

**Request to File as a Related Case with Greenberg v. Bloomberg et al.; Index No. 06/105857
Assigned to Part 17**

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

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In the Matter of the Application of Jonathan Greenberg
and Luther Harris,

Petitioners,

NOTICE OF PETITION

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

Index No.:

-against-

The City of New York, Michael Bloomberg, in his
capacity as Mayor of the City of New York, Adrian Benepe,
in his capacity as Commissioner of the New York City Department
of Parks and Recreation and The New York City Department
of Parks and Recreation

Respondents.

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SIRS/MESDAMES

PLEASE TAKE NOTICE, that upon the annexed Verified Petition duly verified the 16th day of January 2007, and upon all the prior pleadings and proceedings heretofore had herein, an application for relief pursuant to Article 78 of the C.P.L.R. will be made at the Supreme Court of the State of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the ___ day of February 2007, at ___:___ o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for a judgment vacating, annulling and setting aside the Negative Declaration of environmental impact and Environmental Assessment Statement by the New York City Department of Parks and Recreation regarding the redesign of Washington Square Park, and to require the New York City Department of Parks and Recreation to comply

with the requirements of the State Environmental Quality Review Act (“SEQRA”) and the City Environmental Quality Review (“CEQR”), and for such other and further relief as to the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 403(b), answering papers are due at least seven days before return date of this motion.

Dated: New York, New York
January 17, 2007

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The City of New York and
Michael Bloomberg, in his official capacity as Mayor of the City of New York,

Adrian Benepe, in his official capacity as Commissioner of the New York City
Department of Parks and Recreation and
The New York City Department of Parks and Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10021

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

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In the Matter of the Application of Jonathan Greenberg
and Luther Harris

Petitioners,

VERIFIED PETITION

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

Index No.:

-against-

The City of New York, Michael Bloomberg, in his
capacity as Mayor of the City of New York, the New York
City Adrian Benepe, in his capacity as Commission of the
New York City Department of Park and Recreation and
the New York City Department of Recreation,

Respondents.

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Petitioners, by their attorneys, Alterman & Boop LLP, as and for their Verified Petition
pursuant to CPLR Article 78 respectfully allege as follows:

PRELIMINARY STATEMENT

1. This proceeding is commenced pursuant to Article 78 of the New York Civil Practice Law and Rules.
2. Petitioners seek to annul Respondents' November 8, 2006, Environmental Assessment Statement (the "EAS") regarding the redesign of Washington Square Park (the "Park") and the Negative Declaration based on that EAS indicating that there is no possibility of an adverse environmental impact ("Negative Declaration") on the basis that same fail to comply with the requirements of the New York State Environmental Quality Review Act ("SEQRA"), 6 NYCRR § 617 *et. seq.* and the

New York City Environmental Quality Review (“CEQR”) 43 RCNY § 6-01 et. seq. and 62 RCNY § 5-02.

3. Petitioners seek such relief on the specific grounds that Respondents’ EAS fails to address at least three major facets of the intended project and fails to provide even a semblance of the statutorily mandated “hard look” at the relevant areas of environmental concern and “reasoned elaboration” of the basis of Respondents’ determination.
4. Simply put, Respondents’ EAS and the Negative Determination issued pursuant thereto are insufficient and non-compliant with the statutory requirements on their face.
5. Indeed, the approach the Respondents have followed in the issuance of the EAS and Negative Declaration fits into an established pattern of a lack of complete or accurate disclosures regarding the proposed redesign of the Park (the “Project”) resulting in the frustration of the laws intended to ensure the democratic participation of the very community which is to be affected by the Project.

BACKGROUND

6. Petitioners were two of several individuals who in April of 2006 instituted an action against Respondents (Greenberg et. al. V. Bloomberg, Index 06/105857) on the grounds that Respondents had failed to disclose in its numerous presentations before the bodies charged with reviewing and/or approving the Project – Community Board 2, the Landmarks Preservation Commission, and the Arts Commission – their true intentions to effect a massive thirty-three percent (33%) reduction of the gross area of the fountain plaza and to further substantially reduce the useable area of this plaza by

provisioning the central fountain in the plaza with towering water sprays, thereby drastically altering if not wholly destroying the historic and heralded use of this fountain plaza as a unique, impromptu gathering and performance site.

7. On the basis of a record which quoted statements of Respondents' own park designer and prime spokesman George Vellonakis that no substantial reduction or change in use was intended (Exhibit A);¹ a letter to Respondents from Council Members Alan Gerson and Christine Quinn confirming an understanding that the maximum reduction would be 10% (Exhibits C), the understanding of Community Board 2 ("CB2") expressed in approving resolution that the expansion of green areas of the park would not be at the expense of the size of the plaza (Exhibit D), and the wholly contradictory representations contained in Respondents' own papers that on the one hand any reduction had been fully disclosed and on the other that Respondents first measured a twenty-three percent (23%) reduction only after the institution of the proceeding, (Exhibit E)², this Court, per the Honorable Emily Jane Goodman, agreed.
8. Accordingly, the Court issued a decision dated July 25, 2006, granting Petitioners' Article 78 and finding that Respondents had in fact failed to present complete and accurate information about significant aspects of its plans "which could impact the use of the fountain and fountain plaza as a gathering place for cultural and political activity" thereby precluding the exercise of the oversight role of the Community Board as mandated in the New York City Charter and thereby denying the Landmark Preservation Commission and the Arts Commission the opportunity to fully consider the proposal. (Exhibit F).

¹ Indeed, Mr. Vellonakis's representation to the public that the maximum reduction would be 5% is captured on video at minute 3 of the DVD attached as Exhibit B to this petition.

² Exhibit E, Respondent's Verified Answer to Petitioner's Article 78 Petition in Greenberg v. Bloomberg et al.; Index No. 06/105857, at pg. 15.

9. As a result, renovation of the fountain and fountain plaza was enjoined pending further review by Community Board 2 and in turn by the Landmarks Preservation Commission and the Arts Commission.
10. Respondents appealed this decision to the Appellate Division and argument was heard on October 21, 2006. No decision has yet been issued.³
11. The Final EAS at issue in the present Article 78 (Exhibit H) suffers from the same apparent unwillingness on the part of the Respondents to provide complete disclosure of its planned work which lead the earlier Greenberg, *supra* proceeding.
12. Indeed the document is so factually insufficient as to evince a clear intent by Respondents to avoid a potentially positive declaration of all costs in order to again subvert the democratic process inherent in SEQRA and CEQR for public input into any project which by its size and nature have other than a negligible effect.

REGULATORY SCHEME

13. Simply put, the heart of SEQRA and CEQR legislation is a two step process. The first is the preparation of an EAS to permit an agency to determine if there **may** be any substantial impact on the environment – a term which under the statute includes not only effects on natural resources and air quality, but also the impact on a community and its use of a facility even during the construction as well impacts on the streetscape and pedestrian traffic.
14. Only if a thorough analysis of all the mandated factors permits the conclusion that there will be no impact does the process stop at Step 1.
15. In all other circumstances, a more detailed EIS must then be performed and the public given the opportunity to comment in order to permit there to be a reconciliation of the

³ Somewhat shockingly, even after Respondents set forth their representation concerning the 23% reduction before this Court, Respondents nonetheless in their draft EAS dated September 1, 2006 and furnished to CB2 and Council member Gerson for comment made the representation that the reduction would be 14%. (Exhibit G)

competing interests of the planned project and those of the community environment in the broad sense of that term.

16. Indeed, the stated purpose of SEQRA and CEQR is to ensure that “a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making processes of state, regional and local agencies.” 6 NYCRR § 617.1(d). See Matter of Coca-Cola Bottling Co. v Board of Estimate, 72 N.Y.2d 674, 679 (1988).
17. Moreover, with regards to a project like the redesign of the Park, which because of its size is classified as a Type I project, there is a presumption that an EIS will be required. 6 NYCRR § 617.4.
18. This is then the political and legislative setting against which the EAS at issue must be reviewed.

THE GUIDELINES

19. The guidelines for performing an EAS set forth in the CEQR Technical Manual (Relevant Sections are Excerpted at Exhibit I) require, at minimum, an accurate description of the project and/or the work to be done. Without a sufficient and accurate description, there is no way any agency can perform an evaluation a project’s potential environmental impact. 6 NYCRR §§ 617.2(m), 617.3. Tehran v. Scrivani 97 A.D.2d 769,
20. As in the case of the ever shifting size of the fountain plaza, at issue in the prior legislation, Respondents here fail to fully disclose and/or address material aspects of the project in at least three major areas which must be addressed under SEQRA and CEQR: Natural Resources; Neighborhood Character; and Construction Impact.

21. As Respondents have failed to satisfy this minimum requirement in performing their review, it follows that they have failed to adhere to the procedural and substantive requirements of SEQRA and CEQR.
22. This persistent failure to properly address material aspects of the Project in the EAS – and in general – is not a mere technicality. Rather Respondents’ conduct frustrates the very purpose of the underlying legislation.

TIMELINESS

23. This action is timely commenced as the Respondents’ EAS was finalized on November 8, 2006. See CPLR 217(1).

PARTIES

24. Petitioner Jonathan Greenberg is a registered voter and taxpayer who for the past twenty-five (25) years has lived at 15 Charles Street, in Greenwich Village, New York City where he currently resides with his wife and his two young sons. His residence is located five blocks from Washington Square Park and he often spends time in the Park by himself and with his family.
25. Petitioner Luther Harris is a 69 year old taxpayer who has lived at One Fifth Avenue in New York City, a half block from the Park, for thirty years. He is not only a frequent user of the Park, he is also a historian. His book, *Around Washington Square* (2001), is generally considered the definitive history of the Park and its environs.
26. Respondent the City of New York is a municipal corporation.
27. Respondent Michael Bloomberg is the Mayor of New York City.
28. Respondent New York City Department of Parks and Recreation is a mayoral agency of the City of New York.

29. Respondent Adrian Benepe is the Commissioner of the New York City Department of Parks and Recreation.

RELEVANT DOCUMENTS

30. Upon information and belief, there are three basic documents which describe the work contemplated by Respondents relative to the redesign of the Park and thus provide the factual underpinning for the issues raised by the present Article 78 petition:
- a. the Contract Drawings for the Reconstruction of the Fountain, Plaza, and Northwest Quadrant dated February 2006 provided to Petitioners by Council Member Gerson pursuant to a written request for information (“Contract Drawings” excerpted at Exhibit J);
 - b. the Proposal for Bids, Bid Agreement and Specifications for the Reconstruction of the Fountain, Plaza, and Northwest Quadrant dated April 13, 2006 (“Bid Documents” excerpted at Exhibit K) furnished to potential contractors in spring of 2006⁴ were also obtained from Council Member Gerson pursuant to a written request for information ; and
 - c. the EAS which purports to analyze the project’s potential for having an adverse impact on the environment and contains a description of certain “major elements” of the proposed redesign.⁵ (Exhibit H).

⁴ While it is Petitioners’ understanding that the project is to be re-bid because all the bids greatly exceeded the projected budget, counsel for Respondents has represented that the changes to the plans for the purpose of rebidding were anticipated to be minor and primarily involve a different selection of materials. Respondents’ counsel has also represented that as of January 16, 2007 no contract has been issued for bids for the renovation of the Park, and that it will take approximately fifty days from the date that a contract is noticed for bid before work in the Park can commence. Based on these representations, Petitioners are not moving for a preliminary injunction, but reserve the right to seek one should events require it.

⁵ While the Negative Declaration contains some descriptions of the work to be performed, it does so only as a less detailed summary of the discussions and findings contained in the EAS. (Attached as Exhibit L).

31. Though Respondents have issued different iterations of these project documents, these three sets of documents (collectively the “Documents”) are the most recent and complete versions of Respondents proposed work of which Petitioners are aware.

ARGUMENT

32. Petitioners have commenced this action against Respondents pursuant to CPLR 7803 for acting in a manner which is ultra vires, in violation of lawful procedure and contrary to the SEQRA, 6 NYCRR §617.7 et seq.; CEQR, 43 RCNY § 6-01 et. seq.; and 62 RCNY § 5-02.
33. Whether Respondents are correct in their ultimate conclusion that the project will not have an adverse environmental impact is not at issue. Instead, the threshold question here is whether or not the EAS was adequate, i.e. "whether the agency identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination." Matter of Jackson v New York State Urban Dev. Corp., 67 N.Y.2d 400, 417 (1986).
34. As discussed below, the EAS issued by Respondents contains numerous glaring omissions which individually constitute violations of SEQRA and CEQR and taken together demonstrate that Respondents have wholly failed to comply with either the letter or the spirit of SEQRA and CEQR.
35. Indeed, on its face, the EAS fails to conform with the CEQR Technical Manual (the “Manual”) which provides highly detailed instructions on how an EAS must be completed even though Respondents’ compliance with same is mandated. See Coalition Against Lincoln W., Inc. v. Weinshall, 21 A.D.3d 215, 223 (N.Y. App. 1st Dept. 2005).

A. Respondents' Natural Resources Assessment Misstates the Extent of the Construction Activities.

36. Chapter 3I. § 200 of the Manual states that a Natural Resources Assessment is necessary when a natural resource is present on or near the work site or when the project involves disturbance of a natural resource. (Manual at 3I-12, Exhibit I page 1).
37. As admitted in the EAS, the trees currently growing in the Park clearly constitute a natural resource for the purposes of CEQR. (Manual at 3I-18, Exhibit I page 2)(Exhibit H, EAS at 29).
38. The Documents indicate that the Project involves the removal of trees, hence triggering Respondents' obligation to conduct a Natural Resource Assessment.
39. Specifically, Sheet No. 4 of the Contract Drawings titled the Staging and Tree Protection Plan purports to depict in detail the trees currently residing in the Park; the trees which are to be shielded from potential damage from the construction efforts; the trees which are to be relocated within the Park; and the trees which are to be removed from the Park entirely. (Exhibit J).
40. Specifically, Sheet No. 4 indicates that of the one-hundred twenty (120) trees in the North-West quadrant of the Park which measure at least 20 inches in diameter, two (2) will be transplanted and eight (8) will be permanently removed.
41. The Bid Documents similarly indicates that two (2) trees measuring more than 20 inches will be relocated, but also estimates that thirty-two (32) trees measuring between 6 and 18 inches in diameter will be removed from the north-west quadrant of the Park altogether.⁶ (Exhibit K).

⁶ The Bid Documents make no reference to the removal of trees greater than 18 inches in diameter.

42. Based on these two documents together, as many as forty (40) of the one-hundred eleven (120) trees – approximately 30% of the total– in the north-west quadrant of the Park will be permanently removed.
43. While the Natural Resources Assessment in the EAS correctly notes that the Manual provides that “adverse indirect or direct effects are often triggered by the removal of natural resources (such as the removal of trees...)” (Exhibit H, EAS at 36) astonishingly, however, the fact that the project at issue involves the removal of trees is not disclosed at all in the EAS – not in the Natural Resources Assessment or in any other section of the document.
44. The removal of such a large number of trees must have some impact. However, the EAS fails to provide even a cursory analysis of the impact resulting from the removal of the trees.
45. Accordingly the EAS fails to contain any analysis of the impact of this removal.
46. As a result, the Natural Resources assessment fails to do the absolute minimum required by the SEQRA AND CEQR, and that is to “describe fully and in appropriate detail the construction and operational activities associated with the action and analyze their interaction with the resource itself and the environmental systems that support it.” (Manual 3I-13, Exhibit I page 3).

B. Respondents’ Neighborhood Character Assessment Fails to Address the Projects Proposed Changes to Pedestrian Flow/Circulation

47. The CEQR Manual specifically lists “pedestrian activity and circulation” and “streetscape elements” as “urban design” features relevant to the assessment of a project’s impact on Neighborhood Character. (Manual 3H-1, Exhibit I page 4).

48. Relevant to those two aspects of Neighborhood Character as defined in the Technical Manual, the EAS indicates that Respondents plan to install permanent perimeter fencing at the street line around the entire park and eliminate, reroute, and/or diminish an unspecified number of pedestrian pathways which direct and control the flow of pedestrian traffic through and around the Park.
49. These project components, labeled “Perimeter Fencing” and “Pathways & Circulation” in the EAS, are indeed listed by Respondents as two of the five major project elements. (Exhibit H, EAS at 9-10).
50. Moreover, Respondents’ EAS contains a section entitled Neighborhood Character Assessment, presumably because of these aspects of the project.
51. In that section, the EAS sets forth the general proposition that several minor disruptions to things like pedestrian circulation and streetscape can, when taken together, have a significant impact on neighborhood character. (Manual 3H-1,2, Exhibit I page 4,5).
52. Yet, while Respondents list “Perimeter Fencing” and “Pathways & Circulation” as major elements of the overall project, (Exhibit H, EAS at 9) Respondents fail to address these major design elements in the discussion of Neighborhood Character.
53. In fact, the Neighborhood Character assessment makes no mention of these two major design elements at all.
54. However, it is clear from the plans that in addition to the removal of several pathways, the main pedestrian thoroughfare will be substantially reduced by the addition of large planter boxes down the center of what is now wide, free flowing walkway. These walkways will be further reduced by the installation of additional rows of benches alongside the planters. (Exhibit J).

55. At present, these wide thoroughfares are used by park patrons for congregating as well as for travel. The installation of large concrete planters down the center of these thoroughfares will permanently alter their use.
56. Despite these major alterations to the layout of the park, the EAS includes no usage study of the current amount of foot traffic and no analysis of how the changes to these pedestrian pathways will affect park usage.
57. Clearly, the installation of a perimeter fence and the diminution and alteration of pedestrian walkways must have some impact on the way the public interacts with the Park. Whether the impacts are minor or major, these two changes to the streetscape must be acknowledged and analyzed, particularly where Respondents admit, taken together as “moderate impacts” may collectively have an adverse effect on Neighborhood Character. (Manual at 3H-3, Exhibit I page 6). See Matter of LaDelfa v Village of Mt. Morris, 213 A.D.2d 1024, 1025 (App. Div. 4th Dept 1995).
58. The failure to consider at all these changes to the way the Park interacts with the surrounding streets and pedestrian traffic demonstrates a facially insufficient assessment of the impact the project will have on Neighborhood Character. Consequently both the EAS and Respondents’ Negative Declaration issued pursuant to it must be annulled.

D. Respondents Fail to Adequately Describe the Duration, Type, and Extent of the Projects’ Construction Activities.

59. In addition to the tree removal, the redesign of the Park necessarily involves some amount of demolition; excavation and soil removal; grading; masonry work, including the transport, mixing, and use of concrete; heavy machinery; and the closing of substantial portions of the park to the public for extended periods of time.

60. Some of the specific components of the construction can be gleaned from the Bid Documents and the Construction Drawings. These include, but are not limited to, the demolition of the current fountain plaza; the excavation of the new fountain site and moving of the fountain; the excavation of lines for plumbing; the excavation of the site for installing the underground holding tank for the relocated fountain; the demolition and removal of concrete walkways; and the excavation for and installation of a marble border around the entire perimeter of the park. (Exhibit H, K).
61. These activities will necessarily impact the environment with respect to two categories of Construction Impacts: access to “open space” and “fugitive dust.” CEQR Manual 3S-2, Exhibit I page 7).

Open Space

62. The EAS properly states that the “significance of construction impacts are determined based on the duration and magnitude of the project.” (Exhibit H, EAS at 36).
63. Yet, with respect to Construction Impacts, the EAS states only that the construction will happen in one-year phases and goes into no further detail. (Exhibit H).
64. The EAS fails to discuss the timing and staging of these phases, and does not describe at all the work to be performed in each stage.
65. In addition, while the EAS states that Respondents will utilize some methods to mitigate potential adverse impacts, it fails to describe what those methods might be.
66. Nor does the analysis address the proposed “one-year periods of time” that the park will theoretically be closed to the public, or explain what it means to “undertak[e] a carefully-phased construction program.” Id.
67. While the report goes on to state that “heavy construction” will only take three months, it fails to describe at all what work will be done during the rest of the initial

one-year phase, what the other phases will entail, and how much of the park will be closed for renovation and for construction staging. *Id.*

68. Moreover, according to the CEQR Manual, a proper analysis of construction impact on open space should “document[] the amount of open space [affected], the length of time that the open space would be used, and the current condition of the open space and current utilization by the community.” (Manual 3S-4, Exhibit I page 8).
69. Without a analysis of the number of people who use the park, how they use it, and when, it seems impossible for Respondents to arrive at the conclusion that the carefully-phased construction program actually mitigates the adverse impact the construction will have on public access to the park.
70. The EAS, however, contains none of this analyses.
71. In addition, absent any specific information regarding the duration, nature and extent of the construction activities, it is impossible to measure how fugitive dust, park closure, construction vehicle emissions, and sundry other byproducts of construction in what is currently open green space will have on the environment during the duration of the project.

Fugitive Dust

72. Moreover even though the project is admittedly a multiple year construction project, but the EAS includes only a cursory acknowledgment that air quality is even a concern. (Exhibit H, EAS at 36).
73. With respect to fugitive dust, the report states only that “construction staging methods will be undertaken to minimize the release of construction-related dust.”
74. However, there is no further discussion. Not a single detail of Respondents’ planned staging methods is given.

75. While Respondents are not necessarily required to employ the most technologically advanced methods to minimize fugitive dust, an explanation of the anticipated methods rather than a mere passing reference to methods in general is required. See Spitzer v. Farrell, 100 N.Y.2d 186 (2003).
76. According to the CEQR Manual, “if construction would result in fugitive dust emissions **even of a short duration**, the effect of those emissions is usually considered.” (Manual 3S-2, Exhibit I page7) (emphasis added). Such consideration should “quantif[y] the length of time the dust-causing activities are expected to last, and describes the measures that are undertaken to mitigate the emissions of fugitive dust (i.e., watering down of excavation sites, etc.)” (Manual 3S-6, Exhibit I page 9).
77. The Manual further states that “[i]f the project sponsor has committed to implementation of [mitigation] measures they may be incorporated into the project description and analyzed as a project component, thereby reducing project impacts.” No description of mitigation measures appears in the EAS, in the Bid Documents, or in the Contract Drawings.
78. While it is herewith possible that the project might involve appropriate measures to control fugitive dust, Respondents have not made any effort to indicate that this is the case. That failure, together with the absence of any analysis of the impact the construction will have on park usage, demonstrates again a wholly inadequate assessment of the project’s Construction Impacts on the environment.
79. Consequently, Respondents’ EAS and the Negative Declaration issued pursuant to it must be annulled.

CONCLUSION

80. Whenever any construction project involving a state or local government agency has any potential to result in an adverse impact on the environment, an EAS is required. 6 NYCRR 617.3-4, 6.
81. While such EAS was performed by Respondent, in so performing same, Respondents have failed to meet even the minimal requirements set forth in the act: to accurately describe the work to be done.
82. This is particularly significant since, as Respondents concede in the EAS, the project is a Type I project, which carries with it the “presumption that [the project] is likely to have a significant adverse impact on the environment.” 6 NYCRR §617.4 (b)(6)(i).
83. Consequently, Respondents can avoid conducting an EIS only by “determin[ing] either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.” 6 NYCRR §617.7. See City Council v. Town Bd., 3 N.Y.3d 508 (2004).
84. It should be noted that “[t]he threshold at which the requirement that an EIS be prepared is triggered is **relatively low**: it need only be demonstrated that the action **may** have a significant effect on the environment.” Chinese Staff & Workers Assn. v. New York, 68 N.Y.2d 359, 364-365, (1986)(emphasis added).
85. Notwithstanding the presumption that this Type I project will have some adverse environmental impact and the law’s clear preference for a more in depth EIS in most cases, Respondents have seen fit to issue a Negative Declaration based on a patently inadequate EAS.

86. Respondents fail to do the absolute minimum required by the SEQRA AND CEQR to “describe fully and in appropriate detail the construction and operational activities associated with the action and analyze their interaction with the resource itself and the environmental systems that support it.” (Manual 3I-13, Exhibit I page 3).
87. This failure “to identify those relevant areas of environmental concerns and take a hard look at them” constitutes noncompliance with the requirements of SEQRA.” LaDelfa, supra at 1025; see Matter of Tehan v Scrivani, 97 A.D.2d 769 (App. Div. 2d Dept 1983).
88. In Matter of Chatham Towers Inc. v. Bloomberg, 2004 NY Slip Op 24516 (N.Y. Sup.Ct. 2004) the Court ordered the City to conduct and EIS when they failed to adhere to the technical requirements set forth in the Manual.
89. Specifically, the Manual required the City to include any hospitals within one mile of the project site on the project’s community facilities map, and the city failed to do so.
90. In annulling the city’s EAS and Negative Declaration and ordering the city to conduct and a more thorough EIS, the court found this “gross oversight[] to constitute a violation of both SEQRA and CEQR.” Id. at *9.
91. In this case Respondents’ EAS fails to contain any description of or analysis of the impact of the removal of a significant number of trees; failed to treat the installation of a perimeter fence and the diminution of pedestrian walkways as material to Neighborhood Character; and failed to describe the construction work with any specificity so as to permit the analysis of its impact both as to continuing use of the path and fugitive dust.
92. These gross oversights constitute a violation of both SEQRA and CEQR, and requires that the EAS and Negative Declaration be annulled.

93. Petitioners do not seek to substitute Respondents' conclusions with their own. Instead, Petitioners ask only that the Court hold Respondents to the bare minimum required by the statute – that Respondents "identif[y] the relevant areas of environmental concern, [take] a hard look at them, and ma[k]e a 'reasoned elaboration' of the basis for its determination." Matter of Jackson, 67 N.Y.2d at 417.
94. "Where an agency fails to take the requisite hard look and make a reasoned elaboration, or its determination is affected by an error of law, or its decision was not rational, or is arbitrary and capricious or not supported by substantial evidence, the agency's determination may be annulled" Matter of WEOK Broadcasting Corp. v Planning Bd., 79 NY2d 373, 383 (1992).
95. If Respondents' faulty determination is not annulled, Petitioners and the community at large will be injured in that insufficient provisions will be made to mitigate or avoid potentially adverse impacts on the environment stemming from Respondents' planned project and Respondents will be able to avoid the more detailed planning and public comment provisions attendant on an EIS.

PRAYER FOR RELIEF

WHEREFORE, plaintiff-petitioners respectfully request that this Court render a judgment and order containing the following relief:

- (a) A declaratory judgment that the November 8, 2006 EAS regarding proposed renovations of Washington Square Park do not comply with the requirements of the SEQRA and CEQR;
- (b) An order annulling the November 8, 2006 CEQR, EAS and Negative Declaration
- (c) Awarding costs and fees in this action;

(d) Granting such further or other relief as the Court deems just and equitable under the circumstances of the case; and

(e) Upon the filing of an opposition, a reasonable amount of time to file a reply.

Dated: January 17, 2007

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