STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

FRIENDS OF FORT GREENE PARK, INC.,

Plaintiff,

vs

NEW YORK CITY PARKS AND RECREATION DEPARTMENT; JOHN DOES 1-10; and ABC CORPORATIONS 1-10,

Defendants.

SUMMONS

Index No.:

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the verified petition and complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is that Plaintiffs have their principal offices in New York County and Defendant-Respondent New York City Parks and Recreation Department made the determinations complained of and material events took place in the Judicial District that includes New York County.

Dated: September 25, 2023

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STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

FRIENDS OF FORT GREENE PARK, INC.,

Petitioners-Plaintiffs,

vs

NEW YORK CITY PARKS AND RECREATION DEPARTMENT; JOHN DOES 1-10; and ABC CORPORATIONS 1-10,

Respondents-Defendants.

VERIFIED PETITION AND COMPLAINT

Index No.:

Plaintiffs-Petitioners (collectively, "Petitioners" or "Plaintiffs"), Friends of Fort Greene Park, Inc. ("Friends"), by their attorneys, The Zoghlin Group, PLLC, for their Verified Petition and Complaint ("Complaint") allege as follows:

1. This hybrid Article 78 proceeding and plenary action concerns the improper actions of the New York City Parks and Recreation Department (the "Department" or "NYC") in proposing, reviewing, and ultimately deciding to issue a Negative Declaration of Environmental Significance dated June 2, 2023 (the "Neg Dec" or "Determination") for the Fort Greene Park Entrances, Paths, Plaza, and Infrastructure Reconstruction Project (the "Project") located in Brooklyn, New York between and bounded by Mrytle Avenue to the north, Dekalb Avenue to the south, Saint Edwards Street and Ashland Places to the west, and Washington Park to the east (the "Property" or the "Park")[1] based on the erroneous belief that the Project will not result in any potentially significant adverse environmental impacts. As a result, the Department

[1] A proposed high-rise apartment project (240 Willoughby) is attached to the Park with no street interruption between the Park and the Building. A nursing home and Kingsview Homes are located across the street from the Park, as are the Whitman-Ingersoll Homes, NYCHA developments.

has not caused the preparation of an environmental impact statement, despite the significant adverse environmental consequences that will ensue if the Project goes forward.

2. Petitioners bring this action to protect and preserve the historic identity and landscape of Fort Greene Park in Brooklyn, New York; to preserve environmental resources in and around the Park; to protect the public and Petitioner's right to clean air, clean water, and a healthful environment; to safeguard natural resources; and to ensure compliance with the law.

3. The City of New York Department of Parks & Recreation intends to significantly change the landscape of the Park, including taking down numerous mature trees, changing the entrance way to the park, adding various impervious surfaces to it, and otherwise destroying the historic landscaping developed by one of America's most famous landscape architects.

4. The Department has both statutory and Constitutional obligations to protect the Park, as it is an important environmental resource. Both SEQRA and CEQRA require the Department to consider the effect that a Project it approves may have on the environment.

5. Moreover, N.Y.S. Const. Art. I (Bill of Rights), §19 (Environmental Rights) (adopted Nov. 2, 2021, Eff. Jan. 1, 2022) imposes an additional independent obligation on the Department to protect the right of each person in the State to clean air, clean water, and a healthful environment.

6. By improperly issuing a Negative Declaration of Environmental Significance ("Neg Dec"), the Department short-circuited the State Environmental Quality Review Act ("SEQRA") process and City of New York Quality Review Action ("CEQRA") process, and therefore has not complied with the statutory and regulatory environmental review requirements, despite the

significant adverse environmental consequences that will result if the Department's Project goes forward.

FORT GREENE PARK

7. Fort Greene Park is one of New York City's oldest and most beautiful parks. It was designed in 1867 by Fredrick Law Olmstead, the father of America Landscape Architecture, together with his partner Calvert Vaux. The character of the Park is typical of Olmsted and Vaux: it has finding paths, invites the visitor to walk around them and experience a new view — *vistas* — at every turn, a patch of flowers, or a trellis. Surprise is a dominant feature. The Department's Project ignores and destroys the Park's original character, and its EAS failed to take a hard look at adverse impacts to such character and its architectural, historic, and cultural value.

8. Fort Greene Park also houses, along one of the hillsides, a small stately entry building that leads into the tomb of the remains of approximately 11,000 America patriots who were captured by British soldiers during the Revolutionary War, and who were imprisoned on ships until they died. At the turn of the 20th Century, it was determined that the remains of the prison ship patriots deserved a more significant memorial. Nationally acclaimed landscape architects McKim, Mead, and White, were chosen to supply the new memorial. They made the hillside containing the tomb into a grand staircase, 100 feet wide, leading from the base, past the tomb, to the top of the hill at the middle of Fort Greene Park. From that base, they project a broad promenade.

9. Later, a segment of the Park's promenade paving was replaced by AE Bye' beloved mounds of lawn for children's plan. Historian Michael Gotkin provided testimony to the Landmark Commission on November 21, 2017 on this topic, stating that:

> "AE Bye's landscape mounds were resonant of burial mounds, a nod to the mass graves of prisoners of war that expanded the concept of the Martyrs memorial, and also restored, and reinterpreted, Olmsted and Vaux's concept of unprogrammed green open space."

A true and accurate copy of Michael Gotkin's letter to the Landmark Commission dated November 21, 2017 is attached hereto as **Exhibit E**.

THE PROJECT

10. The action at issue in this litigation is the "Fort Greene Park Entrances, Paths, Plaza and Infrastructure Reconstruction" project (the "Project"), which was proposed and is subject to review and approval by the New York City Department of Parks and Recreation.

11. The ambitious and far-reaching project will be located at Fort Greene Park in Brooklyn, New York (a 30.17-acre area); will involve changes to the Lower Plaza and Sidewalks, the Myrtle Avenue Landscape and Southeast Park Path, the West Park Landscape, the Willoughby Street and Saint Edward Street Entrance, and the DeLakb Avenue Stairs; and will "combine[] several improvement projects proposed for the Park that would be constructed as one project under a master contract." See FEAS at Attachment A, Page A-6, §V.

12. The Department's Project plan would obliterate the design footprint laid out in the Park over the past 150 years by generations of respected and significant landscape architects.

a. The Project Plan will create an exaggerated version of portion of the Park designed by McKim, Mead, and White.

b. The Project Plan will remove the 1936 Gilmore and Clarke's stonewall at the northwest corner of the park, eliminating the "boarder" between Myrtle Avenue and the Park.

c. The Project Plan would open a broad entrance at the northwest corner as the new entrance in line with the promenade so that the promenade and the monument would be visible from the street. The new promenade would be 43 feet wide and the current landscape floral garden near the entrance at the northwest end of the promenade would be replaced with a hardscape fountain.

13. These Project features are inconsistent with the Park's history, landscape architecture, and design. For example, Olmsted and Vaux were known for not allowing pointed corners or having entranceways to their design parks at the corners. All of the landscape architects who followed Olmstead and Vaux at Fort Greene Park respected their landscape plan by assuring that the corners remain rounded. For example, Gilmore Clarke designed a rounded retaining wall at the northwest corner of the Park in 1936 in order to remain faithful to Olmsted and Vaux's original design. Belgian blocks were recycled from streets and reused to pave the edges of sidewalks surrounding the entire Park. Workers during the era of The Great Depression laid the blocks by hand and created a pattern of impressive oval at the northeast corner of the Park. AE Bye continued the use of Belgian block to create the two mounds, the feature which

restored and elevated the greenery in place, resonant of burial mounds, and promoted a performance function of unprogrammed joy.

14. In designing this Project, the Department based its design on plans that were rejected by McKim, Mead, and White that were never built, and which therefore are not relevant to this Project. The Department's plans would break the Olmsted tradition by proposing a corner entrance, taking down the Gilmore Clark northwest corner wall, replacing the original northeast corner Belgian Block Oval with pink-tinted concrete paver, and leveling the entire AE Bye mounds, and in so doing, removing at least 78 mature shade trees and endangering more during construction.

15. Therefore, the Project will cause serious adverse aesthetic impacts (described above), as well as several other significant adverse environmental impacts, including:

a. Intentional removal of about a third of the mature trees from the affected area of the Park.

b. Removal of a great many more trees because of excessive intended pruning, and the consequences of construction.

c. The addition of thousands of square feet of impermeable materials along the promenade and from replacing the mounds with concrete.

d. Addition of inaccessible, fenced-in tree pits to compensate for the loss of usable greenery.

e. Consequent interference with wildlife habitat.

f. Radical change of character to opening a wide new entryway at the northwest corner of Myrtle Avenue, removing the mounds and destroying dozens of mature trees.

16. These and other proposed changes to the Park as part of the Project alter the Park's landscape, destroy historic aesthetic enjoyment obtained from viewing and using the park and enjoying the landscape plans of these great and significant landscape architects over the last 150 years. This will cause petitioners and the public to use the park less and will cause the public and petitioners to lose the benefit of the famous landscape plans of Olmsted and Vaux; and McKim, Mead, and White; as well as other well-known landscape architects.

17. Plaintiffs do not oppose the Project. In fact, Plaintiffs have long supported responsible repairs and maintenance programs at the Park, including: repairs to pavements, restoration of the mounds, good arborist stewardship of the many trees and regular weeding of the circular garden; retention of the Historic Design of the Park; adding ADA compliant ramps to existing stairways (such as the Willoughby and Washington Park entrance); and improvements to the underlying infrastructure.

18. With this hybrid action, Plaintiffs merely seek to ensure that Project review, approval, construction, and operation do not harm local residents, cause adverse environmental impacts, degrade air or water quality, violate the law, or harm Petitioners or the public.

19. Plaintiff's opposition focuses on, inter alia, the Project's proposed elimination of the tree canopy in the NW section of the Park, which will degrade air quality, exacerbate heat island conditions, reduce shade, increase noise (by eliminating tree canopy screening), and interfere with bird habitat/migration. These adverse impacts will be felt most significantly by

majority-black and majority-brown populations[2] who currently use such section of the Park, and who will be displaced in their use and enjoyment of the Park by the Department's proposed redesign of the Park.

PRIOR LITIGATION BETWEEN THE PARTIES CONCERNING THE PROJECT

20. This is the third lawsuit commenced by petitioners and/or its members against respondent with respect to the Project.

The FOIL Lawsuit

21. In 2015 Nancy Owens Studio LLC prepared an Historic Resource Management and Operations Study of Fort Greene Park (the "Owens Report"). A true and accurate copy of the Owens Report is attached hereto as **Exhibit A.**

22. The Owens Report consists of a detailed history of Fort Greene Park, an analysis of existing site conditions, and overall design recommendations. Proposed capital improvement projects (such as the Project being litigated herein) are identified by area.

23. In 2017, two of Petitioner's members submitted a Freedom of Information Law ("FOIL") request for the Owens Report.

[2] The Park is used by low-income residents as their "backyard", a community hub for Church and family picnics. While the plan may play with square footage, it is undeniable that much of the picnicking area used by the predominantly Black public housing residents will be shifted away from areas that are closer, even adjacent, to the more affluent residential housing. Parks did not take a hard look at this adverse environmental impact or its disproportionate impact on minorities, disadvantaged groups, or environmental justice communities. Further, early Parks-generated promotional images showed the new plaza full of commercial vendors, with white users, implying an awareness that the Project will displace current users-predominantly Black neighboring residents. Beyond the NYCHA housing directly across the street and within the 400' study area (within the half mile area they could have opted to use-but did not) are numerous Black attended churches north, south, and east of the park, and another huge swath of NYCHA Housing (Farragut).

24. The Department of Parks and Recreation eventually turned over a heavily redacted copy of the Owens Report, incorrectly claiming that the redactions were supported by a non-existent FOIL exemption.

25. In 2018 petitioner Friends of Fort Greene Park and two of its members commenced an Article 78 proceeding against respondent the Department of Parks & Recreation for improperly redacting the Owens Report. Petitioners asked the trial court to compel the Department of Parks and Recreation to provide them with an unredacted copy of it. This case was captioned *Reiburn et al v. NYC Dept. of Parks & Recreation* (New York County Index No. 100532/2018) (the "FOIL Lawsuit").

26. On October 10, 2018 the New York County Supreme Court, Honorable Arlene P. Bluth presiding, found that respondent did not meet its burden to establish that any FOIL exemption applied. The Court ordered respondent to provide petitioners with an unredacted copy of the Owens Report. A true and accurate copy of the FOIL Lawsuit Decision is attached hereto as **Exhibit B.**

27. The trial court further found that "Respondent also failed to justify the redactions made on the report by mischaracterizing where the redactions began." See FOIL Lawsuit Decision, **Exhibit B.**

28. The trial court awarded Judgment for petitioners, with costs and disbursements. Id.

29. The City appealed the trial court's judgment to the First Department.

30. The First Department affirmed the lower court judgment, as modified. The First Department remanded the judgment to the trial court decision because it "failed to address

petitioners' request for counsel fees at all, including making a finding as to whether respondent had a reasonable basis to deny access to an unredacted copy of the report at issue." A true and accurate copy of the First Department Decision dated April 30, 2019 is attached hereto as **Exhibit C.**

31. On remand, the trial court found that the Department of Parks & Recreation did not have a reasonable basis to deny access to the report and, after a hearing, awarded petitioners over $135,000 in attorneys' fees, plus costs and disbursements. A true and accurate copy of the Trial Court Judgment dated January 29, 2020 is attached hereto as **Exhibit D**.

The Improper Type II Classification

32. While the FOIL Lawsuit was pending, the Department of Parks & Recreation classified the Project as a Type II action exempt from environmental review.

33. Petitioner and others commenced a second Article 78 to set aside the Type II classification because the Project has the potential for at least one potentially significant adverse environmental impact. This lawsuit was captioned *The Sierra Club et al v. The Department of Parks & Recreation et al*, New York County Supreme Court Index No. 151735/2019 (the "Type II Lawsuit).

34. The Petition was supported by several affidavits and unsworn statements, including the Owens Report (**Exhibit A**); a letter from landscape preservation consultant Michael Gotkin to the New York City Landmark Preservation Commission dated November 21, 2017 (the "Gotkin Letter", a true and accurate copy of which is attached hereto as **Exhibit E);** and an affidavit from horticultural consultant Carsten W. Glaeser sworn to April 27, 2018 (the "Glaeser Affidavit," a true and accurate copy of which is attached hereto as **Exhibit F**).

35. On December 23, 2019, the New York County Supreme Court, Honorable Julio Rodriques III presiding, granted the petition and remanded the matter back to the Department of Parks & Recreation for a "further determination consistent with this order." A true and accurate copy of the Judgment in the Type II Lawsuit is attached hereto as **Exhibit G**.

36. The trial judge recited how the Gotkin Letter (**Exhibit E**) described how the Project would adversely impact the Park's historic character:

> In particular, Gotkin states that the Project's plan, "for the first time, breaches the wooded corner of the Park and replaces the mature grove of trees and protective rustic retaining wall with an outsize grand staircase…" which also renders a critical entrance inaccessible to individuals who are wheelchair bound and to caregivers with strollers, relegating them to a ramp inconvenient to the central area of the Park. The Project has "more in common with the new luxury condominium towners …outside the park, than with the historical design and verdant nature within the park walls. Type II Judgment, **Exhibit G**, page 5 of 14.

37. The trial judge then described the relevance of the Glaeser Affidavit to his determination:

> Of particular relevance, petitioners submit the April 27, 2018 affidavit of Carsten W. Glaeser, principal of Glaeser Horticultural Consulting Inc. Glaeser inspected the trees at four locations in the northwest corner of the Park. He opines that, **contrary to the conclusion of the respondent, the majority of the Zelkova trees are "healthy and robust,"** with a small percentage of diseased trees requiring removal, and the remainder of the problems are correctable. The removal of trees, which potentially could "achieve a tree height of 50 to 60 feet, and a canopy spread of equal size … is in my opinion unthinkable" (Id.). Glaeser also concludes that the proposal to prune the 60-foot London Planetrees, along with other proposed changes, will reduce photosynthesis, weaken the trees, negatively impact air quality and increase the stress on the trees, among other problems. He disputes respondent's prognosis for other of the existing trees, and states that the aesthetics of the Park also will be harmed. Type II Decision, **Exhibit G,** pages 8-9 of 14.

Consistent with the Court's assessment of Dr. Glaeser's Affidavit, the facts demonstrate that the majority of the trees designated for removal are not sick, diseased, or at the end of their lives, and therefore do not qualify for "condition-based removal." To the contrary, they show that the majority of trees designated for removal as part of the Project are so designated for design purposes, not for tree health or public safety purposes. This fact is demonstrated by the Department's "NYC_TREE_VALUATION" record that was produced in response to a Freedom of Information Law request. The NYC Tree Valuation record contains admissions by the Department that many of the trees to be removed as part of the Project are "design-based removal[s]." A true and accurate annotated excerpt of the NYC TREE Valuation record is below:

NYC Tree Rating	FINAL REPLACEMENT VALUE (3" repl. trees)	FINAL MONETARY REPLACEMENT VALUE	CONDITION-BASED REMOVAL (no restitution)	DESIGN-BASED REMOVAL (restitution required)	REQUIRED RESTITUTION (3" repl. Trees)	REQUIRED MONETARY RESTITUTION
60.6%	10	15,988.50		X	10	15,988.50
60.6%	8	13,434.78		X	8	13,434.78
60.6%	8	13,434.78		X	8	13,434.78
60.6%	7	11,103.13		X	7	11,103.13
60.6%	11	18,764.28		X	11	18,764.28
63.8%	18	29,920.00				
63.8%	20	33,776.88				
63.8%	20	33,776.88				
63.8%	16	26,296.88				
63.8%	18	29,920.00				
55.8%	9	14,726.25		X	9	14,726.25
61.1%	17	28,673.33		X	17	28,673.33
63.8%	34	56,567.50		X	34	56,567.50
63.8%	44	73,046.88		X	44	73,046.88
63.8%	10	16,830.00		X	10	16,830.00
63.8%	31	51,541.88		X	31	51,541.88
50.6%	13	20,882.81		X	13	20,882.81
63.8%	20	33,776.88		X	20	33,776.88
63.8%	18	29,920.00				
55.8%	12	20,044.06	X		0	0.00
44.3%	14	23,469.96		X	14	23,469.96

38. Justice Rodriquez then stated the following about the Owens Report:

> Petitioners also include a copy of a study Nancy Owens Studio LLC, an urban landscape architecture firm, conducted for the Parks Department [citations omitted]. In particular, petitioners mention

> that the Owens Report recommends retaining the lawn area, including the Bye mounds, and makes frequent reference s to the significance of adhering to the Park's historic plans and purposes as much as possible. The Report also emphasizes the importance of retaining as many trees as possible, and suggests that the Parks Department avoid planting new trees in the open portions of the Park, The Project as it currently exists, petitioners suggest, ignore the history and aesthetics of the Park. Respondent has argued that the Report's purpose was to inform respondent as it planned the Project. Type II Decision, **Exhibit G**, page 9 of 14.

39. The Court considered the documents provided by respondent in support of its Type II classification, ands stated it was "troubled" by respondents' omission of the Owens Report:

> Despite [the City's representation that it provided the Court with all of the materials upon which it based its decision to classify the Project as Type II exempt from SEQRA and CEQRA], the court is troubled by respondent's failure to mention or annex the 151-page Owens Report. The Owens Report states that it was prepared for respondent's use as it planned the Project. The report's purpose was "to introduce a unified comprehensive vision for future improvements to [the Park]" (NYSCEF Doc. No. 45 [the Owens Report], p 5) and the Nancy Owens Studio used input from the Parks Department as well as from one of the petitioners (id.). The report analyzed the conditions at the Park, including its topography, infrastructure, lighting, and other issues which the Project ultimately addressed. the Owens' Report contains an extensive study of the Park's history, including its many renovations. Also, among other things, the Report discusses problems with the trees; problems with the drainage and infrastructure; the need for more adequate lighting in some areas in and around the park; and the need for ADA accessibility. As respondent describes the history set forth in the report and discusses several of the issues in the report, it appears that it may have relied on some parts of the study even though it rejected others. Not only did the respondent fail to mention the report in its Type II determination, but it does not include or even reference the report in its current papers.

Type II Decision, **Exhibit G**, pages 11-12 of 14.

40. Respondent submitted an affidavit from Mattes in opposition to the petition. The lower court found that the Mattes affidavit "only generally refers to the areas of community concerns and provides no documentation from these critical [public] meetings, which Mattes states formed the basis for respondent's [Type II] decision":

> The determination sets forth the background of the Park and the proposed changes, and it also sets forth the Type II classification. However, it does not include analysis showing which of the proposed changes fall within which classifications (see NYSCEF Doc. No. 14). The addition of ADA-compliant ramps, the repairs to damaged pipes and stairs, the addition of erosion control measures, and adjustments that make the Park code-compliant are clearly within the scope of Type II, and there is no need for further elaboration. However, the letter does not explain why the expansion of the adult fitness area, the reconstruction of the barbecue area and the basketball court, and the possible reconstruction of the entire sidewalk at Saint Edwards Street are minor maintenance and repairs which fall within the scope of Type II (see Town of Gosken v Serdarevic, 17 AD3d 576, 579 [2d Dept 2005] [addition of drainage pipe, replacement of another pipe with a larger one, and extension of ditches were not matters of routine maintenance]). It is not clear which of the proposed alterations are part of the "routine or continuing agency administration and management" (6 NYCRR § 617. 5 [c] [26]). Additionally, the determination indicates that 32 of the trees are diseased but does not explain why the other 51 trees must be removed. **Although the determination indicates that around 267 replacement trees are planned for the Park, and that the work follow the Administrative Code as well as Parks' tree protection protocols, it does not provide any explanation as to its reasoning in determining that neither the destruction of apparently healthy trees nor the addition of trees throughout the Park has the potential for an adverse impact. There is only a perfunctory mention of the impact of the changes on the aesthetic, and cultural value of the Park or the neighborhood's character, and there is no real explanation as to why respondent concluded there is no possibility of any negative aesthetic and cultural impacts or of negative impacts to the neighborhood character** [citations and footnotes omitted, emphasis supplied]. Type II Decision, pages 12-13 of 14.

41. The Court found that the Department of Parks & Recreation did not justify why it made a Type II classification for the Project, and remanded the matter to the Department "for a further determination consistent with this order." See **Exhibit G**.

The Department of Parks and Recreation Changed the Project Classification to Type I on Remand, Without Notifying Petitioners

42. The Department of Parks & Recreation reversed itself after the trial court remanded the Type II classification on December 23, 2019.

43. On June 10, 2022, the Department of Parks & Recreation adopted Parts I and II of the Environmental Assessment Statement ("EAS") for the Project and classified the Project as a Type I Action under CEQRA and SEQRA. A true and accurate copy of the EAS and exhibits is attached hereto as **Exhibit H.**

44. Even though this resulted from a court remand to which petitioners were a party, the Department of Parks & Recreation did not provide petitioners with a copy of Parts 1 and 2 of the EAS.

45. Even though this resulted from a court remand to which petitioners were a party and constituted an about-face from its prior classification, the Department of Parks & Recreation did not provide petitioners with a copy of its decision to reclassify the Project as a Type I action under CEQRA and SEQRA.

46. Part I of the EAS states that the Project will:

a. impact 13 acres of land (p. 2, para. 6 and 7);

b. impact Fort Greene Park (page 3, publicly Accessible Open Space),

c. change or eliminate existing open space subject to CEQR Technical Manual Chapter 7 (page 6, para. 4a),

d. impact an architectural site designated as a NYC landmark subject to CEQRA manual Chapter 9 (page 7, para. 6a),

e. impact natural resources subject to CEQRA manual Chapter 11,

f. result in the development of a site where hazardous materials are suspected to be present and therefore subject to CEQRA Technical Manual Chapter 12 (page 7, para. 9i and 9II),

g. increase impervious surfaces subject to CEQRA manual Chapter 13 (page 7, para. 10d),

h. require a public health analysis under CEQRA Manual Chapter 20 (page 9, para. 17a, and

i. require a preliminary construction assessment under CEQRA Manual Chapter 22 because activities would be within 400' of a cultural resource and distance of natural resources (page 9, para. 19a).

47. There was no public notice or comment associated with the classification of the Project as a Type I Action.

The Department of Parks & Recreation Issued a Negative Declaration of Environmental Significance for the Project After Remand, Without Notifying Petitioners.

48. On June 2, 2023, the Department of Parks & Recreation completed Part 3 of the EAS and made a Negative Declaration of Environmental Significance ("Neg Dec") for the Project. The basis of this belief is the June 2023 EAS. See **Exhibit H.**

49. A Neg Dec may only be issued if the lead agency finds that the Project will not result in any adverse environmental impact. 6 NYCRR 617.2(z).

50. The lead agency must provide a Type I Neg Dec to any person who requested a copy. 6 NYCRR 617.12((b)(iv).

51. Even though this resulted from a court remand to which petitioners were a party, the Department of Parks & Recreation did not provide petitioners with a copy of the Neg Dec for the Project.

52. The Neg Dec fails to remedy the deficiencies in the record which caused Justice Rodriquez to remand the Type II classification back to respondent.

53. Petitioner commences this litigation to challenge the Neg Dec for the Project.

PARTIES

Friends of Fort Greene Park

54. Plaintiff Friends of Fort Greene Park, Inc. ("Friends") is an unincorporated association of individuals who live in the vicinity of Fort Greene Park. Friends was formed for the purposes of, among other things, advancing by any legal means the betterment of the community by: encouraging and advocating for open, honest and transparent local government; adherence to local zoning, land use and other laws; and education, litigation and advocacy related thereto. Friends' constituents come from the entire city of New York. Many of Friends' members reside in the immediate area that would be directly and adversely affected by the facts and circumstances pleaded herein. Several of Friends' members reside within 500 feet or less of the Fort Greene Park.

a. Hui-Ling Hsu is President and Treasurer of the Friends of Fort Greene Park, and is a member of Friends. She resides at 122 Ashland Place, Apt. 2N, Brooklyn, New York. She has a long-standing history of working to preserve the historic

landscape of the Park, frequently uses and enjoys the park for aesthetic enjoyment and recreation, and lives in close proximity to the Park.

b. Enid Braun is a member of Friends. She resides at 116 Adelphi Street, Brooklyn, New York, lives in close proximity to the Park, and is regularly uses and enjoys the Park for aesthetic enjoyment and recreational purposes.

c. Sandy Reiburn is a member of Friends. She lives and resides in close proximity to the Park and regularly uses and enjoys the Park for aesthetic enjoyment and recreational purposes.

d. Upon information and belief, other Friends' Members live and reside in close proximity to the Park and regularly uses and enjoys the Park for aesthetic enjoyment and recreation purposes.

55. Friends was formed to promote the health, safety, and welfare of its members; protect and preserve the historic identity and landscape of Fort Greene Park in Brooklyn, New York; to preserve environmental resources in and around the Park; to protect the public and Petitioner's right to clean air and a healthful environment; to safeguard natural resources; and to ensure compliance with the law, among other things.

56. Friends brings this action by and through its President and Treasurer, Hui-Ling Hsu. Its membership is made up of individuals who regularly use and enjoy the Park, and who work to preserve its historic landscape. This lawsuit is consistent with the purpose of Friends.

57. Friends is comprised of numerous members, many of whom reside in New York State, and several of which reside in New York City, including many members who live and reside in close proximity to the Park and/or who use and enjoy Fort Greene Park and whose

conservation, aesthetic, and/or recreational interests, are injured by the environmental damage that will be caused to Fort Greene Park.

58. Friends and its members will be harmed by the Project because it will have one or more unmitigated significant adverse environmental impacts, and said impacts will interfere with Friends, its members, and the public's use and enjoyment of the Park.

59. The Project's adverse impacts to the environment and the Park will cause petitioners and the public to use the park less, and will cause the public and petitioners to lose the benefit of the famous landscape plans of Olmsted and Vaux; and McKim, Mead, and White; as well as other well-known landscape architects.

60. Friends' members' environmental rights (to clean air and a healthful environment), lives, and properties will be adversely impacted by the Department's approval, which will allow the Project to be constructed and the adverse environmental impacts discussed herein to result, thereby negatively impacting Petitioners and the public.

61. Friends' (and its members') injuries fall within the zone of interests of SEQRA and CEQRA.

62. Friends' (and its members') injuries fall within the zone of interests of the New York State Constitution, which states that: "Each person shall have a right to clean air and water, and a healthful environment." N.Y. Const. Art. 1., §19.

63. Friends' (and its members') harm is different from that to the general public by virtue of the fact that many of them reside in close proximity to the Park; regularly use and enjoy the Park for aesthetic purposes; and regularly use and enjoy the Park for recreational purposes.

64. Friends' and its members have standing to pursue the claims asserted herein because its members own real property in vicinity of the Park and have unique property and personal interests that will be adversely affected by the Project. The reasons that Friends brings this action are germane to Friends' purpose.

65. Friends' and its members further have standing to maintain a proceeding to compel a public body to perform its duty and to correct an arbitrary and capricious decision in relation to matters of great public interest, particularly when failure to accord such standing would, in effect, erect an impenetrable barrier to judicial scrutiny.

Respondent New York State Department of Parks and Recreation

66. Respondent New York City Department of Parks and Recreation is a department of the City of New York, which is located at The Arsenal, 830 Fifth Avenue, New York, New York. Upon information and belief, the Department was designated Lead Agency for the environmental review of the Project under SEQRA and CEQRA. As Lead Agency, the Department was responsible for ensuring that the procedural and substantive mandate of SEQRA is carried out and that potentially significant adverse environmental are mitigated to the maximum extent practicable. Despite this legal obligation, the Department improperly issued a Negative Declaration of Environmental Significance dated June 2, 2023 for the Project, in violation of their SEQRA responsibilities.

John Does and ABC Corporations

67. John Does 1-10 are other persons or entities that may be necessary parties to this action that have not yet presently been identified.

68. ABC Corporations 1-10 are other persons or entities that may be necessary parties to this action that have not yet presently been identified.

JURISDICTION, VENUE, AND PROCEDURAL POSTURE.

69. This Court has jurisdiction pursuant to New York Civil Practice Law and Rules ("CPLR") Article 78 and CPLR §3001 and other applicable law.

70. Venue lies in the Supreme Court, New York County, pursuant to CPLR §503, §506 and §7804(b) because at least one Plaintiff resides or has its principal office in New York County and Defendant-Respondent NYC Department of Parks and Recreation made the determinations complained of and material events took place in the Judicial District that includes New York County.

71. This Court has personal jurisdiction over Defendants-Respondents under CPLR §301 and §302.

72. The time within which to commence this action and proceeding has not expired.

73. No previous application has been made to any court for the relief requested herein.

74. Petitioners have exhausted their administrative remedies.

75. Petitioners do not have any other adequate remedy at law.

SEQRA

76. "**No agency involved in an action may undertake, fund or approve the action** until it has complied with the provisions of SEQR. A project sponsor may not commence any physical alteration related to an action **until the provisions of SEQR have been complied with**. … No agency involved in an action may undertake, fund or approve the action until it has

complied with the provisions of SEQR. A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with." 6 NYCRR §617.3(a).

77. An agency's responsibilities under the SEQRA are specified in the regulations promulgated pursuant to statute, and are contained in 6 N.Y.C.R.R. §617.

78. The regulations provide that:

> The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

6 NYCRR §617.1(c)

79. The regulations further clarify that:

> In adopting SEQR, it was the legislature's intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land and living resources, and that **they have an obligation to protect the environment** for the use and enjoyment of this and all future generations.

6 NYCRR §617.1(b) (emphasis added).

80. Under the regulations, an Environmental Impact Statement ("EIS") is required and must be prepared if the proposed action "may include the potential for at least one significant adverse environmental impact." 6 NYCRR §617.7(a)(1) (emphasis added). Where there is potential that the Project will result in at least one significant adverse environmental

impact, the lead agency must issue a "positive declaration of environmental significance" and prepare an Environmental Impact Statement ("EIS"). 6 NYCRR §617.2(ad).

81. By contrast, to determine that no EIS is required, "the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant." 6 NYCRR §617.7(a)(2). Where there is not the potential for the Project to result in at least one significant adverse environmental impact, the lead agency may issue a "negative declaration of environmental significance" and need not prepare an Environmental Impact Statement EIS. 6 NYCRR §617.2(z).

82. "Type I" Actions are those actions and projects are more likely than not to have at least one significant adverse environmental effect, and therefore such actions "are more likely to require the preparation of an EIS than Unlisted actions." 6 NYCRR §617.4(a). See 6 NYCRR §617.4(a)(1) (Type I Actions are those that the agency has determined "may have a significant adverse impact on the environment and requires the preparation of an EIS. … 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.") No EIS was prepared for this Project.

83. When making a determination of significance as to a Type I Action, the lead agency must:

a. Consider the action as defined in 6 NYCRR §617.2(b)[3] and §617.3(g)[4];

b. Review the Environmental Assessment Form, the criteria contained in 617.7(c), and any other supporting information to identify the relevant areas of environmental concern;

c. Thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment; and

d. Set forth its determination of significance in a written form containing a reasoned elaboration and providing a reference to any supporting documentation.

6 NYCRR §617.7(b).

84. In making a determination of significance as to a Project that is a Type I action, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria in 6 NYCRR §617.7(c), which are considered indicators of significant adverse impacts on the environment. If any of those factors, listed below, are found, an environmental impact statement must be prepared for the Project:

[3] The regulations define "actions" as including "(1) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that: (i) are directly undertaken by an agency; or (ii) involve funding by an agency; or (iii) require one or more new or modified approvals from an agency or agencies; (2) agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions; (3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and (4) any combinations of the above." 6 NYCRR 617.2(b).

[4] "Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.
(1) Considering only a part or segment of an action is contrary to the intent of SEQR. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible.
(2) If it is determined that an EIS is necessary for an action consisting of a set of activities or steps, only one draft and one final EIS need be prepared on the action provided that the statement addresses each part of the action at a level of detail sufficient for an adequate analysis of the significant adverse environmental impacts. Except for a supplement to a generic environmental impact statement (see section 617.10(d) of this Part), a supplement to a draft or final EIS will only be required in the circumstances prescribed in section 617.9(a)(7) of this Part." 6 NYCRR §617.3(g).

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;

(iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to section 617.14(g) of this Part;

(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;

(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

(vi) a major change in the use of either the quantity or type of energy;

(vii) the creation of a hazard to human health;

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

(x) the creation of a material demand for other actions that would result in one of the above consequences;

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but

> **when considered together result in a substantial adverse impact on the environment**; or
>
> **(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision**.

6 NYCRR §617.7(c)(1) (emphasis added).

85. In determining whether an action may cause one of the consequences listed in 6 NYCRR §617.7(c)(1), the lead agency under SEQRA **must consider** reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

> (i) included in any long-range plan of which the action under consideration is a part;
>
> (ii) likely to be undertaken as a result thereof; or
>
> (iii) dependent thereon.

6 NYCRR 617.7(c)(2).

86. Likewise, under CEQRA, in determination whether an action/Project may have a significant effect on the environment — because it may result in one of the consequences listed in 6 NYCRR 617.7(c)(1) — the action is deemed to include other contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part, which are likely to be undertaken as a result thereof, or which are dependent thereon. *See* New York City Planning Rules §6-09, *available at* https://www.nyc.gov/assets/oec/technical-manual/rules_procedure_ceqr_2014.pdf .

87. In assessing the significance of a likely consequence listed in 6 NYCRR §617.7(c)(1) as part of the determination of significance (i.e., whether it is material, substantial, large, or important), a lead agency should consider:

(i) its setting (e.g., urban or rural);

(ii) its probability of occurrence;

(iii) its duration;

(iv) its irreversibility;

(v) its geographic scope;

(vi) its magnitude; and

(vii) the number of people affected.

6 NYCRR §617.7(c)(3). Here, the impacts from the Project are significant because they would be in an urban setting, are likely to occur, will have a long or permanent duration in many cases, will be irreversible, will cover a significant geographic portion of Fort Greene Park, be of a large magnitude, and will affect a great number of people in Brooklyn and the historic district.

88. Where an EIS is required, the EIS is intended to provide the lead agency with all of the appropriate information concerning the effects of the project. Moreover, in considering whether to prepare an EIS, the lead agency must consider not only issues involved with the specific action that the lead agency is being asked to take, but all potential significantly adverse consequences of the project including those issues or permits that may be issued by other agencies. Just as surely, the EIS provides the public with this information, allowing them to knowledgeably provide input and comment on the environmental review process.

89. Lead agencies must strictly comply with SEQRA's procedural requirements.

90. As a result of the Department's substantive and procedural SEQRA and CEQRA violations, including its improper issuance of a Neg Dec for this Project, no Environmental Impact Statement will be prepared for the Project.

91. The Department's EAS and Neg Dec make clear that the Department did not identify all areas of environmental concern, take a hard look at them, and provide a reasoned elaboration concerning whether or not at least one significant adverse environmental consequence may result from the Project. Therefore, the Department has violated SEQRA's and CEQRA's substantive requirements, and so must be enjoined from proceeding with the Project until SEQRA and CEQRA have been complied with fully.

92. In rendering its Determination, the Department failed to consider how the Project will impact air quality, water quality, noise, the environment, and environmental rights. Specifically, the Department failed to take a hard look at open space, historic and cultural resources, aesthetic impacts, urban design and visual resources, natural resources, hazardous materials, water and sewer infrastructure, air quality, public health, and more. As a consequence, the Project will result in one or more potentially significant adverse environmental impacts, including unmitigated adverse impacts.

FIRST CAUSE OF ACTION
THE LEAD AGENCY FAILED TO TAKE A "HARD LOOK"
AT POTENTIALLY SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS

93. Petitioners repeat and reallege paragraphs 1 – 92 as if set forth herein at length.

94. Under CPLR Article 78 et seq, Courts may review administrative decisions and may annul those that are arbitrary and capricious, an abuse of discretion, or made in violation of law or lawful procedure.

95. The failure of an administrative agency to comply with mandatory statutory or procedural requirements is an abuse of discretion as a matter of law.

96. SEQRA's procedural requirements – established by law and regulation – are intended to be strictly enforced.

97. The basic purpose of SEQRA is to incorporate the consideration of environmental factors into the planning, review and decision-making processes of state and local government agencies at the "earliest possible time." To accomplish this goal, SEQRA requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant effect on the environment. When an action may have a significant effect, the agency must minimize adverse environmental impacts to the greatest extent practicable. ECL 8-0103; 6 NYCRR 617.1(c).

98. Early environmental review of a proposed action serves three purposes: "To relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision-making process in determining the environmental consequences of a proposed action." ECL 8-0109(4).

99. SEQRA requires the preparation of an Environmental Impact Statement ("EIS") when a proposed project "may have a significant effect on the environment." ECL 8-0109[2] and 6 NYCRR 617.7(b)(3).

100. Because the operative word triggering the requirement of an EIS is "may," there is a relatively low threshold for issuance of a Pos Dec and preparation of an EIS. *Matter of*

Chemical Specialties Mfrs. Assn. v. Jorling, 85 NY2d 382, 397 (1995); (*Omni Partners LP v. County of Nassau*, 237 AD2d 440 (2d Dept. 1997).

101. Moreover, a Type I action (as is the one here) carries with it the presumption that it is likely to have a significant adverse effect on the environment and may require an EIS. An EIS is required when the lead agency determines that the action as proposed may include the potential for at least one significant adverse impact to the environment.

102. Compliance with SEQRA is mandatory. "No agency involved in any action shall carry out, fund or approve the action until it has complied with the provisions of SEQRA." 6 NYCRR 617.3(a).

103. Lead agencies are required to apply a "hard look standard" in fulfilling their substantive SEQRA responsibilities, including in making a determination of significance, which obliges an agency to:

a. Identify all areas of environmental concern; and

b. Take a "hard look" at the environmental issues identified; and

c. Provide a reasoned elaboration for the decisions that are made, including whether or not to issue a positive or negative declaration of environmental significance and require an Environmental Impact Statement.

Even though the areas of significance (6 NYCRR §617.7(c)(1)) are specifically indicated and would apply to the Department's proposed Fort Greene Park Project, on or about June 2, 2023, the Department improperly issued a "negative declaration of environmental significance" (the "Neg Dec") and wrongly determined that this Project does not have the potential to result in at least one potentially significant adverse environmental impact. A true and accurate copy of the Department's Environmental Assessment Form dated June 2023, which contains its Type I

classification and its Neg Dec, is attached hereto as **Exhibit I**. Here, the Department failed to take a Hard Look at all potentially significant adverse environmental impacts that may result from the Project that had been identified. For example, by letter dated November 21, 2017, landscape preservation consultant Michael Gotkin informed the New York City Landmark Preservation Commission of several potentially significant adverse environmental impacts that may result from the Project (the "Gotkin Letter"). **Exhibit E**. As is demonstrated by the 2023 Report from preservation consultant Michael Gotkin (the "2023 Gotkin Report"), a true and accurate copy of which is attached hereto as **Exhibit J**, the Department did not take a Hard look at, or provide a reasoned elaboration as to, those potentially significant adverse environmental impacts that may result from the Project that had been previously identified. Likewise, horticultural consultant Carsten W. Glaeser's affidavit sworn to April 27, 2018 identified several potentially significant adverse environmental impacts that may result from the Project, and the Department was on notice of such issues. As is demonstrated by the September 2023 Affidavit from horticultural consultant Dr. Carsten W. Glaeser (the "2023 Glaeser Affidavit"), a true and accurate copy of which is attached hereto as **Exhibit K**, the Department did not take a Hard look at, or provide a reasoned elaboration as to, those potentially significant adverse environmental impacts that may result from the Project that had been previously identified.

The Department Failed To Take A "Hard Look" At Project Impacts To "Open Space."

104. The Department admits that the Project will "change or eliminate existing open space." See EAS dated June 2023 at page 6, §4(a).

105. The Project will change an existing open space and grassy area that currently has flexible uses into a table and barbecue area suitable only for passive activities.

106. The Project will eliminate the open space mound area that has historically been used to stage public events (including an annual Halloween dog parade) and by physical trainers who run group exercises using the mounds.

107. The Department determined that "further assessment of potential direct effects as a result of the [Park] project" was warranted under the CEQRA Technical Manual. See EAS dated June 2023 at Attachment C, Page C-1, § II.

108. Despite the Department's plan to remove several mature trees as part of the Project, the Department somehow claims that the Project will not impact air pollutants, noise, and shade, even though mature trees undeniably reduce air pollutants, buffer against noise, and provides natural shade.

109. The Project will result in a loss of open space that is used for active and passive recreation by community members, including members of minorities, disproportionately impacted groups, disadvantaged communities, and environmental justice populations.

110. The Neg Dec must be set aside because the Lead Agency failed to take a hard look at potentially significant adverse impacts to open space.

The Department Failed To Take A "Hard Look" At Project Impacts To "Historic And Cultural Resources."

111. The Project site contains historical, architectural, cultural, and/or aesthetic resources of significance, including the park's famous landscape architecture.

112. The CEQRA Technical Manual recommends conducting an architectural resources assessment if the Project would result in a change in scale, visual prominence, or visual context, of any building, structure, or object or landscape feature. See CEQRA Technical Manual Chapter

9, Historic Resources, available at

https://www.nyc.gov/assets/oec/technicalmanual/09_Historic_Resources_2021.pdf .

113. The Project will require ground disturbances associated with removal of the mounds at the Park and installation of new plumbing for a fountain and new pavement. The Burial Crypt of the Martyrs is within an area to be disturbed.

114. The Society of Old Brooklynites holds an annual ceremony near there to honor the sailors and soldiers who died on the prison ships, some of whom are buried there.

115. The Proposed project will result in one or more change(s) in scale, visual prominence, or visual context, of any building, structure, or object or landscape feature at the Project site.

116. The Project site or adjacent site contain architectural and/or archaeological resources that are eligible for or have been designated as a New York City Landmark, interior landmark or scenic landmark, or is listed or eligible for listing on the New York State or national Register of historic places, is within a designated or eligible New York city, new York state, or national register historic district. See EAS dated June 2023 at page 7, §6(a).

117. This project will change the character and view of important historic, cultural, archaeological, and/or aesthetic recourses and may introduce architectural designs that are not consistent with the Site's historic character or the City's long-term vision for this area.

118. The Project will be visible and situated so as to change the visual aspect of the park as an aesthetic, historical and cultural resource.

119. Accordingly, the Department should have conducted a focused architectural survey and assessment of the Park to identify potentially significant adverse environmental impacts that may result for cultural and historic resources.

120. The Neg Dec must be set aside because the Lead Agency failed to take a hard look at potentially significant adverse impacts to historic and cultural resources.

The Department Failed To Take A "Hard Look" At Project Impacts To "Natural Resources."

121. The Department's Park Project will involve the removal of 78 mature trees from Fort Greene Park, many of which have been there for decades or more. See EAS dated June 2023 at Attachment F, page F-19, §V.

122. The Department admits that the Project will "result in the removal of trees and other plans in several areas of the park because of the proposed design." See EAS dated June 2023 at Attachment F, page F-19, §V.

123. The CEQRA Technical Manual gives an example of projects that may impact natural resources. See CEQRA Technical Manual, Chapter 11, Natural Resources available at https://www.nyc.gov/assets/oec/technical-manual/11_Natural_Resources_2021.pdf at §342. The Technical Manual states, "a stand of trees may shade an area, allowing for increased cover and a cool microclimate for small mammals, birds, plants, and other organisms. The loss of the trees would remove a specific habitat. Based on this type of analysis, the assessment identifies the loss associated with the project and the importance of that loss for the critical functions of the habitat." *Id.*

124. The CEQRA Technical Manual states that a disturbance of an existing natural resource may be deemed significant under CEQRA if it either:

a. Would likely result in the loss of part or all of a resource that is important because it is large, unusual, the only one remaining in the area where the project is to take place, or occurs within a limited geographic region.

b. A project would, either directly or indirectly, be likely to cause a noticeable decrease in a resource's ability to serve one or more of the following functions: wildlife habitat; food chain support; physical protection (e.g., flood protection); water supply; pollution removal; biogeochemical cycling; recreational use; aesthetic or scenic enhancement; commercial productivity; or microclimate support.

125. This Project would result in the loss of part or all of such resource(s) and would cause a noticeable decrease in a natural resource's ability to serve one or more of the specified functions.

126. The Project will involve the removal of a sylvan glen stand of trees at the Park that will create a sterile rigid corner out of character with the Park's historical and significant design.

127. The Department further admits that, as part of the Project, "the canopy of a portion of the park would be altered by the removal of approximately 48 trees, many of which are mature and providing myriad ecological and social benefits." See **Exhibit H** (EAS dated June 2023) at Attachment F, page F-20, §V.

128. The Department acknowledges that "the environmental benefits provided by mature trees, such as increased shade and lower air temperature, air quality improvement,

carbon sequestration, and wildlife habitat would not be immediately realized by replanting smaller trees." See **Exhibit H** (EAS dated June 2023) at Attachment F, page F-19, §V.

129. Because mature trees provide significantly more benefits than immature trees, New York City's Tree Valuation Method requires the Department to replant more trees than it removes. The Project does not require sufficient replacement trees to account for the benefits and value lost from the mature trees that will be removed as part of the Project.

130. The Department admits that "Since replanting or transplanting mature trees is not possible, the total number of [immature] trees to be planted as replacement trees will be much higher than the number [of mature] trees removed [from the Park]" (the "Replacement Trees"). See **Exhibit H** (EAS dated June 2023) at Attachment F, page F-19, §V.

131. The Department admits that not all of the Replacement Trees will be located within Fort Greene Park even though they are ostensibly being planted to replace the mature trees that the Project would cut down and from the Park. See **Exhibit H** (EAS dated June 2023) at Attachment F, page F-19-20, §V ("If there is a lack of suitable space for all the replacement plantings, the trees will be planted within the same Community Board and as close to the original location as possible under a separate, future contract.)

132. The Department admits that it does not even know how many Replacement Trees will actually be replanted within Fort Greene Park. Furthermore, the Department does not commit to replanting the Replacement trees within a certain number of feet from the Park. Nor does the Department commit to a date by which such Replacement Trees outside of Fort Greene Park will be planted. See **Exhibit H** (EAS dated June 2023) at Attachment F, page F-19-

20, §V ("If a remainder of the replacement value cannot be met inside the park, trees will be planted within the Community Board and as close to the Park as feasible.")

133. Because many of the Replacement Trees will be planted outside of Fort Greene Park — where the mature trees will be removed from — the benefits of the Replacement Trees will not be felt in the same location or by the same population as the mature trees that will be removed as part of the Project.

134. The Department acknowledges that the proposed tree removals would potentially have "impacts to resident and breeding birds in the Park," which may persist until "the newly planted trees are installed, become established, and expand their canopies," a process that could take years. See EAS dated June 2023 at Attachment F, page F-20, §V. This indicates that the adverse impacts from removing the 78 mature trees may be felt for decades or generations until the immature replacement trees become established and expand their canopies, a slow and gradual process that can take many years.

135. Impacts to such birds may implicate the Migratory Bird Treaty Act of 1918, which is administered by the US Fish and Wildlife Service.

136. The Department claims such impacts to birds will be mitigated by a proposed Project provision that "discourages" the removal of trees between April and October, unless a qualified biologist is present to oversee the tree's removal. See **Exhibit H** (EAS dated June 2023) at Attachment F, page F-20, §V.

137. The Department's proposal to "discourage" the removal of trees unless a biologist is present appears to be non-binding and does not appear to have been imposed as a condition of approval or as a required mitigation measure.

138. The Department failed to mitigate all potentially significant adverse environmental impacts to natural resources that may result from this Project to the maximum extent practicable.

139. The Project may cause one or more potentially significant unmitigated adverse impact to natural resources, including trees and birds.

140. The Neg Dec must be set aside because the Lead Agency failed to take a hard look at potentially significant adverse impacts to natural resources, including trees and birds.

The Department Failed To Take A "Hard Look" At Project Impacts From "Hazardous Materials."

141. The Department identified two off-site Recognized Environmental Conditions ("REC"s) near the proposed Park Project that could expose people or the environment to hazardous materials or increase such exposure, thereby potentially leading to significant public health impacts or environmental damage. See EAS dated June 2023 at Attachment G, page G-1, §I.

142. A Phase I Environmental Site Assessment (ESA) was conducted in June 2021, which identified the two RECs just outside the Park, including:

a. NYSDEC Spill Number 1610979 at the north adjacent NYSCHA Whitman Houses at 287 Mytle Avenue on 8/8/2018, resulting from removal of a underground storage tank. After continuous well monitoring, in 2019, product as think as a third of a foot was still observed in the monitoring well. The Department admits that "although the [NYSDEC] spill [file] is closed, **residual contamination may have remained and migrated off site**. The north adjacent NYCHA Whitman Houses are also listed for **numerous other petroleum spills over the years, increasing the potential for subsurface impacts to exist beneath the property.**" See EAS dated June 2023 at Attachment G, page G-1, §II (emphasis added).

b. Fort Greene Cleaners, Inc., located at 293 Myrtle Avenue, is north adjacent to the subject property, and operated from 1976 to 1990, and under the name Deanna French Cleaners from 2000 to 2003. The

> Department admits that (1) this drycleaner generates "chromium and spent halogenated solvents including tetrachloroethylene and trichlorethylene;" (2) this drycleaner "has received a notice of violation involving its hazardous waste generation;" and (3) "the nature of the [drycleaner's] violation is not indicated" (nor is it stated in the Department's EAS). See EAS dated June 2023 at Attachment G, page G-2, §II.

143. Because of the potential for adverse environmental impacts from hazardous materials, the New York City Department of Environmental Protection (NYC DEP) recommended required mitigation including a Remedial Action Plan (RAP), Construction Health and Safety Plan (CHASP), and Community Air Monitoring Plan (CAMP).

144. This does not adequately address all potentially significant adverse environmental impacts from hazardous waste.

145. The Department failed to mitigate all potentially significant adverse environmental impacts associated with hazardous materials that may result from this Project.

146. The Project may cause one or more potentially significant unmitigated adverse environmental impact associated with hazardous materials.

147. The Neg Dec must be set aside because the Lead Agency failed to take a hard look at potentially significant adverse impacts from hazardous materials.

The Department Failed To Take A "Hard Look" At Project Impacts To "Water and Sewer Infrastructure."

148. The CEQR Technical Manual states that "Stormwater is of concern if it exceeds the capacity of the City's sewers or wastewater conveyance systems and transmits new or increased levels of pollutants to the City's water bodies." See CEQRA Technical Manual, Chapter 13 at §121.3, available at https://www.nyc.gov/assets/oec/technical-manual/13_Water_and_Sewer_Infrastructure_2021.pdf .

149. The Project would replace permeable surfaces — such as the mounds, a round garden, and certain sections of trees (e.g., the sylvan glen stand of trees) — with thousands of square feet of impermeable surfaces, such as concrete pavers, a widened promenade, a hardscaped fountain, and more.

150. The Department admits that the Project will "include new impervious surface that would be constructed as part of the Project, in the form of new park pathways or similar infrastructure improvements at the Park," yet simultaneously concludes that the proposed Park Project would not lead to "development sites that would be covered with large area of impervious surfaces including streets that generate runoff containing pollutants." See See **Exhibit H** (EAS dated June 2023) at Attachment H, page H-2, §II.

151. The Department also admits that the Park Project will involve the removal of 78 mature trees from Fort Greene Park[5], and admits that there are RECs of hazardous materials directly adjacent to the Project Site, yet nonetheless relies on design plans directing stormwater towards planted areas to relieve the burden of stormwater volumes on the City's sewer system. The Department did not consider how the removal of the 78 trees would affect stormwater infrastructure and did not consider whether its proposal would direct contamination from the sites of the RECs to the Project, groundwater, or the City's wastewater conveyance system.

152. The FEAS does not contain facts, studies, or analysis explaining how the Department reached the conclusion that, even though the Project (1) is near RECs of hazardous materials, (2) includes "the addition of new impervious surfaces," and (3) involves the removal of 78 mature trees, the Project does not have the potential to lead to "development sites that

[5] See EAS dated June 2023 at Attachment F, page F-19, §V.

would be covered with large area of impervious surfaces including streets that generate runoff containing pollutants" or result in any potentially significant adverse impacts to water or sewer infrastructure. See **Exhibit H** (EAS dated June 2023).

153. The Department failed to mitigate all potentially significant adverse environmental impacts associated with water and sewer infrastructure that may result from this Project.

154. The Project may cause one or more potentially significant unmitigated adverse impact associated with water and sewer infrastructure.

155. The Neg Dec must be set aside because the Lead Agency failed to take a hard look at potentially significant adverse impacts to water and sewer infrastructure.

The Department Failed To Take A "Hard Look" At Project Impacts To "Public Health."

156. The CEQR Technical Manual states that "When other CEQR analyses identify significant unmitigated adverse impacts, the lead agency may determine that a public health assessment is warranted for that specific technical area." See CEQRA Technical Manual, Chapter 20 at §300, available at https://www.nyc.gov/assets/oec/technical-manual/20_Public_Health_2021.pdf .

157. Pursuant to the CEQRA Technical Manual, "If a public health assessment is determined to be appropriate under Section 200 above, the assessment process involves evaluating whether and how exposure to environmental contaminants may occur and the extent of that exposure; characterizing the relationship between exposures and health risks; and applying that relationship to the population exposed. This assessment should be conducted

in consultation with an environmental epidemiologist, a professional exposure or risk assessor, or similarly trained person." Id. at §300

158. The SEQRA Technical Manual explains that a public assessment involves (1) identifying the extent of potential environmental exposures to the public as a result of the Project; (2) identifying potential health impacts as a result of identified exposure pathways; (3) identifying the potential significance of the impact; and (4) recommending steps to reduce and prevent exposure. Id. at §300.

159. The CEQRA Technical Manual gives examples of how this public health assessment analytic framework has been utilized, and specifically cites projects:

a. that may result in asthma hospitalizations in a neighborhood from an increase in pollutants affecting air quality; and
b. that may result in poisonings or asthma hospitalizations from the spraying of a pesticide for a mosquito control program. Id

160. This Project, by removing 78 mature trees, not committing to planting the Replacement Trees in the Park, and not committing to a timeline for planting the Replacement Trees, will result in one or more potentially significant adverse, unmitigated impacts to air quality and noise, by removing mature trees that improve have known benefits associated with air quality and buffering against noise.

161. The Project apparently ignores the fact that the Park is located within a half- mile from Flatbush Avenue, which is a major road artery from the Manhattan Bridge and the BQE, which results in significant exhaust in the area, affecting air quality.

162. The Project does not consider the impacts that the 78 existing mature trees at the Park have on mitigating adverse air quality impacts, nor does it consider how the removal of such 78 mature trees (even if partially mitigated by the planting of immature replacement trees nearby) will impact air quality and public health.

163. The Project fails to consider the potentially significant adverse environmental impacts that may result from the removal of 78 mature trees, such as exacerbation of the heat island effect in this portion of the city and exacerbation of asthma symptoms in this area, which is a known neighborhood asthma cluster.

164. The lack of effectiveness of proposed mitigation concerning the Replacement Trees should also be considered in light of the adjacent luxury high-rise apartment project attached to the Park with no street interruption between the Park and the building because the shade from that skyscraper will decrease the amount of natural sunlight absorbed by the Replacement Trees, slowing their growth and beneficial impacts, decreasing their likelihood of survival, and increasing the number of years (or decades) before the Replacement Trees will be large enough to replace the benefits lost from the removal of the 78 mature trees at the Project Site.

165. Thus, the Project will have long periods of significant, unmitigated adverse environmental impacts from the project in areas that may harm public health.

166. The CEQRA Technical Manual recommends requiring a public health assessment under these circumstances.

167. The Department did not require a public health assessment for the Project prior to issuing the Neg Dec.

168. The Department failed to mitigate all potentially significant adverse environmental impacts associated with public health that may result from this Project.

169. The Project may cause one or more potentially significant unmitigated adverse impacts associated with public health.

170. The Neg Dec must be set aside because the Lead Agency failed to take a hard look at potentially significant adverse impacts to public health.

The Department Failed To Take A "Hard Look" At Project Impacts From "Construction."

171. The CEQR Technical Manual states that "consideration of several factors, including the location and setting of the project in relation to other uses and the intensity of construction activities, may indicate that a project's construction activities, even if short-term, warrant analysis in one or more technical areas described below. For instance, further analysis may be warranted in certain areas if a project's construction period would be short, but construction activities that otherwise would take place over a longer period have been compressed into this shorter timeframe" See CEQRA Technical Manual, Chapter 22 at §200, available at https://www.nyc.gov/assets/oec/technical-manual/22_Construction_2021.pdf.

172. The CEQR Technical Manual (Id.) recommends a construction impact analysis for projects that involve "construction activities within 400 feet of a historic resource." Id. at page 22-3.

173. The Project construction activities will involve construction within 400 feet of a historic resources and so a construction impact analysis should have been required.

174. The Department failed to mitigate all potentially significant adverse environmental impacts associated with construction that may result from this Project.

175. The Project may cause one or more potentially significant unmitigated adverse impacts associated with construction.

176. The Neg Dec must be set aside because the Lead Agency failed to take a hard look at potentially significant adverse impacts to construction.

177. By reason of the foregoing, the Department's decision to issue the Neg Dec was arbitrary and capricious, an abuse of discretion, and/or made in violation of law and/or lawful procedure.

SECOND CAUSE OF ACTION
THE LEAD AGENCY FAILED TO CONSIDER
CUMULATIVE IMPACTS AND/OR IMPROPERLY SEGMENTED ENVIRONMENTAL REVIEW

178. Petitioners repeat and reallege the allegations set forth in paragraphs 1 - 177 as if set forth herein at length.

179. The Project does not consider the cumulative impacts from nearby projects, in violation of SEQRA, and instead improperly segments the environmental review of such projects from the Park Project's review.

180. Segmentation is "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." 6 NYCRR 617.2(ah). Segmentation is generally not permitted under SEQRA or CEQRA because it obfuscates environmental impacts of projects, undermines their legislative purposes, and often evades mitigation of adverse environmental impacts by making such impacts appear less significant than they would otherwise appear if viewed as a whole by breaking them into smaller segments with proportionally smaller impacts.

181. Segmentation is not permitted unless each of the segments has independent utility and do not commit the agency to continuing with the remaining segments. 6 NYCRR 617.3(g)(1).

182. Where a lead agency determines that segmentation is appropriate, it must document its reasons for believing that segmentation is warranted under the circumstances, the reasons for proceeding in a segmented manner, and a determination that the segmented review is no less protective of the environment than would be an unsegmented review. The lead agency must also identify and fully disclose the other segments in the individual environmental reviews for each segment. Here, the lead agency did not determine that segmentation was appropriate and did not disclose the other segments.

183. The New York State Department of Environmental Conservation's (the "NYSDEC") SEQR Handbook (the "Handbook") provides guidance on improper "segmentation" of environmental reviews. The Handbook offers the following eight criteria that are considered in determining whether individual agency actions should be reviewed together:

1. Purpose: Is there a common purpose or goal for each segment?

2. Time: Is there a common reason for each segment being completed at or about the same time?

3. Location: Is there a common geographic location involved?

4. 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?

5. Ownership: Are the different segments under the same or common ownership or control?

6. 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?

7. Utility: Can any of the interrelated phases of various projects be considered functionally dependent on each other?

8. Inducement: Does the approval of one phase or segment commit the agency to approve other phases?

If the answer to one or more of these questions is yes, the Handbook recommends that an agency should be concerned that segmentation is taking place. The Department did not conduct this analysis do determine whether its improper segmentation was appropriate (it isn't).

184. A luxury high-rise apartment project (a new 31-story building on Willoughby and St. Edwards) is being proposed attached to the Park with no street interruption between the Park and the building, and appears to be a factor motivating the Fort Greene Park Project.

185. The luxury apartment project and park Project have overlapping/common time, location, and impacts, which suggests that agencies should be concerned about improperly segmenting the environmental reviews for these projects.

186. The Department did not consider the potentially significant adverse environmental impacts that may result from luxury high rise projects together with the Park Project. This constituted improper segmentation and failure to consider cumulative impacts, in violation of SEQRA and CEQRA.

THIRD CAUSE OF ACTION
THE LEAD AGENCY ILLEGALLY ISSUED A CND FOR A TYPE I ACTION

187. Petitioners repeat and reallege the allegations set forth in paragraphs 1 - 186 as if set forth herein at length.

188. The Neg Dec was conditioned on the adoption and implementation of a Remedial Action Plan (for hazardous waste contamination), Community Air Monitoring Plan (CAMP), Construction Health and Safety Plan (CHASP) related to hazardous waste contamination and an Unknown Discoveries Plan associated with possible impacts to archeological resources.

The Department's Neg Dec Constitutes An Improperly Issued Conditioned Negative

189. When making a determination of significance under SEQRA or CEQRA, a lead agency may make (1) a Positive Declaration (a pos dec, meaning at least one potentially significant adverse environmental impact may result from the project), (2) a Negative Declaration (a neg dec, meaning that no potentially significant adverse environmental impact will result from the project), OR a Conditioned Negative Declaration of environmental significance (a "CND").

190. The Lead Agency may not issue a Conditioned Negative Declaration ("CND") for a Type I action. 6 NYCRR 617.7(d).

191. A CND is a determination by the lead agency that "the action will not have a significant effect on the environment **if the applicant modifies its proposed action** in accordance **with conditions** or alternatives designed **to avoid adverse environmental impacts**." *See* New York City Planning Rules §6-07(b)(2), *available at* https://www.nyc.gov/assets/oec/technical-manual/rules_procedure_cegr_2014.pdf (emphasis added).

192. A CND may not be issued for any Type I Action under SEQRA. A CND may only be issued for an Unlisted Action. 6 NYCRR §617.7(d).

193. Accordingly, Courts have repeatedly annulled conditioned negative declarations issued for Type I Action. *See*, *e.g.*, *Miller v. City of Lockport*, 210 A.D.2d 955 (4th Dept. 1994); *Ferrari v. Town of Penfield Planning Board*, 181 A.D.2d 149 (4th Dept. 1992); *Shawangunk Mountain Environmental Ass'n v. Planning Board of Town of Gardiner*, 157 A.D.2d 273 (3d Dept. 1990).

194. Here, the Department claims that it issued a Neg Dec on or about June 2023 determining that the action will not have a significant effect on the environment.

195. But the Department's purported June 2023 Neg Dec is not a true neg dec. Although it finds that no significant adverse effects on the environment will result, that conclusion is expressly condition on the **applicant modifying its proposed action** in accordance **with conditions** or alternatives designed **to avoid adverse environmental impacts**, particularly related to hazardous waste and archeological resources. *See* New York City Planning Rules §6-07(b)(2), *available at* https://www.nyc.gov/assets/oec/technical-manual/rules_procedure_cegr_2014.pdf (emphasis added).

196. Specifically, the Department's neg dec finding is conditioned on the adoption and implementation of a Remedial Action Plan (for hazardous waste contamination), Community Air Monitoring Plan (CAMP), Construction Health and Safety Plan (CHASP) related to hazardous waste contamination and an Unknown Discoveries Plan associated with possible impacts to archeological resources.

197. The Department's June 2023 Neg Dec therefore constitutes an impermissible CND on a Type I action, which is illegal and violates SEQRA.

198. Because the Department illegally issued a CND on a Type I action, its purported Neg Dec violates SEQRA and must be annulled.

199. As such, The Neg Dec herein is the substantive and legal equivalent of a CND.

200. The Lead Agency imposed mitigation measures in a closed process that bypassed the open, comprehensive weighing of environmental impacts required by SEQRA.

201. By reason of the foregoing, petitioners are entitled to an order vacating and annulling the Neg Dec and any subsequent municipal approval based on it.

FOURTH CAUSE OF ACTION
THE LEAD AGENCY FAILED TO FOLLOW ITS OWN PRECEDENT

202. Petitioners repeat and reallege the allegations set forth in paragraphs 1 - 201 as if set forth herein at length.

203. A department acts arbitrarily and capriciously when it fails to follow reach the same determination on essentially the same facts without explaining why it failed to follow its own precedent.

204. Here, the Department specifically applied a tree valuation tool for this Project's environmental review that considers only the cost to replace a tree that was different from the tree valuation tool — "I-Tree" — that the Department generally uses for environmental reviews of Projects. This was inconsistent with the Department's precedent, and such discrepancy is not addressed in the FEAS.

205. "I-Trees" is a database of the trees in NYC that indicates the value both of the tree itself and of the environmental benefits of such tree.

206. The Department has used the I-Trees tool when conducting environmental reviews of Projects that will result in the removal of trees, to determine the value of both the

trees themselves and the value of the three's environmental benefits that will be lost if the Tree is removed as part of the project.

207. By contrast, the Department uses a different cost appraisal tool to determine the replacement cost of trees, which it applies when, for example, a contractor damages a tree during project construction.

208. By refusing to apply I-Trees in this Project, the Department is acting inconsistently with its own precedent.

209. By reason of the foregoing, petitioners are entitled to an order vacating and annulling the Neg Dec and any subsequent municipal approval based on it.

FIFTH CAUSE OF ACTION
THE LEAD AGENCY FAILED TO INVOLVE SHPO IN COORDINATED REVIEW UNDER SEQRA

210. Petitioners repeat and reallege paragraphs 1 through 209 as if set forth herein at length.

211. Section 106 of the National Historic Preservation Act and Section 14.09 of the New York State Historic Preservation Act authorize SHPO to participate in the review environmental process to ensure that effects or impacts on eligible or listed properties are considered and avoided or mitigated during the project planning process.

212. The Lead Agency failed to identify SHPO as an Involved Agency and did not give SHPO an opportunity to participate in coordinated review of the Project, as required by 6 NYCRR 617.6.

213. By reason of the foregoing, petitioners are entitled to an order annulling the Neg Dec.

SIXTH CAUSE OF ACTION

THE LEAD AGENCY'S DETERMINATION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD

214. Petitioners repeat and reallege paragraphs 1 through 214 as if set forth herein at length.

215. The Department's Decision to issue a Neg Dec is not supported by substantial evidence on the record.

216. The Department's Decision to issue a Neg Dec is not supported by a rational basis.

217. The Lead Agency relied on false and misleading information in making a determination of insignificance.

218. By reason of the forgoing, petitioners are entitled to an order vacating the Neg Dec and Site Plan Approval.

SEVENTH CAUSE OF ACTION
VIOLATION OF ARTICLE I §19 OF THE NEW YORK CONSTITUTION

219. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 218 as if set forth herein at length.

220. Section 19 of Article I of the New York Constitution (the "Green Amendment") provides for "Environmental rights," and guarantees "Each person shall have a right to clean air and water, and a healthful environment."

221. The Green Amendment recognizes and preserves New Yorkers' Constitutional right to clean air, clean water, and a healthful environment.

222. The inherent and inalienable rights conferred by the Green Amendment reflect the basic societal contract between citizens and the government of New York.

223. The Green Amendment creates a private cause of action. *E.g., Fresh Air for the Eastside, Inc. v. State*, 2022 N.Y. Slip Op. 34429(U), 10 (Monroe Co. 2022).

224. The legislative history behind enactment of the Green Amendment states that the "Amendment will **require government to consider the environment** and its citizens' relationship to it **in all decision making**." *See* Legislative History of N.Y. Const. Art. I, ¶19, Environmental Advocates Letter re passage of S528, Jan 12. 2021, *available at* Environmental-Advocates-Letter-re-passage-of-S528.pdf (bpb-us-w2.wpmucdn.com) ("**This language will** finally put in place safeguards that **require the government to consider the environment and our relationship to the Earth in decision making.** If the government fails in that responsibility, New Yorkers will finally have the right to take legal action for a clean environment because it will be in the State Constitution") (emphasis added).[6] *See also* Legislative History of N.Y. Const. Art. I, ¶19, Senate Transcript 1.12.2021, *available at* Senate-Transcript-1.12.2021.pdf (bpb-us-w2.wpmucdn.com) (Senator Jackson: "we will finally have safeguards **requiring government to consider the environment** and our relationship to Mother Earth **in the decision-making process**") (emphasis added).

225. The Department has an affirmative duty to all the citizens of New York to protect clean air, clean water, and a healthful environment.

[6] See Id. (Constitutional Green Amendments **ensure government officials are making informed decisions focused on protecting environmental rights from the beginning of the decision-making process** when protection is best accomplished. Green Amendments are also powerful for advancing environmental justice protections by ensuring government officials are protecting the environmental rights of all people and are constitutionally prohibited from creating environmental sacrifice zones.)

226. Accordingly, the Department has the power and responsibility to consider how a project it proposes and reviews may impact the health of the inhabitants of this State, particularly with respect to air, water, and environmental impacts.

227. The Department's acts and omissions alleged herein were inconsistent with its obligation to protect the environment and the health, safety, and welfare of the inhabitants and the people of the State of New York.

228. The Department's decision to issue a neg dec for the Project is inconsistent with the Department's obligation under the green amendment to protect environmental rights because the project will result in adverse impacts to air quality in a known asthma neighborhood cluster, as well as the numerous other potentially significant adverse environmental impacts identified herein.

229. Petitioners raised these issues to the Department at the administrative level and during the prior litigation described above.

230. The Department failed and refused to take a hard look at the environmental issues raised by petitioners.

231. The Department failed to consider whether the Project would infringe on the constitutional right of New Yorkers to clean air, clean water, and a healthful environment.

232. The Department's Determination to grant a Neg dec for the Project without protecting air quality or addressing the environmental issues raised above violated Plaintiffs' Constitutional rights under the Green Amendment, which requires that government entities consider the impacts of their decisions on individuals' Constitutional environmental rights to

"clean air, clean water, and a healthful environment" before granting a discretionary approval that may adversely impact the Environment or any individual's environmental rights.

233. The Department's neg dec violates the constitutionally protected, affirmative rights of the Friends' Members to "clean air, clean water, and a healthful environment" under the Green Amendment by enabling, inter alia, the felling of 78 mature trees without accounting for their lost environmental benefits for generations, or even within the Park at all.

234. As a direct and proximate cause of the combined acts and omissions of the Department in granting the Neg Dec, the Department's Determination will harm Plaintiff and its members.

235. The Department did not independently consider how the Project would impact the environment and the Association's environmental rights under Article I, §19 of the New York State Constitution.

236. The Department is authorizing the removal of 78 mature trees that have substantial positive environmental impacts on air quality and mitigate adverse environmental air quality, stormwater, noise and other adverse environmental impacts from surrounding conditions. This will contribute to the generation of polluted air and an unhealthy environment in and around the Park.

237. The Department failed to abate such harms to clean air and a healthful environment by refusing to impose necessary mitigation measures as proposed by Petitioners.

238. The Department took no action to mitigate harm to clean air and a healthful environment and did nothing to preserve clean air and a healthful environment, or to protect Plaintiffs' environmental rights.

239. As a result, the Department violated Plaintiffs' constitutionally protected rights to "clean air, clean water, and a healthful environment."

240. Because of this Constitutional violation, Plaintiffs are entitled to the relief requested herein.

EIGHTH CAUSE OF ACTION
DECLARATORY JUDGMENT AGAINST THE DEP'T OF PARKS & RECREATION

241. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 240 as if set forth herein at length.

242. Pursuant to CPLR §3001 et seq., Plaintiffs seeks a declaration from this Court that Dept of Parks & Recreation is violating their Constitutional rights under the Green Amendment by depriving them of clean water and a healthful environment.

WHEREFORE, petitioners respectfully request that the Court issue an order:

a. Granting a preliminary injunction prohibiting respondent Department of Parks & Recreation from doing any site work (including but not limited to tree removal) at the Fort Greene Park;

b. Granting a permanent injunction prohibiting respondent Department of Parks & Recreation from doing any site work (including but not limited to tree removal) at the Fort Greene Park in furtherance of the Project;

c. Annulling and vacating the Neg Dec pursuant to Article 78;

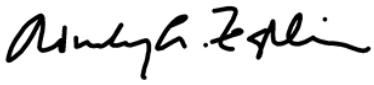
d. Declaratory judgment that, under the New York State Constitution, the Department of Parks & Recreation:

   i. failed to comply with its affirmative substantive duty under the ERA/Green Amendment (NYS Const. Art. I, §19) to consider the impacts of its actions/decisions/determinations on individuals' environmental rights.

   ii. failed to comply with their affirmative substantive duty under the ERA/Green Amendment (NYS Const. Art. I, §19) to ensure that its actions/decisions/determinations do not infringe upon any individuals' environmental rights.

e. Awarding attorneys' fees, costs and disbursements, and such other and further relief as this Court deems just and proper.

Dated: Rochester, New York
September 29, 2023



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EXHIBITS

A. Owens Report

B. FOIL Lawsuit Decision

C. First Department Decision dated April 30, 2019

D. Trial Court Judgment dated January 29, 2020

E. Michael Gotkin letter to the New York City Landmark Preservation Commission dated November 21, 2017

F. Glaeser Affidavit sworn to April 27, 2018.

G. Judgment in the Type II Lawsuit

H. EAS and exhibits

I. Negative Declaration of Environmental Significance

J. 2023 Gotkin Report to Friends of Fort Greene Park

K. Glaeser Affidavit sworn to September 2023

VERIFICATION

STATE OF NEW YORK)
COUNTY OF GREENE) s.s.:

Hui-Ling Hsu, being duly sworn, deposes and says:

1. I am the President and the Treasurer of Petitioner – Plaintiff Friends of Fort Greene Park, Inc., named in the within proceeding.

2. I have read the Petition- Complaint and know the contents thereof to be true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. The source of my information and belief is the books and records maintained by the corporate Petitioner/ Plaintiff, conversations with Petitioner's managing agents, officers, members, independent contractors, and/or employees.

3. This verification is made by your deponent because the Petitioner – Plaintiff is a corporation and I am an officer thereof.

Dated: September 28, 2023
Rochester, New York

Hsu, Hui-Ling Sep. 28 2023
Hui-Ling Hsu

Sworn before me this 28th
Day of September, 2023

Esther Blount
Notary Public

ESTHER BLOUNT
NOTARY PUBLIC. STATE OF NEW YORK
Registration No. 01BL6188396
Qualified in Kings County
Commission Expires June 09. 2024