AN EIS

45. The HRPT’s Negative Declaration was issued in error.⁴² The Pier 55 Project will likely have multiple significant environmental impacts on the Hudson River and surrounding ecosystem.

46. The Project includes the construction of an enormous, new artificial island to be sited in an area of the Hudson River between existing Piers 54 and 57 defined in the Park Act as the “Estuarine Sanctuary.”⁴³ The Estuarine Sanctuary is an undisturbed, never-before developed section of the Hudson River Park that is the stopping point or home to more than 200 fish species and over 85 species of birds found within the Park’s boundaries. The Sanctuary also hosts numerous plankton species that are an important food source for fish and other organisms.⁴⁴

47. In the face of the obvious incursion into the Sanctuary area that a project of this scale presents, the EAF states that there will be no loss of habitat, impact on species, or disturbance of natural areas.⁴⁵ It is not plausible that the loss of 2.7 acres of overwater area⁴⁶ could be neutral as to have no effect on indigenous species and the interpier habitat, which is a

⁴⁰ *Id.* at § 617.4(a)-(b).

⁴¹ *Id.* at § 617.4(a)(1) (emphasis added).

⁴² Negative Declaration (Feb. 11, 2015), (Ex. X).

⁴³ See Hudson River Park Act § 8(1) (Ex. R).

⁴⁴ Habitat (Ex. L); “*Hudson River Park WILD!*”, HUDSON RIVER PARK, <http://www.hudsonriverpark.org/events/hudson-river-park-wild> (last visited Mar. 10, 2015) (Ex. S).

⁴⁵ EAF at B-12 (Ex. H).

⁴⁶ *Id.* at F-21.

unique ecosystem.⁴⁷ Indeed the Park Act explicitly recognizes that overwater structures have an impact that should be minimized.⁴⁸

48. In its analysis, the EAF states that the Pier 55 Project “may affect” the shortnose and Atlantic sturgeon.⁴⁹ The shortnose sturgeon is on the federal and state endangered species lists.⁵⁰ And yet the EAF concludes, without explanation or further study, that building a 2.7 acre structure in the middle of these creatures’ habitat will have no potential significant impacts to the shortnose sturgeon population.⁵¹

49. The Pier 55 Project will also create new shading impacts. The new island and adjoining structures will create an area of shading in the Estuarine Sanctuary where no shade existed before. The complete lack of sunlight underneath much of the pier will affect the flora and fauna currently living in that environment, killing nearly all of it permanently.

50. The new pier will also require driving piles in the river bed, disrupting the sediment in that area and causing significant noise disturbance over the course of the project’s multi-year construction. These effects must be studied, and mitigation measures must be developed.

51. The “actors’ barge” that will serve as a staging area for performers will create additional environmental impacts not assessed by the HRPT. This poses many problems because the barge will have its own shading effect, will likely operate a water cooled air conditioning unit, which will discharge warm water into the Hudson and, relatedly, disturb the river with noise and artificial light at night.

⁴⁷ (1998 EIS), at 10-36 (Ex. A).

⁴⁸ It does so by restricting the total amount of over- and in-water structures: “in the aggregate, no more than eight acres of the water section may be covered or altered by floating structures or minor improvements at any time.” Hudson River Park Act §8(3)(c) (Ex. R). Though the project does not currently violate this limit, it is significant that projects of this size are generally considered to have a negative impact on the Park through their overwater coverage.

⁴⁹ EAF at F-12 (Ex. H).

⁵⁰ *Id.* at F-15.

⁵¹ *Id.*

52. The Pier 55 Project, in combination with the Pier 57 Project that has been expanded to include 250,000 square feet of office space, will potentially impact vehicular, pedestrian, and bicycle volumes in the area, including along Route 9A. The area adjacent to the proposed Pier 55 Project is the narrowest section of the Route 9A right-of-way, with traffic jams occurring daily.⁵² The addition of a large amphitheater is likely to result in a significant impact to the Park's bicycle and pedestrian path, which is the busiest in the nation, along with creating safety concerns for vehicles and pedestrians in connection with Route 9A.⁵³

53. The proposed Pier 55 Project, towering as high as seven stories, will block the scenic river views of the general public in the area of [West 13th] Street, as set forth in the photo rendering below. The HRPT admits as much in the EAF, where it states that “[w]hile the new pier would be located within the West 13th street visual corridor, that visual corridor does not provide unique view of the Hudson River vista.”⁵⁴ HRPT's claim is unsubstantiated, with the EAF stating only that there are similar views nearby.

54. The EAF discusses mitigation measures, further acknowledging the potential for significant environmental impacts. Yet those mitigation measures were never fully developed or discussed with community members and stakeholders.

55. The Notice and EAF specify that some portion of the new island will encroach on both the existing Pier 56 pile field and the to-be converted pile field at Pier 54.⁵⁵ The HRPT has not studied what effect, if any, the Pier 55 Project will have on the to-be converted pile field at Pier 54.

56. The EAF is inaccurate, insufficient, and not a reasonable basis for issuing a negative declaration of significance.

57. The EAF states broadly that the “[e]nvironmental impacts associated with the development of the Hudson River Park were analyzed” in the 1998 EIS, including the

⁵² Fox Aff. ¶¶ 24–5.

⁵³ Fox Aff. ¶¶ 26–27.

⁵⁴ EAF at B-15 (Ex. H).

⁵⁵ Amended Notice at 1-2 (Ex. D); EAF at A-1 (Ex. H).

“renovation of Pier 54 for public park use.”⁵⁶ That statement is incorrect because the 1998 EIS did not contemplate any changes to the Estuarine Sanctuary and footprint of Pier 54,⁵⁷ as currently proposed. The 1998 EIS states that Pier 54 was “to be fully restored for public access” in the *same location* as the previously vacant Pier 54, and would utilize the arches and granite bases from the original pier facade of Pier 54.⁵⁸ The 1998 EIS further states that limited maritime activities would be allowed at Pier 54; specifically, that historic ships were anticipated to dock there.⁵⁹

58. Similarly, although the 1998 EIS referenced Pier 56 (an area that the proposed Pier 55 Project will encroach upon), it did not contemplate an artificial island being erected on top of it. Instead, the 1998 EIS described Pier 56 as an “ecological pier” created for use as a “wildlife habitat” with indigenous plants to attract birds and butterflies.⁶⁰

59. The 1998 EIS makes no mention of Pier 55 or the interpier space in which the overwhelming majority of the new pier will be constructed. This demonstrates that the 1998 EIS never contemplated a project like the Pier 55 Project.⁶¹ The HRPT’s reliance on the 1998 EIS is therefore entirely misplaced.

60. The EAF is further flawed because it fails to adequately describe the total area impacted by the Pier 55 Project and its related projects, the Pier 54 Connector, and the Crosswalk Project. The EAF analyzes potential impacts based on the contention that the Pier 55 Project disturbs less than one river acre.⁶² Yet the EAF also states that the new artificial island will create “approximately 2.7 acres of overwater structure consisting of a new 320-by-320-foot platform,” and result “in the creation of approximately 1.9 acres of lighted pile field habitat.”⁶³

⁵⁶ 1998 EIS at 1-16 (Ex. A).

⁵⁷ EAF at A-8 (Ex. H).

⁵⁸ 1998 EIS at 6-4 (Ex. A).

⁵⁹ *Id.*

⁶⁰ 1998 EIS at I-8 and S-6 (Ex. A); *see also* GPP at 11 (Ex. J), where the GPP designates the existing Pier 56 pile field as an “ecological pier.”

⁶¹ 1998 EIS (Ex. A)

⁶² EAF at F-21 (Ex. H).

⁶³ *Id.*

And the Pier 55 Project includes the conversion of the existing Pier 54 into a pile field, which is not a part of the “1 acre” and was not examined or discussed in the 1998 EIS, GPP, or any Park permits.⁶⁴ Nowhere is this disparity explained.

61. The EAF is also flawed because it uses an erroneous “No Action” baseline to evaluate the potential effects of the Pier 55 Project.⁶⁵ The EAF examines the impacts of the Pier 55 Project by comparing the impact of a new Pier 55 against a reconstructed Pier 54 on its current pilings. This comparison is incorrect because there is currently no plan to reconstruct Pier 54. Instead, the HRPT intends to proceed with demolishing Pier 54 and leave it as a pile field, regardless of whether or not the Pier 55 Project proceeds.

62. Notably, in 2013, the HRPT issued a separate Environmental Impact Statement with regard to the repair and rehabilitation of Pier 57. Pier 57 is also located within the Hudson River Park and sits just a few blocks north of Pier 54.⁶⁶ The HRPT prepared an EIS for Pier 57 based on an EAF which stated that the Pier 57 revitalization project could result in potentially significant adverse environmental impacts.⁶⁷ There are no obvious reasons for treating the Pier 57 project differently from the Pier 55 Project. If anything, the potential environmental consequences of the Pier 55 Project are far more dire.

63. Other projects of similar or smaller size around the city received Positive Declarations, even though they presented fewer potential impacts.

64. In sum, an agency that approves an action “which may have a significant effect on the environment” must prepare or cause to be prepared an EIS.⁶⁸ The foregoing facts show that there are several potential significant environmental impacts resulting from the Pier 55 Project. As such, the HRPT violated SEQRA when it failed to prepare an EIS.

⁶⁴ 1998 EIS (Ex. A); GPP (Ex. J).

⁶⁵ EAF at A-8 (Ex. H).

⁶⁶ See Pier 57 Redevelopment Project Final Environmental Impact Statement, February 2013, (Ex. PP).

⁶⁷ *Id.* at Part II; see also Pier 57: Draft Scope of Work for an Environmental Impact Statement, at 1 (Ex. Y).

⁶⁸ N.Y. Env'tl. Conserv. § 8-0109.2.

THE HRPT FAILED TO COMPLY WITH THE NEW YORK CITY WATER
REVITALIZATION PLAN, WHICH ALSO VIOLATES SEQRA

65. SEQRA also requires compliance with the New York City Water Revitalization Plan (“NYC WRP”).⁶⁹ The Pier 55 Project is inconsistent with the NYC WRP’s policy goal of “protect[ing] and restor[ing] the quality and function of ecological systems within the New York City coastal area.”⁷⁰ Extensive driving of new pile systems, uncontrolled release of contaminated stormwater, and nighttime illumination and daytime shading of the Estuarine Sanctuary clearly do not comport with the goals of protecting and restoring the quality of the Hudson River’s ecological system.

66. In addition, though the HRPT filled out and certified a Coastal Assessment Form, as required by the NYC WRP, the form contains several mischaracterizations and misstatements, including a representation that the project would not result in any direct or indirect discharge into any body of water.⁷¹

67. The Pier 55 Project is also inconsistent with the NYC WRP’s policy goal of promoting “use of New York City’s waterways for commercial and recreational boating and water-dependent transportation.”⁷² The proposed new pier will dramatically reduce access to the river for recreational boat users who currently enjoy boating activities in the interpier area.

68. The failure to comply with the NYC WRP constitutes an independent SEQRA violation.

⁶⁹ 6 NYCRR § 617.6(a)(5) (Ex. QQ).

⁷⁰ NYC WRP, Part I (Policy 4) (Ex. W).

⁷¹ See WRP Consistency Form, attached to EAF (Ex. H).

⁷² NYC WRP, Part I (Policy 3) (Ex. W).

The Project Also Violates the Hudson River Park Act and Its Accompanying Regulations

THE HRPT VIOLATED THE PARK ACT BECAUSE THE PARK ACT BARS THE CONSTRUCTION OF ANY NON-WATER DEPENDENT USES WITHIN THE WATER SECTION OF THE HUDSON RIVER PARK

69. The Park Act requires that, within the Estuarine Sanctuary, “only water dependent uses shall be permitted.”⁷³ The Pier 55 Project does not qualify as a “water dependent use” of the Estuarine Sanctuary.

70. The Park Act narrowly defines “water dependent use” as any use “that depends on utilization of resources found in the water section; recreational activities that depend on access to the water section, such as fishing, boating, swimming in such waters, passive enjoyment of the Hudson river and wildlife protection and viewing; facilities and incidental structures needed to dock and service boats; and scientific and educational activities that by their nature require access to marine reserve waters.”⁷⁴ The Park Act defines “water section” as “all the area of the park west of the bulkhead line, including the water, lands under water and space above the water, but not including the piers and float bridge as they exist on the effective date of [the] Act.”⁷⁵

71. The Pier 55 Project does not fall within any of the permitted uses under the Park Act: it does not depend on resources found in the water section, does not depend on access to the water, is not a facility for docking and servicing boats, and is not being built for research that requires access to the Estuarine Sanctuary.⁷⁶

⁷³ See Hudson River Park Act § 3(m) (Ex. R); see also 1998 EIS at 24-115 (Ex. A), where in response to a comment expressing concern about the potential construction of floating platforms in the Park, the 1998 EIS specifically states that no platforms will be built in the Park for non-water-dependent uses.

⁷⁴ *Id.*; see also N.Y. Exc. Law § 911(7), where the New York Code section on Waterfront Revitalization Of Coastal Areas And Inland Waterways defines a “water dependent use” as “an activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.” (Ex. XX).

⁷⁵ See Hudson River Park Act § 3(l) (Ex. R).

⁷⁶ EAF (Ex. H); Proposed Lease Agreement (Ex. CC).

72. The Pier 55 Project therefore does not meet the definition of “water dependent use” under the Park Act.⁷⁷

THE HRPT VIOLATED ITS OWN REGULATIONS WHEN IT FAILED TO FOLLOW A PROPER BIDDING PROCESS FOR THE RIGHT TO BUILD AND MANAGE THE PIER 55 PROJECT

73. The HRPT’s Regulations require any “capital expenditure in excess of one million dollars over the proposed term of the agreement” to go through a bidding process.⁷⁸ The HRPT was required to issue a bid prospectus for the Pier 55 Project.

74. No bid prospectus was issued for the Pier 55 Project, thereby violating another part of the HRPT’s governing regulations.

THE HRPT VIOLATED THE PARK ACT, AS THE EAF CONTAINS NO PLANS TO RETAIN THE HISTORIC ELEMENTS FROM THE WHITE STAR LINE AS REQUIRED BY THE PARK ACT

75. The Park Act requires any reconstruction of Pier 54 outside of its historic footprint to incorporate the historic elements of the White Star Line, including the iron arch.⁷⁹

76. The EAF does not contain any indications that the design of the Pier 55 Project will incorporate the iron arch or other historic elements of the White Star Line. In fact, the EAF only mentions the iron arch and the White Star Line as part of the “No Action” condition, indicating the HRPT has no intention of incorporating these elements into the design of the Pier 55 Project.

FIRST CAUSE OF ACTION

77. Petitioners repeat and reallege each and every allegation in paragraphs 1 through 76 as if fully stated therein.

78. The public trust doctrine bars the alienation of parkland without the explicit and unambiguous consent of the State Legislature.⁸⁰

⁷⁷ Hudson River Park Act § 3(m) (Ex. R).

⁷⁸ 21 NYCRR § 752.1(a)(2) (Ex. SS).

⁷⁹ See Hudson River Park Act § 8.3(e) (Ex. R).

⁸⁰ See, e.g., *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623, 630 (2001).

79. The public trust doctrine has been codified in New York State statutes.⁸¹

80. The HRPT's actions constitute an alienation of parkland and were taken without any legislative approval. The alienation is also for a non-public use, compounding its alienating effects.

81. The HRPT's actions therefore violate the public trust doctrine.

82. An actual and justiciable controversy exists between Petitioners/Plaintiffs and Respondents/Defendants because Petitioners/Plaintiffs contend, and Respondents/Defendants dispute, that Defendants' actions as described above have violated the public use doctrine.

83. Petitioners/Plaintiffs seek a declaration that the HRPT's issuance of negative declaration, amendment to the GPP, and engaging into a Lease with Pier55, Inc. to build the Pier 55 Project violate the public trust doctrine.

SECOND CAUSE OF ACTION

84. Petitioners repeat and reallege each and every allegation in paragraphs 1 through 83 as if fully stated therein.

85. SEQRA is a New York state statute designed to protect the environment.

86. CEQR is a New York City law designed to protect the environment.

87. Under SEQRA, the "environment" is broadly defined as:

the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.⁸²

88. SEQRA protects the environment by requiring "the responsible agency, as early as possible in the formulation of a proposal for an action, [to] make an initial determination whether an environmental impact statement need be prepared for the action."⁸³

89. Under SEQRA, "agency" means "any state or local agency."⁸⁴

⁸¹ N.Y. Gen. City Law § 20(2) (codifying the public trust doctrine).

⁸² N.Y. Env'tl. Conserv. § 8-0105.6 (Ex. AAA).

⁸³ N.Y. Env'tl. Conserv. § 8-0109.4 (Ex. BBB).

90. The HRPT is an agency as defined by SEQRA.

91. Under SEQRA, an “action” is defined as:

projects or activities directly undertaken by any agency; or projects or activities supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more agencies; or projects or activities involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use or permission to act by one or more agencies.⁸⁵

92. The Pier 55 Project involves a project or activities “directly undertaken by” an agency, the HRPT.⁸⁶

93. The Pier 55 Project is a “project[] or activit[y] involving the issuance to a person of a lease.”⁸⁷

94. The Pier 55 Project is a project or activity “supported...in part through contracts, grants, subsidies, loans or other forms of funding assistance from one or more agencies.”⁸⁸

95. The Pier 55 Project “involv[es]...the issuance of a permit.”⁸⁹

96. By reason of the foregoing, the Pier 55 Project constitutes an “action” within the meaning of SEQRA.⁹⁰

97. The Pier 55 Project is a Type I action.

98. The Pier 55 Project has the potential for significant environmental impact.

99. The HRPT was required to follow SEQRA and issue a positive declaration of significant environmental impact requiring, among other things, the preparation of an EIS.

100. The HRPT’s failure to prepare an EIS is a violation of SEQRA.

⁸⁴ N.Y. Env'tl. Conserv. § 8-0105.3 (Ex. AAA).

⁸⁵ *Id.* at § 8-0105.4(i).

⁸⁶ *Id.*

⁸⁷ Lease Agreement between Hudson River Park Trust, Landlord, and Pier55, Inc., Tenant (Feb. 11, 2015) (“Lease”) (Ex. BB).

⁸⁸ EAF (Ex. H).

⁸⁹ *Id.*

⁹⁰ N.Y. Env'tl. Conserv. § 8-0105.4.

101. By issuing a negative declaration on February 11, 2015, the HRPT indicated that it refuses to prepare an EIS.

102. Petitioners have no remedy at law.

103. This Article 78 Petition is the proper vehicle for this cause of action as the HRPT is a governmental entity, and the cause of action lies in its violation of lawful procedure, error of law, and arbitrariness and capriciousness.⁹¹

104. This Court has jurisdiction and is the proper venue for this Article 78 Petition.

105. By reason of the foregoing, Petitioners are entitled to an order:

i. Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Respondents fully comply with the requirements of SEQRA/CEQR, including completing an EIS; and

ii. declaring that any approvals made by any government entity, without compliance with SEQRA/CEQR, are null and void *ab initio*.

THIRD CAUSE OF ACTION

106. Petitioners repeat and reallege each and every allegation of paragraphs 1 through 105 as if fully stated therein.

107. The Park Act requires that within the Estuarine Sanctuary, “only water dependent uses shall be permitted,” for which water is integral to such use (*e.g.*, boating, swimming, sailing, or waterborne commerce).⁹²

108. The EAF incorrectly states that the Pier 55 Project is a water-dependent use.⁹³ The Pier 55 Project does not depend on utilization of the resources found in the water section, does not involve any recreational activities that depend on access to the water section, is not a facility needed to dock and service boats, and does not involve scientific and educational activities that by their nature require access to marine reserve waters.

⁹¹ CPLR § 7803.

⁹² See Hudson River Park Act § 3(m) (Ex. R).

⁹³ EAF at B-11 (Ex. H).

109. The Pier 55 Project is therefore not a water-dependent use under the Park Act, which governs the Park.

110. Accordingly, construction of the Pier 55 Project would violate the Park Act § 3(m).

111. The HRPT's regulations also require the HRPT to host a bidding process for capital expenditures in excess of one million dollars over the proposed term of the agreement.⁹⁴

112. The HRPT did not host such a bidding process nor did it issue a bidding prospectus.

113. Accordingly, the HRPT violated its own regulations.

114. The Hudson River Park Act requires any rebuilding of Pier 54 outside of its current footprint to include historic elements of the White Star Lines.

115. The HRPT's plans for the Pier 55 Project do not include any historic elements of the White Star Lines.

116. Accordingly, the HRPT violated the Hudson River Park Act, § 8.3(e).

117. Petitioners have no remedy at law.

118. This Article 78 Petition is the proper vehicle for this cause of action as the HRPT is a governmental entity, and the cause of action lies in its violation of lawful procedure, error of law, and arbitrariness and capriciousness. CPLR § 7803.

119. This Court has jurisdiction and is the proper venue for this Article 78 Petition.

120. By reason of the foregoing, Petitioners are entitled to an order:

i. Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Respondents fully comply with the requirements of the Hudson River Park Act and its accompanying regulations; and

ii. declaring that any approvals made by the Hudson River Park Trust, without compliance with the Hudson River Park Act, are null and void *ab initio*.

⁹⁴ 21 NYCRR § 752.1(a)(2) (Ex. SS).

FOURTH CAUSE OF ACTION

121. Petitioners repeat and reallege each and every allegation of paragraphs 1 through 120 as if fully stated therein.

122. This Court has broad discretion, under CPLR § 6301, to grant a preliminary injunction “in any actions where...the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which ... would produce injury to the plaintiff.”

123. This discretion includes the power to grant affirmative, mandatory relief in the form of a preliminary injunction directing a government entity to fulfil its statutory responsibilities.

124. As discussed above, Respondents’ actions constitute violations of the public trust doctrine, SEQRA, CEQR, the Hudson River Park Act, and its accompanying regulations.

125. Petitioners have demonstrated a likelihood of success on the merits because Respondents have committed numerous violations of environmental protection statutes, park governance statutes and regulations, and the public trust doctrine.

126. Petitioners have demonstrated a danger of irreparable injury absent an injunction because the HRPT is preparing to drive numerous pilings into the Estuarine Sanctuary, causing significant damage to protected wildlife. These pilings will also displace a navigable and protected area used by kayakers and boaters.

127. Petitioners have demonstrated that the balance of equities are in their favor. Respondents may still build their project in the future, but must do so through the proper governmental and statutory channels. They may seek governmental approval for their project in order not to run afoul of the public trust doctrine. They may produce an EIS in order not to run afoul of SEQRA. And they may take the appropriate steps to comply with their own governing statute and regulations. However, if they start driving pilings into the Estuarine Sanctuary, they will undoubtedly do serious and irreversible damage to the riverbed and the protected Estuarine Sanctuary.

128. Petitioners have no remedy at law.

129. This Article 78 Petition is the proper vehicle for this cause of action as the HRPT is a governmental entity, and the cause of action lies in its violation of lawful procedure, error of law, and arbitrariness and capriciousness.⁹⁵

130. This Court has jurisdiction and is the proper venue for this Article 78 Petition.

131. By reason of the foregoing, Petitioners are entitled to an order enjoining the start of construction of any aspect of the Pier 55 Project, until such time as Respondents comply fully with the requirements of the public trust doctrine, SEQRA, CEQR, and the Hudson River Park Act and its accompanying regulations.

PRIOR APPLICATION

132. No prior application has been made for the relief requested herein.

RELIEF REQUESTED

WHEREFORE, for the reasons stated herein and in the accompanying papers, Petitioners demand judgment as follows:

As to the First Cause of Action:

- i. Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Defendants fully comply with the public trust doctrine; and
- ii. declaring that any approvals made by the Hudson River Park Trust, without compliance with the public trust doctrine, are null and void *ab initio*.

As to the Second Cause of Action:

- i. Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Respondents fully comply with the requirements of SEQRA/CEQR; and
- ii. declaring that any approvals made by the Hudson River Park Trust, without compliance with SEQRA/CEQR, are null and void *ab initio*.

As to the Third Cause of Action:

⁹⁵ CPLR § 7803.

i. Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Respondents fully comply with the requirements of the Hudson River Park Act and its accompanying regulations; and

ii. declaring that any approvals made by the Hudson River Park Trust, without compliance with the Hudson River Park Act and its accompanying regulations, are null and void *ab initio*.

As to the Fourth Cause of Action:

i. Enjoining the start of construction of any aspect of the Pier 55 Project until such time as Respondents fully comply with the requirements of the public trust doctrine, SEQRA/CEQR, and the Hudson River Park Act.

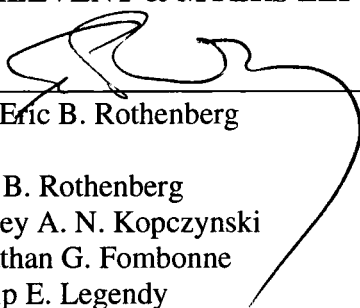
As to All Causes of Action:

i. Affording such additional relief, including award of fees as the Court may deem just and proper.

Dated: New York, New York
June 11, 2015

Respectfully submitted,

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