

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

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THE BATTERY ALLIANCE, BATTERY PARK  
CITY NEIGHBORHOOD ASSOCIATION,  
JOHN DELLAPORTAS and J. KELLY McGOWAN,

Index No.: 162911/2025

(Perry-Bond, J.)

Petitioners,

-against-

BATTERY PARK CITY AUTHORITY, U.S. ARMY  
CORP OF ENGINEERS, U.S. FISH AND WILDLIFE  
SERVICE, U.S. ENVIRONMENTAL PROTECTION AGENCY  
and FEDERAL EMERGENCY MANAGEMENT AGENCY,

Respondents.

For a Preliminary and Permanent Injunction, Declaratory  
Judgment and Order Pursuant to Article 78 and CPLR 6301.

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**PETITIONERS' MEMORANDUM OF LAW  
IN FURTHER SUPPORT OF VERIFIED PETITION**

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## PRELIMINARY STATEMENT

This is a proceeding pursuant to Article 78 of the Civil Practice Law and Rules brought by two grassroots community organizations and two individual members of those organizations (“Petitioners”) against the Battery Park City Authority (“BPCA”) seeking declaratory and injunctive relief. Respondent BPCA is a New York State public benefit corporation that created and maintains Battery Park City (“BPC”), a 92-acre community on the west side of lower Manhattan. The proceeding arises out of BPCA’s approval of a coastal protection “Resiliency” Project for BPC. The Resiliency Project is a two-phase, inter-related plan with the purported goal, when completed, of protecting the residences and businesses of BPC from sea level rise and coastal flooding. The plan calls for a flood protection system with a combined installation of floodwalls, gate deployments and drainage infrastructure improvements.

This proceeding challenges the environmental review of the second phase of the Resiliency Project, entitled the North/West Battery Park City Resiliency Project (the “North/West Project”), which received its final New York State approval on May 30, 2025. The location of the second phase is generally along the north and west areas of BPC. Notwithstanding that flood protection is a worthy goal, BPCA’s plan would needlessly wreak havoc on the acclaimed Battery Park City Esplanade and adjacent public parks and spaces, primarily by dramatically altering these enormously popular and widely-used public spaces with a one-mile plus long concrete wall ranging in height from 16.0-19.5 feet surrounded by a 30-foot wide “vegetation free zone” (see Design Flood Elevation Map, Appendix A to Final Scope of Work to Prepare a DEIS, p. 28).

<https://media.bpca.ny.gov/wp-content/uploads/2025/05/16135729/Appendix-A-Final-Scope-of-Work-1.pdf>.) Among the casualties of this unfortunate and reckless plan are the destruction and removal of hundreds of decades-old shade trees.

In some ways the most frustrating aspect of this wide-ranging plan is that it is, likely, unnecessary. Battery Park City was largely spared the worst effects of Superstorm Sandy in 2012, particularly in comparison with other shoreline locations in lower Manhattan. As then Mayor Michael Bloomberg observed about Sandy, the East Side of Lower Manhattan was badly flooded, while the Hudson River waterfront south of Chambers Street and north of the Battery “held up pretty well.” The reason is that Battery Park City was built to withstand major flooding, and, as Mayor Bloomberg emphasized, “for the most part, it did.” A Stronger, More Resilient New York, p. 7:

[https://www.nyc.gov/assets/sirr/downloads/pdf/Ch3\\_Coastal\\_FINAL\\_singles.pdf](https://www.nyc.gov/assets/sirr/downloads/pdf/Ch3_Coastal_FINAL_singles.pdf). The FEIS confirms that most of the neighborhood’s building footprints are within the “500-year floodplain,” meaning that the likelihood of a flood hitting the buildings is a miniscule 0.2% per year (see Appendix A to Final Scope of Work to Prepare a DEIS, Figure 4, p. 7).

<https://media.bpca.ny.gov/wp-content/uploads/2024/08/28162946/Appendix-A-FSOW.pdf>. In light of this crucial distinction, BPCA should have focused its attention – as Petitioners urged it to do -- on other approaches that are less expensive, less intrusive and less destructive, but equally effective.

This lawsuit focuses on BPCA’s legally flawed environmental review of the Project. As is discussed in this Memorandum of Law, BPCA had before it options that it arbitrarily and capriciously left wholly unexamined without reasoned elaboration or rational explanation. BPCA also unlawfully “segmented” the required environmental review into two phases, thereby

avoiding and precluding an examination of the cumulative negative environmental impacts of the two phases. BPCA also failed to propose reasonable and appropriate mitigation measures, particularly as relates to loss of scarce open space and parkland. And it failed to include in its environmental review any analysis of the potential adverse impacts of a proposed easement it is currently seeking that concerns placement of the floodwall.

As a result, this Court, respectfully, should grant the relief Petitioners are seeking. In particular, it should declare that BPCA violated applicable environmental statutes, rules and guidelines, annul and vacate BCPA's environmental review of this Project, and compel BPCA to undertake a Supplemental Environmental Impact Statement in accordance with the controlling statutes and administrative rules.

### **STATEMENT OF FACTS**

#### **A. Battery Park City**

Battery Park City is a planned community that runs along the Hudson River in Lower Manhattan. It was built in stages over the past half-century under a detailed set of design strictures provided in a 1979 Master Plan and 1981 Design Guidelines. The community sits on landfill salvaged from construction of the adjacent World Trade Center on what previously had been navigable Hudson River. The Guidelines are the defining features of Battery Park City and what give the neighborhood its unique character. The "crown jewel" of the community is the Esplanade, with its canopy of mature shade trees, where residents, visitors and workers can enjoy peaceful strolls and striking views along the river and an external pathway for runners, cyclists and other exercise enthusiasts.

With completion of the first stages of Battery Park City in the mid-1980s, architecture and urban planning experts raved. In 1986, acclaimed architecture critic Paul Goldberger wrote:

The central idea at Battery Park City is that there is something more important than the single building, more important than the individual developer--more important even than the individual apartment renter or office-space leaser. It is the concept of community, and it is expressed at Battery Park City both in the overall design of the complex and in the organizational structure under which it was built . . . .The overall master plan is . . . based on a particularly radical notion - that there is not too much wrong with New York as it is. . . . [The architects] . . . laid out streets, parks, squares and a riverfront esplanade, designing the public areas of the complex down to the details of street lamps and benches. . . .

Battery Park City proves that under the ideal conditions . . we still have the ability to create a convincing new urban environment. . . [W]hat happens [elsewhere] will prove whether the success of Battery Park City was an accident or a harbinger of better times for the dream of making real urban places in our age.

As Battery Park City came to completion, the raves continued:

The 1.2 mile Esplanade is the central feature of the Battery Park City Master Plan. It defines the Hudson River edge of lower Manhattan, provides access to the waterfront, and serves as a prototype for public spaces throughout Battery Park City. The overall design creates a civic scale appropriate to the expanse of the Hudson, while familiar materials complement the natural setting. The park is on two levels, providing quiet cloisters as well as a splendid tree-lined thoroughfare for pedestrians. Public art can be found at various points along the Esplanade, and city-style park benches provide an ideal place to sit and enjoy a river view. The award-winning Esplanade has become one of New York City's most valued public spaces and a model for large-scale developments around the world.

<https://architizer.com/projects/battery-park-city-esplanade/>

#### B. The Proposed Action

Given the great popularity and acclaim that Battery Park City has received since its inception and throughout its half-century of existence, many in the community were astonished

to learn of the destructive scope of BPCA's plan. The proposed action challenged in this proceeding -- the North/West Battery Park City Resiliency Project (the "North/West Phase" or "Phase 2") -- entails the construction of an "integrated" flood barrier alignment system extending along the north and west Hudson River shorelines of Battery Park City and including a number of inland blocks up to Greenwich Street. The alignment system will run along streets and open spaces between the intersection of North Moore/Greenwich Street on the north and 1<sup>st</sup> Place in Battery Park City on the south and includes a crossing of State Route 9A/West Street. Final Environmental Impact Statement ("FEIS"), Findings Statement, May 2025, p. 1. The flood protection system will consist of a combination of floodwalls, deployable gates and drainage infrastructure improvements. *Id.*

At its southern end, the proposed project is designed to connect with the South Battery Park City Resiliency Project (the "South Phase" or Phase 1"), near 1<sup>st</sup> Place. Phase 1 stretches from the Museum of Jewish Heritage, through Wagner Park, across Pier A Plaza, and along the northern border of Battery Park and Battery Park City. The Environmental Impact Statement for Phase 1 was completed in October 2022, and although Petitioners are not challenging the EIS for Phase 1, its impact on Phase 2 is directly challenged in this proceeding.<sup>1</sup> The impact from Phase 1 on Phase 2 is manifest and is discussed herein. Construction of Phase 1, which began in 2023 is, purportedly, substantially completed, although critical aspects of the Project remain unfinished, particularly as it relates to ongoing construction in Wagner Park.

### C. Adverse Impacts

Given the extensive scope of the Project and its potential to impose serious adverse impacts on the community, BPCA, as the lead agency under the legally required environmental

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<sup>1</sup> A lawsuit challenging an earlier aspect of the Project was brought in 2022 in Supreme Court, New York County (Index No. 160624/2022). The preliminary injunction was denied (Kraus, J., February 8, 2023).

review, determined (correctly) that an Environmental Impact Statement (“EIS”) needed to be conducted. Among the most devastating of the adverse impacts identified in the EIS is the planned destruction and removal from the Esplanade of over 400 mature shade trees. Although the plan calls for these trees to be mostly replaced, it will take decades for the replacement trees to satisfactorily replace the size and grandeur of the existing trees.

Aside from destroying the most cherished feature of the Battery Park City community, this action raises the very real prospect of a substantial increase in heat conditions in and around the Esplanade. Indeed, that very result arose following tree destruction and removal in Wagner Park during Phase 1 of the Project. The heat effect was no idol concern, as the community by then had already endured two years of the South Project, where such heat effect was prevalent.

As one local resident recounted in the *Battery Park City Broadsheet*:

I live above P.S. 276, and I’ve witnessed the construction... Every single tree in Wagner Park was taken down, so we have no tree canopy. That means my electric bill has increased this summer by \$150 a month, for air conditioning. I have to keep my blinds closed because it is so hot by us.

I had flood lights in my bedroom for months when you were working over in the Battery, and noise streaming all the time. We have dust in our apartments. My window is not open anymore because of it. It’s really bad for us down there. I just can’t emphasize enough how stressful it’s been to live amongst this.

And we’re not going to see any of this greenery. I love looking at these beautiful pictures [depicting the future, years after the Project’s completion], but I may not be alive for that. It’s going to be in 15 years, and I’m 54 years old. The reason we live here is for all the green space.

D. Failure to Consider a Rational Alternative Approach Without a Reasoned Elaboration.

Petitioners maintained during the environmental review process that rational and reasonable alternatives to the worst features of Phase 2 are available at a fraction of the cost,

without sacrificing the hundreds of majestic shade trees and incurring other adverse impacts arising out of BPCA's plan. This is a critical point because as set forth herein, the State Environmental Quality Review Act ("SEQRA") mandates that alternatives must be examined that mitigate adverse environmental consequences to the maximum extent practicable. The failure to do so in this case, given the catastrophic environmental consequences of the mass destruction of trees, virtually defines arbitrary and capricious. Residents urged that the relatively few Battery Park City buildings that lie in whole or in part in the 100-year floodplain can be effectively flood-proofed by basic, relatively straightforward and simple improvements. These include, for example, raising mechanical equipment, water-proofing basements and using sandbags. *See* U.S. Army Corps of Engineers ("ACE") Guidelines for Landscape Planting and Vegetation Management At Floodwalls And Appurtenant Structures, Engineering Technical Letter ("ETL") [ETL 1110-2-583](#), Section 2-2 (c)(2). A variance from the guidelines is only allowed if the project's sponsor conducts a specific type of analysis and applies for a variance. *See*, [ETL 1110-2-583](#), Section 2-2 (c)(3)(d). By comparison, the BPCA plan calls for a combination of passive structures and hand-cranked, portable floodwalls to be raised manually at dozens of locations by employees, who will purportedly be standing ready 24 hours, 7 days a week.

BPCA's explanation for choosing, instead, to destroy hundreds of 40-year-old trees is that the applicable ACE guidelines do not permit trees, bushes and other vegetation (other than grass) within 15-feet of either side of the floodwall. *See* [ETL 1110-2-583](#), Section 2-2 (c)(3)(d). Variances, however, are allowed under the ACE guidelines if the project sponsor conducts and submits a specified analysis. *Id.*

But BPCA made no application for a variance, demonstrating that it was interested merely in giving lip service to its alleged principal purpose of the Project to "[p]reserve and

enhance to the greatest extent possible the character, accessibility, including universal access, and design aesthetic of the neighborhood and its interface with the Battery Park City waterfront. . .” FEIS, Findings Statement, May 2025, p. 1. It is self-evident that because no variance was requested despite the beneficial results that would have accrued to the community, the failure to do so was arbitrary and capricious. The ACE guidelines are [generally] intended for oceanfront properties. BPCA suggested, however, that floodwall construction is more expensive and logistically difficult to implement if the wall must be built around existing trees – a cost that BPCA obviously has concluded is not worth it simply to save trees.

E. Unlawful Segmentation of the Environmental Review

Another glaring flaw in the environmental review process was the segmentation of the environmental review into two separate and distinct phases resulting in two separate and distinct environmental reviews – one for the “South” and one for the “North/West.” The South Environmental Impact Statement was conducted first and completed in October 2022; the North/West followed and was completed in May 2025. No explanation is given for the segmentation, a procedure widely frowned upon by the courts. This divided approach was particularly dubious here, where the North/West EIS expressly (and accurately) described the overall Battery Park City Resiliency Project as “integrated” and “interconnecting.” FEIS, North/West Battery Park City Resiliency Project, Findings Statement, May 2025, p. 1. *See also* “The Case for Resiliency: A Benefit-Cost Analysis for Battery Park City Resiliency Projects,” Executive Summary, p. 4 (describing the Project as a “contiguous” flood barrier system).

A major problem that can arise with the segmentation of an environmental review is that it can preclude consideration of an integrated and interconnected project’s full cumulative environmental impacts. In other words, the full brunt of an overall project’s environmental

impacts in one individual phase can be diminished if assessed separately, rather than in conjunction with the cumulative impacts of all of the inter-related phases. Among the cumulative negative impacts of the two phases of environmental review considered separately include, among other things, loss of open space, diminution of parkland, destruction and removal of trees, impairment of neighborhood character, noise, air and light pollution and increased rodents.

F. Inadequate Mitigation

As part of the environmental review of Phase 1 of the of the Project, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) determined that Wagner Park was eligible for listing in the National Register of Historic Places, and that the Project would have an adverse impact on Wagner Park. In particular, it was determined that the Wagner Park Pavilion could not be elevated and integrated into the new Wagner Park design. OPRHP agreed with BPCA that there were no prudent and feasible alternatives that would avoid demolition of the Wagner Park Pavilion, and that a Letter of Resolution be prepared for BPCA and OPRHP to stipulate to appropriate mitigation for the adverse impact. Final Letter of Resolution for South Battery Park City Resiliency Project, City of New York, Borough of Manhattan, New York County, New York, September 6, 2022.

The mitigation agreed to is essentially a written and photographic memorialization of the historic-defining features of Wagner Park, including the Pavilion. It includes interpretive panels to be installed in the new Wagner Park with a link to the BPCA website. *Id.* BPCA's proposed no mitigation which would ameliorate the loss of open space and diminish parkland being suffered by Petitioners. BPCA has provided no reasoned elaboration or explanation for the failure to mitigate negative impacts of lost parkland and open space. Merely reporting or archiving the loss of open space and historic resources highlights the lack of mitigation.

### G. The Easement

BPCA is currently seeking an easement by which Petitioners would agree to the installation of a floodwall through their property. This proposed easement was not evaluated or disclosed in the EIS. The potentiality of structural impacts has thereby been left an open question. The environmental consequences of the easement are manifest because that portion of the easement which is underground will require a geotechnical and foundational analysis in order to mitigate and avoid structural damage to Petitioners' home. This is all the more perplexing because, notably, the EIS references easements in other portions of the project area, but arbitrarily excludes reference to an easement that directly impacts the structural integrity of Petitioners' home.

### H. Commencement of this Lawsuit

Petitioners filed this lawsuit pursuant to CPLR Article 78 and CPLR §§ 3001 and 6301 on September 18, 2025. Petitioners maintain that BPCA conducted the second phase of its environmental review of the Resiliency Project arbitrarily and capriciously and in abuse of its discretion by (1) wholly failing even to consider a far less intrusive and destructive and far less costly approach; (2) unlawfully segmenting its environmental review; (3) failing propose or deliver adequate mitigation measures; and (4) failing to evaluate as part of the environmental review a proposed easement it is seeking. As a result, Petitioners respectfully urge this Court to declare that BPCA violated controlling environmental statutes, rules and guidance, annul and vacate BCPA's environmental review of the Project, and compel BPCA to undertake a Supplemental Environmental Impact Statement in accordance with the controlling statutes, rules and guidance.

## ARGUMENT

### I. THE ENVIRONMENTAL REVIEW OF THE SECOND PHASE OF THE PROJECT VIOLATED STATE AND CITY STATUTES, RULES AND GUIDANCE

The State Environmental Quality Review Act (“SEQRA”) was enacted in 1975 to strike a balance between social and economic goals and concerns about the environment. Env. Cons. Law (“ECL”) § 8-0103; 6 NYCRR § 617.1(d). SEQRA makes environmental protection a concern of every governmental agency and requires that, in proposing an action, an agency must give consideration to protection of the environment. ECL § 8-0103; 6 NYCRR § 617.1(b) & (d). Under SEQRA, an environmental impact statement (“EIS”) must be prepared if an agency’s action “may have a significant effect on the environment.” ECL § 8-0109; *see Matter of Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400, 415 (1986).

The agency undertaking the proposed action and responsible for determining whether an EIS must be prepared is known as the “lead agency.” 6 NYCRR §§ 617.2(u), 617.6. If, after taking a “hard look” at the action, the lead agency determines that an EIS is required, it must prepare a draft EIS (“DEIS”) followed by a period of public hearings and/or public comment. ECL § 8-0109; *H.O.M.E.S. v. New York Urban Dev. Corp.* 69 A.D.2d 222 (4<sup>th</sup> Dep’t 1979). Unless the lead agency withdraws the proposed action or concludes that it will not have a significant effect on the environment, it must prepare a Final Environment Impact Statement (“FEIS”) followed by written findings that the requirements of SEQRA have been met. 6 NYCRR §§ 617.9, 617.11.

SEQRA requires that an EIS be prepared for any action that “may include the potential for at least one significant adverse environmental impact.” 6 NYCRR § 617.7(a)(1), a “relatively low” threshold. *Chinese Staff & Workers’ Assoc. v. City of New York*, 68 N.Y.2d 359, 364

(1986). “Environmental impact” is defined broadly to include “social” and “economic” factors, not simply traditional environmental factors.

The FEIS must contain a description of the proposed action, including its environmental impact and any avoidable adverse environmental effects, alternatives to the proposed action and mitigation measures proposed to minimize the environmental impact. ECL § 8-0109; 6 NYCRR § 617.9(b). An agency may not approve an action unless it makes “an explicit finding that the requirements of [SEQRA] have been met and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided” by incorporating as conditions to the decision those mitigative factors which were identified as practicable. ECL § 8-0109; 6 NYCRR § 617.11(d)(5).

In New York City, technical guidance and methodologies for carrying out mandated environmental reviews are provided in the City Environmental Quality Review (“CEQR”) Technical Manual, which promotes consistency and “provides guidance . . . in the procedures and substance” of the City’s environmental review process. CEQR Technical Manual, Introduction, p. 2 (November 2020 edition). The courts have held that the City is entitled to rely on the accepted methodology set forth in the CEQR Technical Manual. *See, e.g., Northern Manhattan is Not For Sale v. City of New York*, 185 A.D.3d 515, 520 (1<sup>st</sup> Dep’t 2020); *Friends of P.S. 163 v. Jewish Home Life Care*, 146 A.D.3d 576, 579 (1<sup>st</sup> Dep’t 2017).

SEQRA establishes no provision regarding judicial review. Therefore, the courts are guided by general standards applicable to administrative proceedings, *Jackson, supra*, 67 N.Y.2d at 416; *Chinese Staff Workers, supra*, 68 N.Y.2d at 363, that is, “whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and

capricious or an abuse of discretion.” CPLR § 7804. In a “statutory scheme whose purpose is that the agency decision-makers focus attention on environmental concerns, it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively.” *Jackson, supra*, 67 N.Y.2d at 416. In assessing an agency’s compliance with the substantive mandates of the statute, courts must “review the record to determine 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.” *Apkan v. Koch*, 75 N.Y.2d 561, 570 (1990) (quoting *Matter of Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 417 (1986)). See *Peterson v. Planning Bd. of City of Poughkeepsie*, 163 A.D.3d 577 (2<sup>nd</sup> Dep’t 2018).

Notably, the failure to follow SEQRA requires that the entire governmental action be annulled. 6 NYCRR § 617.3(a).

1. BPCA Improperly Segmented its Environmental Review of the Project.

The SEQRA implementing rules define “segmentation” as “the division of the environmental review of an action such that various activities or stages are addressed . . . as though they were independent, unrelated activities, needing individual determinations of significance.” 22 NYCRR § 617.2(ah). Segmentation is generally not permissible. For example, in *Village of Westbury v. Dep’t of Transportation*, 75 N.Y.2d 62 (1989), the Court of Appeals held that reconstruction of a highway interchange was “closely linked” to the widening of the highway, as they were “complementary components” of the government’s plan to alleviate traffic generally. *Id.* at 69. The Court based its ruling that segmentation was improper largely on its application of provisions of the SEQRA rules, which require the evaluation of a SEQRA determination to consider other simultaneous or subsequent actions that are “(1) included in any

long-range plan of which the action under consideration is a part; (2) likely to be undertaken as a result thereof; or (3) dependent thereon.” 75 N.Y.2d at 68 (citing 6 NYCRR § 617.11(b)). As the Court emphasized, the two plans shared a common purpose, were integrated and were scheduled for consecutive construction. The rules “require the consideration of their combined effects even though they are not part of a single formalized plan.” 75 N.Y.2d at 69. *See also Town of Blooming Grove v. Orange County*, 103 A.D.3d 655 (2<sup>nd</sup> Dep’t 2013) (segmentation unwarranted where projects at issue were part of an “integrated and cumulative development plan sharing a common purpose”); *Matter of Citizens Concerned for the Harlem Valley Environ. v. Town Bd. of the Town of Amenia*, 264 A.D.2d 394 (2<sup>nd</sup> Dep’t 1999) (town board’s SEQRA review improperly segmented a rezoning that was an “integral part” of a mining proposal).

One of the problems with segmentation is that it can preclude consideration of highly relevant cumulative environmental effects. *See Village of Westbury, supra*, 75 N.Y.2d at 69 (SEQRA rules require consideration of “combined effects” even though they are not part of a single plan). In *Matter of Save the Pine Bush v. City of Albany*, 70 N.Y.2d 193 (1987), the City of Albany was reviewing 10 separately owned proposed projects in an ecologically unique area that it had recently rezoned. The Court of Appeals held that the city was required to review the cumulative effects of those projects. In support of its ruling, the Court cited two SEQRA rules -- 6 NYCRR § 617.11(a), which includes the following in its list of indicia of significant effects on the environment: “(11) two or more related actions undertaken, funded or approved by an agency, no one of which has or would have a significant effect on the environment, but cumulatively meet one or more of the criteria in this section; and 6 NYCRR § 617.11(b), which provides, in relevant part: “For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other simultaneous or

subsequent actions which are . . . included in any long-range plan of which the action under consideration is a part.” *Matter of Save the Pine Bush, supra*, 70 N.Y.2d at 206.

The SEQRA Handbook lists the factors that determine whether an action has been improperly segmented. *See* New York State Department of Environmental Conservation SEQRA Handbook (4th ed. 2019), ch. 2, p. 53. If any one question is answered in the affirmative, then segmentation has occurred. The factors are as follows:

- Purpose: Is there a common purpose or goal?
- Time: Is there a common reason for each segment being completed at or about the same time?
- Location: Is there a common geographic location involved?
- Impacts: Do any of the activities being considered for segmentation share a common impact that may, if the activities are reviewed as one project, result in a potentially significant adverse impact, even if the impacts of single activities are not necessarily significant by themselves?
- Ownership: Are the different segments under the same or common ownership or control?
- Common Plan: Is a given segment a component of an identifiable overall plan? Will the initial phase direct the development of subsequent phases or will it preclude or limit the consideration of alternatives in subsequent phases?
- Utility: Can any of the interrelated phases of various projects be considered functionally dependent on each other?
- Inducement: Does the approval of one phase or segment commit the agency to approve the other phases?

Application of these principles leads to only one conclusion – that BCPA acted unlawfully in segmenting its environmental review of this Project. By BPCA’s own acknowledgment, the North/West Project and the South Project are “*critical components*” of the Lower Manhattan Coastal Resiliency Program. Battery Park City Authority, “The Case for Resiliency,” Executive Summary, p. 4 (2025) (emphasis supplied). As the North/West FEIS

clearly explains, the North/West Project “involves the construction of an *integrated* flood barrier system” that is “part of a broader *integrated* coastal flood risk management system proposed for Lower Manhattan comprised of several *interconnecting* projects that together are designed to reduce the vulnerability of Lower Manhattan to coastal flood events.” FEIS, North/West Project, Findings Statement, p. 1 (emphasis supplied). At its southern end, the North/West Project is designed to “*connect*” with the South Project at approximately 1<sup>st</sup> Place. *Id.* (emphasis supplied).

Each “phase” is indisputably “closely linked” with the other phase[s] and the overall plan has “complementary components.” *Village of Westbury, supra*, 75 N.Y.2d at 69. As part of a “long range and integrated plan,” the components “share a common purpose.” *Town of Blooming Grove, supra*, 103 A.D.2d 655.

Application of the SEQRA Handbook factors for determining whether an action has been improperly segmented leads inescapably to the conclusion that this was an unlawful segmentation.

Inexplicably, neither the EIS nor BPCA offered any explanation for its determination to segment the environmental review, no less provide a “reasoned elaboration,” as the courts require. *Apkan v. Koch*, 75 N.Y.2d 561, 570 (1990) (quoting *Matter of Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 417 (1986)). See *Peterson v. Planning Bd. of City of Poughkeepsie*, 163 A.D.3d 577 (2<sup>nd</sup> Dep’t 2018). This error was no mere technical omission. Rather, it resulted in BPCA failing to take a “hard look” at the cumulative adverse impacts across the two Environmental Impact Statements. See *Village of Westbury, supra*, 75 N.Y.2d at 69; *Matter of Save the Pine Bush, supra*, 70 N.Y.2d 193 (1987).

In his Affirmation, affirmed November 21, 2025, Petitioner John Dellaportas describes some of the cumulative impacts resulting from the two phases of the Project that he, as a more

than 30-year BPC resident, has witnessed and experienced. With the Hudson River to the north and west, Battery Park to the South and the ten-lane West Side Highway to the east, Battery Park City is “functionally an island.”

Despite the two names and two phases, Mr. Dellaportas describes the considerable geographic overlap of the Project. For example, in the EIS for the South phase, only “passing” reference is made to “interior drainage improvements” being proposed, including “tidegates . . . near . . . Rector Place near the Hudson River. Rector Place is in Phase 2, 1,000 feet north of the northern boundary of Phase 1. In his more than 30 years residing on Rector Place, there have been no water drainage issues. Yet his research of the Project documentation revealed that the Rector Place tidegate is not intended to cure any existing drainage problems in his area, but rather to prevent new flooding created by the proposed flood control system that BPCA is building. BPCA’s plan to destroy and replace Wagner Park with a new flood control system that will increase the risk of flooding for Rector Place by pushing the floodwater northward, thereby requiring the new tidegate at Rector Place.

Mr. Dellaportas also explains how this past August, BPCA announced for the first time that this Spring it will be shutting off their access to the Esplanade for the second time, for another six months (or longer), to install a second tidegate -- in the very same spot as the first tidegate.

2. BPCA Failed to Explore a Rational Alternative Without Providing a Reasoned Elaboration for Such Failure.

SEQRA mandates that agencies consider and “choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects,” including effects revealed in the

environmental impact statement process. ECL § 8-0109(1). In the actions they propose, agencies shall include in their environmental impact statements “a detailed statement setting forth . . . alternatives to the proposed action.” ECL § 8-0109(2)(d). The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. 6 NYCRR § 617.9(b)(5)(v). The alternatives must include a “no-action” alternative, which should evaluate the adverse or beneficial site changes likely to occur in the reasonably foreseeable future in the absence of the proposed action. *Id.* The range of potential alternatives may include alternative sites, technology, scale or magnitude, design, timing, use and types of action. *Id.*

Alternatives must be “reasonable.” *See* CEQR Technical Manual, Ch. 23, “Alternatives” (2021 ed.) (EIS must consider range of “reasonable” alternatives to the project that have potential to reduce or eliminate a proposed project’s impacts and that are “feasible”). To be meaningful, any choice among alternatives must be based on an awareness of all reasonable options, but the degree of detail required in assessing those alternatives will vary with the circumstances and nature of each proposal. *Town of Dryden v. Tompkins Cty. Bd.*, 78 N.Y.2d 331, 333-34 (1991) (citing *Webster Assocs. v. Town of Webster*, 59 N.Y.2d 220, 228 (1983)). The rule of reason applies, so that the agency must consider a reasonable range of alternatives to the specific project. *Town of Dryden*, 78 N.Y.2d at 334 (citing *Matter of Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 422 (1986)).

Here, BPCA failed to take even the most modest of steps toward considering an alternative approach for this project. BPCA’s strategy -- apparently from the very beginning -- was to take the most extreme position, which involved tearing out Battery Park City’s very core. There is no evidence that BPCA gave any consideration to avoiding this dire result. Ironically,

BPCA's extreme measure was pursued even though the evidence is clear that Battery Park City poses the tiniest of risks for serious flooding – a miniscule 0.2% per year. Nearly all of the neighborhood's buildings are within the "500-year floodplain," according to a recent FEMA survey. See Appendix A to Final Scope of Work to Prepare a DEIS, Figure 4, p. 9

<https://media.bpca.ny.gov/wp-content/uploads/2024/08/28162946/Appendix-A-FSOW.pdf>.

It was in this context that community leaders proposed an approach far more appropriate for the greatly reduced actual flood threat that the community faces. Rather than demolish what is arguably the primary feature for which Battery Park City is most admired (its "crown jewel"), BPCA was urged to take a rational approach, more consistent with the greatly reduced risk of a flood threat. For example, this included, in the relatively few buildings situated in whole or in part in the 100-year floodplain, raising mechanical equipment, water-proofing basements and using sandbags.

BPCA's response to this far more rational and mitigating approach was that the U.S. Army Corps of Engineers guidelines do not permit trees (and bushes and other vegetation, except for grass) within 15 feet of either side of a floodwall. Variances from this prohibition are allowed, and would likely be granted here because the prohibition is intended in practice for oceanfront properties. Yet faced with this lawfully mandated approach, which mitigates significant adverse environmental consequences in a very practical way, BPCA chose not to apply for a variance. Presented with a appropriate solution that -- on its face -- addressed the needs of all stakeholders, BPCA not only failed to take a "hard look" at this option but determined not to take even the most preliminary steps to consider it. That position was inexcusable, and can only be described as arbitrary, capricious and an abuse of discretion.

3. The Respondent's Failure to Disclose the Proposed Easement in the EIS Violates SEQRA.

SEQRA mandates that an EIS identify “any adverse environmental effects of an action.” *Akpan v. Koch*, 75 N.Y. 2d 561 (1990). The “hard look” doctrine requires that an EIS must identify relevant areas of environmental concern, take a “hard look” at them and make a reasoned elaboration of the basis for its determination as to whether or not mitigation or alternatives must be applied to those areas of environmental concern. *Jackson v. Urban Dev. Corp.*, 67 N.Y.2d 400 (1986). If on the other hand, an agency fails to address an important issue in its EIS, a reviewing court may annul the decision on the grounds that the agency failed to give the requisite “hard look” to the issue. *Chinese Staff Workers Ass'n v. City of New York*, 68 N.Y. 2d 359 (1986).

The easement at issue in this proceeding is more than a relevant area of environmental concern -- it is a critical area of concern. The construction and development of the floodwall will not only impact view corridors, pedestrian access, aesthetic, and open space, it will profoundly impact the structural integrity of Petitioners' homes. Proper mitigation and alternatives are more than vital under these circumstances. The abject failure to disclose BPCA's need for this easement emphasizes its “build at any cost” approach to this project.

4. The Court Should Direct the BPCA to Prepare a Supplemental EIS

The segmentation of the environmental review aggravated by the failure of the BPCA to comply with or offer appropriate mitigation in relation to the ongoing project and project changes mandates the performance of a Supplemental EIS (“SEIS”).

SEQRA has specific regulatory requirements pertaining to the performance of a SEIS as set forth as follows:

6 NYCRR 617.9(a)(7)

(7) Supplemental EISs.

(i) The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

(a) changes proposed for the project;

(b) newly discovered information;

(c) or a change in circumstances related to the project.

(ii) The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:

(a) the importance and relevance of the information; and

(b) the present state of the information in the EIS.

(iii) If a supplement is required, it will be subject to the full procedural requirements of section 617.9 (a) of this Part except that scoping is not required.

The failure to assess the cumulative impacts of the two phases of the Project by virtue of an unlawful segmentation omitted significant environmental consequences of the Project. For example, the development of a flood control system in the South Phase has increased flood potential for the residents of the North/West Phase. The cumulative impacts of the two phases will result in loss of open space, diminution of parkland, loss of vegetation, destruction of trees and ongoing construction impacts. As it relates to construction, there is a proximity pertaining to the timing of the construction and the location of the construction of the two phases.

Second, the concealment of the easement and its revelation at the 11<sup>th</sup> hour mandates an

evaluation of the potential structural, safety and aesthetic impacts upon the residents of Liberty House. The failure to assess the significant environmental impacts as set forth herein mandates the preparation of an SEIS.6 NYCRR 617.9(a)(7).

5. Petitioners Meet the Legal Standard for Injunctive Relief.

Petitioners in this proceeding seek a preliminary injunction pursuant to CPLR § 6301. They seek an order (1) declaring that BPCA violated controlling environmental statutes, rules and guidance; (2) directing, annulling and vacating BCPA's environmental review of the Project; (3) compelling BPCA to undertake a Supplemental Environmental Impact Statement in accordance with the controlling statutes, rules and guidance; and (4) preliminarily and permanently halting work and construction on the Project until an SEIS can be conducted..

Pursuant to CPLR § 6301, a preliminary injunction may be granted where the movant demonstrates a likelihood of success on the merits, risk of irreparable injury in the absence of an injunction, and balance of the equities in its favor. *See Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839 (2005). "Success on the merits" does not mean "certainty" of success -- the evidence need not be conclusive, and a prima facie showing of a right to relief is sufficient. *Terrell v. Terrell*, 279 A.D.2d 301, 303 (1<sup>st</sup> Dep't 2001). Irreparable injury is an injury for which money damages are insufficient. *Walsh v. Design Concepts, Ltd.*, 221 A.D.2d 454, 455 (2<sup>nd</sup> Dep't 1995); *see also Sterling Fifth Assoc. v. Carpentille Corp.*, 5 A.D.3d 328, 330 (1<sup>st</sup> Dep't 2004). The injury must be direct and concrete. *Rowland v. Dushin*, 83 A.D.3d 738 (2<sup>nd</sup> Dep't 2011).

Petitioners have met this test. They have clearly established that BPCA unlawfully segmented the environmental review of the Project, a procedure that is strongly disfavored by the courts and that was pursued here by BPCA without any enunciated rationale or justification.

Further, BPCA wholly ignored, in the absence of a reasoned elaboration any consideration of an alternative approach that would have been less costly and far more favorable to petitioners and the BPC community as a whole. These actions were arbitrary and capricious and an abuse of discretion on BPCA's part. Thus, Petitioners have demonstrated a likelihood of success on the merits. Similarly, Petitioners have also demonstrated a risk of irreparable injury in the absence of an injunction. If this Project proceeds now as planned, hundreds of cherished trees will be removed and destroyed, striking a dagger in the very heart of this community. Although the plans call for replacing the trees at an unspecified time, it will indisputably be decades before replacement trees approach the level of splendor and majesty that the current trees project. In addition, the balance of equities weighs in Petitioners' favor. No work has commenced on Phase 2 of the Project, and BPCA has failed to examine reasonable viable alternatives to protect against the remote possibility of any flood event in the foreseeable future. The public-at-large will benefit from a lawful and effective supplemental environmental review alongside alternatives that mitigate negative environmental consequences to the maximum extent practicable.

Accordingly, the balance of equities here favors Petitioners, and this Court should grant the injunctive relief Petitioners are seeking.

## **II. THE NORTH/WEST PROJECT VIOLATES THE GREEN AMENDMENT**

The "Green Amendment" to the New York State Constitution, which took effect on January 1, 2022, states, in its entirety, that "each person shall have a right to clean air and water, and a healthful environment" (NY Const Art I, § 19). Citizens of New York have a private right of action under the Green Amendment. *See Friends of Fort Greene Park v. New York City Parks and Recreation Department*, 239 N.Y.S.3d 457, 490 (Sup. Ct., N.Y. Cnty. July 1, 2025) ("it must

be concluded that the Green Amendment creates a substantive right and separate cause of action”).

As set forth above, the unexamined cumulative impacts of the Battery Park Resiliency Project violate Petitioners’ rights under the Green Amendment, as it will deny Petitioners the constitutional minimums of a healthful environment. Among other things, it will subject local residents to prolonged construction activity resulting in dangerous noise levels (up to 80db by the BPCA’s own admission), dust, toxins, rodents and excessive lighting for a period of at least five years and, given the BPCA’s poor track record of meeting construction deadlines, potentially longer.

The BPCA cannot show that the North/West Project phase is justified by an important interest that is substantially related and proportionate to action it proposes to take. The unexamined cumulative impacts of the two phases of the Battery Park City Resiliency Project will wreak havoc on a community already reeling from a diminution and scarcity of parkland and open space. The Battery Park City community was designed to integrate commercial and residential use into a carefully planned neighborhood safeguarding essential characteristics of a healthful environment prioritizing vegetation, parkland, open space and recreational activities. The Battery Park City Resiliency Project tears this carefully planned framework asunder without examining proper forms of mitigation and alternatives. This simultaneously violates SEQRA and the New York State Constitution.

Accordingly, for this reason as well, a preliminary injunction should be granted.

### **III. THE NORTH/WEST PROJECT VIOLATES THE PUBLIC TRUST DOCTRINE**

The public trust doctrine is ancient and firmly established in New York common law. It holds that, where a governmental entity takes land for the public use as a park, it holds it in trust

for that purpose. Only the New York State Legislature has the power to alienate parkland for purposes other than those for which they have been designated. *See Union Sq. Park*, 22 N.Y.3d 648, 654 (2014) (“Under the public trust doctrine, dedicated parkland cannot be converted to a nonpark purpose for an extended period of time absent the approval of the State Legislature”).

As set forth above, the Resiliency Project proposes to replace a 1+ mile stretch of tree-lined parkland with a spaces with a mile-long, up to 19.5-foot high concrete wall surrounded by a 30-foot wide “vegetation free zone.” The concrete wall and vegetation free zone are not park use. Indeed, the park in question (the Esplanade) would be on the water side of the flood wall. Rather, as the BPCA has repeatedly admitted, most recently in its report, “The Case for Resiliency: A Benefit-Cost Analysis for Battery Park City Resiliency Projects 2025,” the principal purpose of the Project is to help mostly private buildings in Tribeca and the Financial District avoid property damage and reduce insurance rates.

This is a clear-cut alienation of parkland which requires legislative approval. Yet no such legislative approval has been given. Accordingly, for this reason as well, a preliminary injunction should be granted.

**CONCLUSION**

For all the reasons discussed herein, this Court respectfully should grant the relief

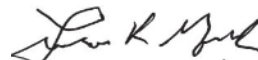
Petitioners are seeking.

Dated: New York, New York  
November 21, 2025



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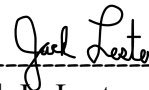


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**WORD COUNT CERTIFICATION**

Jack Lester, Esq., an attorney duly admitted to the practice of law, hereby certifies that, pursuant to 22 NYCRR 202.8-b(c), the foregoing Reply Memorandum of Law contains 7,498 words, which exceeds the word count limit by 498 words. In making this certification, I have relied upon the Word Count tool in the Microsoft Word processing program.



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