

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

----- X

In the Matter of

COUNCIL OF CHELSEA BLOCK ASSOCIATIONS,
William Borock, President;
FLATIRON ALLIANCE, INC., Michele Golden & Susan
Finley, Co-Directors;
WEST 12th STREET BLOCK ASSOCIATION, Marguerite
Martin, Co-Chair;
UPPER WEST 13th STREET BLOCK ASSOCIATION, INC.,
Jeffrey Ryan, President;
WEST 13th STREET 100 BLOCK ASSOCIATION, INC.,
Gary Tomei, President;
100/200 WEST 15th STREET BLOCK ASSOCIATION,
Steven Starosta & Kimon Rezos, Co-Chairs;
100 WEST 17th & 18th STREETS BLOCK ASSOCIATION,
Judy Klein And Michael Glassman, Co-Presidents;
16th STREET TENANTS CORP., Sherrie Levy, President;
13 WEST 13th APARTMENT CORPORATION; Michael
Cohen, President;
CAMBRIDGE OWNERS CORPORATION, Trevor Stewart,
President;
VICTORIA OWNERS CORPORATION, James Heller,
Treasurer;
VERMEER OWNERS, INC.,
JOHN WETHERHOLD;
DAVID R. MARCUS;
JULIANNE BOND; and
ARTHUR Z. SCHWARTZ, individually and as Male
Democratic District Leader for the 66th Assembly District
Part A,

Index No.

VERIFIED PETITION

Petitioners,

–against–

POLLY TROTTENBERG, as COMMISSIONER OF THE
CITY OF NEW YORK DEPARTMENT OF
TRANSPORTATION,

Respondent,

For an Order and Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules, the State Environmental Quality
Review Act, and the New York City Environmental Quality
Review Act.

----- X

Petitioners, by their undersigned attorney, Arthur Z. Schwartz, of Advocates for Justice, as and for a Verified Petition, allege as follows.

INTRODUCTION

1. This is a lawsuit seeking declaratory and injunctive relief, addressed to two separate, but inter-related plans adopted by the CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION (“DOT”) and its Commissioner, Respondent POLLY TROTTENBERG, which will (a) reconfigure 14th Street in Manhattan so as eliminate passenger car traffic and prohibit left turns from the eastbound and westbound lanes, and right turns from some eastbound intersections; (b) make permanent, what were originally described as “temporary,” “protected” bike lanes on 12th and 13th Streets in Manhattan.

2. Petitioners bring this suit pursuant to the N.Y. State Environmental Quality Review Act (“SEQRA”), and the NY City Environmental Quality Review Act (“CEQRA”), 62 RCNY Chapter 5, and NY City Executive Order 91, 43 RCNY Chapter 6, and the New York Freedom of Information Law, Sections 87 and 89 of the Public Officers Law. Petitioners also assert, pursuant to Article 78 of the CPLR, that the plan to eliminate one lane of traffic on the north and south sides of 14th Street, and to establish a “bus and ‘truck’” lane (“hereinafter the “14th Street Plan”), and the adoption of a related plan to make permanent 16 foot wide bike lanes on 12th and 13th Streets in Manhattan (hereinafter ‘The Bike Lane Plan’), are arbitrary and capricious actions by the DOT

3. Neither Plan has been properly vetted under SEQRA or CEQRA, the DOT has refused to release any studies or data supporting its decisions, and both plans are arbitrary and capricious actions by government which threaten the wellbeing of residents of the Greenwich

Village, Chelsea and Flatiron communities in Manhattan, and threaten the character of those neighborhoods.

4. This suit is brought in order to stop the implementation of the 14th Street Plan, and to bring about the restoration of the 12th and 13th Street streetscapes to their former condition unless these interrelated plans are evaluated in accordance with SEQRA and CEQRA, until all FOIL requests are lawfully responded to and unless the plan reveals some modicum of rationality.

5. These actions by the DOT were originally envisioned in 2017-2018 as part of a mitigation plan to remedy what was expected to be a lack of subway service on 14th Street at a time when the Metropolitan Transportation Authority (“MTA”) was planning to shut down L Train service from Brooklyn, and across 14th Street, for an 15 month period. The 2017-2018 plans were designed to accommodate a projected massive increase in crosstown bus service, a number exceeding 85,000 riders a day (MTA’s estimate) and 2–5,000 crosstown bike riders a day (DOT’s estimate). The subway shutdown will no longer occur, and service will only be slowed down on the L Train late at night and on weekends. Despite prior unresolved litigation about the applicability of SEQRA and CEQRA, several “community meetings,” and all sorts of obscure “modeling,” and additional meetings after the shutdown was called off, the DOT has refused to evaluate either the interrelated 2019 14th Street Plan or the Bike Lane Plan (which we call, collectively, the 14th Street “Corridor Plan”) pursuant to SEQRA or CEQRA, which means that any assessments made by DOT have been done without taking a legitimate “hard look” at the impacts, and without consideration of various alternative proposals. Not only that, DOT has come up with a new “rationale” for the Corridor Plan, since the original rationale was no longer viable. That rationale (making bus service faster) amounts to no more than PR material. The result, Petitioners contend, will be increased vehicular traffic on all east and westbound streets

between 12th Street and 20th Street, bringing with it air pollution, noise, and vibrations endangering the 19th century buildings which line these blocks, challenging the character of the Greenwich Village, Chelsea, and Flatiron communities, and likely causing delay in the crosstown transit of emergency vehicles.

6. The two intertwined plans are the result of non-public decision making by the Respondent DOT, which has switched its motivation for reworking 14th Street from accommodation of riders inconvenienced by the L Train, to a need to make cross-14th Street buses “run faster.” No new rationale has been stated for the two bike lanes constructed before the shutdown was called off, which were supposed to be “temporary” and were designed to serve 2,500 to 5,000 L Train riders who chose to bicycle across Greenwich Village. This shifting rationale, despite meetings with various community boards, several of which have denounced some or all aspects of the plans (see Exhibit A, resolution of Community Board 4, and Exhibit B, resolution of Community Board 3), is not how government in New York City, or anywhere in New York State, is supposed to function.

7. Thirty-three years ago the Court of Appeals addressed this kind of planning in *Chinese Staff and Workers Assn. v. City of New York*, 68 N.Y.2d 359 (1986), where the City at least acted like it wanted to comply with SEQRA by doing an environmental review of the effects of a construction project on the “physical environment,” but ignored broader environmental questions, set forth language which should guide us today:

“Initially, we note that there is no basis here to rely on any special expertise of the agency since all that is involved is the proper interpretation of statutory language. It is clear from the express terms of the statute and the regulations that environmental is broadly defined ... and expressly includes as physical conditions such considerations as ‘existing patterns of population concentration, distribution or growth, and existing community or neighborhood character’ [citation

omitted] ... That these fact factors might generally be regarded as social or economic is irrelevant in view of this explicit definition ...”

* * *

“A significant effect on the environment may be found if a proposed project impairs the character or quality of ... existing community or neighborhood character (CEQR 6[a][5]) ... It is not relevant whether the proposed project may affect these concerns primarily or secondarily or in the short term or in the long term since the regulations expressly include all such effects.”

8. Not only does the DOT ignore the impacts, the two interrelated actions result in a myriad of non-enforceable or confusing rules. Some passenger vehicles will be allowed on 14th Street for some purposes, but some will not. For-hire vehicles can pick up and drop off passengers, but yellow cabs cannot do pick-ups. Enforcement will be “achieved” through tickets given out by cameras, which somehow will peer into the inside of vehicles and track them, not by live traffic agents stopping vehicles to check for a for-hire order. There is no statutory definition of a “truck” here. The action epitomizes arbitrary and capricious decision making. *See N.Y. Statewide Coalition of Hispanic Chambers of Commerce v. NYC Dept. of Health and Mental Hygiene*, 2013 W.L. 1343607 (Sup. Ct. N.Y. County 2013), *aff’d* 110 A.D.3d 1 (1st Dept. 2013), 22 N.Y.3d 853 (2013). It is not an action “based on a rational documented, empirical determination.” *N.Y. State Association of Counties v. Axelrod*, 78 N.Y.2d 158, 168 (1991). The DOT has failed to “substantiate what therefore amount[s] only to a theory and assumption—arrived at swiftly and certainly not after any reasonable or measured period of empirical documentation, assessment and evaluation.” *Id.* “That is not the equivalent of requisite rationality.” *Id.* *And see Gerson v. NYC Campaign Finance Board*, 171 A.D.3d 648 (1st Dept. 2019).

9. The Plans being addressed here are the government thumbing its nose at the views of residents and the character of three neighborhoods in order to speed up busses by one or two miles per hour and promote use of bicycles. This Court’s intervention is sorely needed.

PARTIES

10. Petitioners are as follows:

- a. Petitioner Council of Chelsea Block Associations is a not-for-profit corporation consisting of numerous block associations. William Borock is its President.
- b. Petitioner Flatiron Alliance, Inc. is a not-for-profit membership corporation. Its members are residential and commercial tenants and owners of co-ops & condos; it works to Preserve and Protect the Flatiron District. Michele Golden & Susan Finley are its Co-Directors.
- c. Petitioner West 12th Street Block Association is a New York not-for-profit corporation whose members reside on West 12th Street between Fifth and Seventh Avenues in Manhattan. Marguerite Martin is its Co-Chair.
- d. Petitioner Upper West 13th Street Block Association, Inc. is a New York not-for-profit corporation, whose members reside on the block of West 13th Street between Fifth and Sixth Avenues in Manhattan. Jeffrey Ryan is its President.
- e. Petitioner West 13th Street 100 Block Association, Inc. is a New York not-for-profit corporation whose members reside on West 13th Street between Sixth and Seventh Avenues in Manhattan. Gary Tomei is its President.
- f. Petitioner 100/200 West 15th Street Block Association is an unincorporated block association whose members reside on West 15th Street between Sixth and Eighth Avenues in Manhattan. Steven Sirota & Kimon Rezos are its Co-Chairs.
- g. Petitioner 100 West 16th Street Block Association is an unincorporated membership association whose members reside on West 16th Street between Sixth and Seventh Avenues in Manhattan. Paul J. Gronki is its President.

h. Petitioner 100 West 17th & 18th Streets Block Association is an unincorporated membership association whose members reside on West 17th and West 18th Streets between Sixth and Seventh Avenues in Manhattan. Judy Klein And Michael Glassman are its Co-Presidents.

i. Petitioner 16th Street Tenants Corp. is a New York cooperative apartment corporation which owns 16 West 16th Street in Manhattan. Sherrie Levy is its President.

j. Petitioner Cambridge Owners Corporation is a New York cooperative apartment corporation which owns 175 West 13th Street in Manhattan. Trevor Stewart is the President.

k. Petitioner Victoria Owners Corporation is a New York cooperative apartment corporation which owns 7 East 14th Street in Manhattan. James Heller is its Treasurer.

l. Petitioner Vermeer Owners, Inc., is a New York cooperative apartment corporation which owns 77 Seventh Avenue, in Manhattan, which is on the corner of Seventh Avenue and 14th Street.

m. Petitioner 130 West 16th Street Owners Corporation is a New York cooperative apartment corporation which owns 130 West 16th Street in Manhattan. Paul J. Gronki is its President.

n. Petitioner John Wetherhold is a resident of 13 West 13th Street, in Manhattan.

o. Petitioner David R. Marcus resides at 175 West 13th Street in Manhattan and is a Cooperative Shareholder in the Cambridge Owners Corp.

p. Petitioner Julianne Bond resides at 175 West 13th Street in Manhattan.

q. Plaintiff Arthur Schwartz lives at, and is the owner of a townhouse built in around 1840, located at 78 West 12th Street in Manhattan. He also sues as the elected

Democratic District Leader for the 66th Assembly District Part A, which goes from the Hudson River to First Avenue and from 15th Street to Houston Street in Manhattan.

11. Respondent Department of Transportation (DOT) is an agency of the City of New York, created under the NYC Charter, with a Commissioner, Respondent Trottenberg, who reports to the Mayor. DOT is responsible for the maintenance and management of New York City's roadways and bridges. It does not, itself, provide transportation to the public.

STATUTORY BACKGROUND

NY State Environmental Quality Review Act

12. To ensure the "laudable goal" of placing environmental concerns alongside economic interests in the land use decision-making process, the "Legislature created an elaborate procedural framework, SEQRA, requiring parties to consider the environmental ramifications of their actions as early as possible." *Matter of King v. Saratoga Bd. of Supervisors*, 89 NY2d 341, 347 (1996).

13. SEQRA requires government agencies to consider the environmental impacts of proposed actions. See N.Y. Envir. Conser. Law § 8-0109. Rules and regulations promulgated as a result of the law distinguish between Type I, Type II, and Unlisted Actions. See 6 NYCRR § 6I7.3. Type I Actions are enumerated and considered more likely to require an Environmental Impact Statement ("EIS"). See 6 NYCRR § 6I7.4(b)(I)-(II). Type II Actions, also enumerated, generally do not require environmental review. See 6 NYCRR § 6I7.5(c)(1)-(37). All other actions are Unlisted Actions and thus, like Type I Actions, may require environmental review. See 6 NYCRR § 6I7.3(c). Among Type I Actions are actions that involve physical alteration of 2.5 acres which are contiguous to a historic district and publicly owned parkland. See 6 NYCRR 6I4.4(b)(9) and (10).

14. There is no question that SEQRA applies to capital improvements to roadways.

The current version of the SEQRA Handbook—SEQRA and Local Government, issued by the NY State Department of Environmental Conservation (see Exhibit C) at Section C states:

Direct actions of local governments to acquire, construct, alter, remove or dispose of land or structures intended for public purposes require review under SEQRA. Included would be capital projects such as public buildings and open space, streets and highways, sewer and water systems and maintenance facilities.

15. That same Handbook, in Section C, describes the following capital repairs as being Type II exceptions:

- Maintenance or repair involving no substantial changes in an existing structure or facility;
- Replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds for Type I actions; and
- Maintenance of existing landscaping or natural growth.

A capital project which substantially changes a roadway would not be an exception.

16. The Department's proposed revision of the Handbook's relevant sections, annexed as Exhibit D, at Chapter 1 Subsection 3, makes it clear that a municipal agency, like the DOT, is not immune from SEQRA compliance:

“Are there any agencies excluded from complying with SEQR?”

In enacting SEQR, the Legislature specifically excluded some decisions by agencies. These include the Adirondack Park Agency for actions on private land within the Adirondack Park (the “Blue Line”) and the Public Service Commission for actions involving Articles VII, X (expired) and 10 of the Public Service Law (e.g., pipelines, transmission lines and power plants). This was done because these two agencies already had a SEQR-like analysis process. In addition, there are a few narrowly focused exclusions:

- The Metropolitan Transit Authority (MTA) has an exemption for most actions it takes on land that it already owns.
- The New York Power Authority (NYPA) has the potential to be excluded from the provisions of SEQR only to the extent that

compliance with SEQR is inconsistent with the terms and purposes of Section 1014 or the Public Officers Law.

- The Long Island Power Authority is exempt for actions involving the decommissioning of the Shoreham Nuclear Plant.
- The Thruway Authority was granted an exclusion from SEQR in 1990 for the acquisition of Interstate 287 which connects the Tappan Zee Bridge to the New England Section of the Thruway.
- The Hudson River Waterfront Area was similarly excluded from SEQR requirements in 1990 for the designation of certain portions of the Hudson River shoreline in Manhattan as portions of the Hudson River Waterfront Area, and their simultaneous removal from the West Side Roadway Construction area.
- The New York State Department of Transportation was granted an exemption for certain actions involving addition of travel lanes and other projects on the Long Island Expressway.”

17. Proposed Type I and Unlisted Actions require the lead agency (which here would be the DOT), to either issue a Negative Declaration as to environmental impact or to draft an EIS. A Negative Declaration is legally sufficient if the lead agency has identified all relevant environmental impacts, thoroughly analyzed such impacts, and provided a written explanation of the reasoning that supports the negative declaration.¹ Thus, a negative declaration is improper and legally insufficient if the agency fails to identify a relevant environmental impact, thoroughly analyze the impacts identified, or explain the reasoning behind its negative declaration.²

18. Under SEQRA, in order to assess whether a proposed action will have a significant environmental impact, agencies must take a “hard look” at the proposed action and its effects.³ A “hard look” involves a level of granularity that includes, for example, a discussion of

¹ *Dunk v. City of Watertown*, 11 A.D.3d 1024, 784 N.Y.S.2d (App. Div. 4th Dep’t 2004); *See also* New York State Dep’t of Environmental Conservation, *The SEQRA Handbook* 80 (3rd Ed. 2010)

² *Defreetsville Area Neighborhood Ass’n, Inc. v. Town of North Greenbrush*, 299 A.D.2d 631, 750 N.Y.S.2d 164 (App. Div. 3d Dep’t 2002) (finding environmental review improper when town adopted resolution issuing negative declaration of environmental significance regarding rezoning plans but failed to consider that rezoning would lead to the construction of retail shopping center).

³ *MYC New York Marina v. Town Board of East Hampton*, 17 Misc.3d 751 (Sup. Ct. Erie County 2007) (citing *Aldrich v. Pattison*, 107 A.D.2d 258, 266, 486 N.Y.S.2d 23 (App. Div. 2d Dep’t 1985)).

alternatives “sufficient to permit a comparative assessment of the alternative discussed.”⁴ Actions also must be evaluated in terms of their “reasonably related” long-term, short-term, direct, indirect, and cumulative impacts,⁵ and must be analyzed with other actions that are part of a long-range plan, likely to be subsequently undertaken, or dependent on approval of the initial action. See 6 NYCRR § 617.7(c)(2). Significance is also evaluated in connection with the proposed action’s setting, probable occurrence, duration, irreversibility, geographic scope, magnitude, and the number of people affected. See 6 NYCRR § 617.7(c)(3).

19. The New York Court of Appeals has held that the “[t]hreshold at which an environmental impact statement must be prepared is relatively low.”⁶ If an action is determined to have a significant impact, the EIS must provide a description of: short-term and long-term effects; unavoidable effects; possible alternatives, including the effects of taking no action at all;⁷ public resource commitments; possible mitigation measures; the action’s growth-inducing characteristics; use of energy; solid waste implications; affects groundwater protection; and any other information consistent with the Commissioner’s guidelines. 6 NYCRR § 617.9

20. The New York Court of Appeals has weighed “population patterns” and “existing community character” as relevant when evaluating an agency’s EIS.⁸ Indeed, agencies must consider an action’s secondary and long-term effects on “population patterns, community goals, and neighborhood character,” including any “potential acceleration of the displacement of local

⁴ *MYC New York Marina v. Town Board of East Hampton*, 17 Misc.3d 751 (Sup. Ct. Erie County 2007)

⁵ *Chinese Staff Workers Ass’n v. City of New York*, 68 N.Y.2d 359, 367 (1986).

⁶ *Chinese Staff Workers Ass’n v. City of New York*, *Id.* (1986).

⁷ *MYC New York Marina v. Town Board of East Hampton*, 17 Misc.3d 751 (Sup. Ct. Erie County 2007) (rejecting board’s environmental review where it did not consider “no action” alternative and therefore failed to take a requisite “hard look” at the environmental impact of rezoning as required under SEQRA).

⁸ *Chinese Staff Workers Ass’n v. City of New York*, 68 N.Y.2d 359 at 365 (1986) (reversing appellate court’s grant of summary judgment to respondents and granting petitioner’s cross-motion for same, finding that lead agencies did not take requisite hard look because they failed to include project’s secondary, long-term, and social effects on population patterns and community character in EIS).

residents and businesses.”⁹ See also *Teich v. Bucheit*, 221 AD2d 452 (2d Dep’t 1995), *Hand v. Hospital for Special Surgery*, 943 N.Y.S.2d 792 (Sup. Ct. N.Y. County 2012).

21. While SEQRA does not specifically include public health in its broad definition of “environment,”¹⁰ state regulations clearly do—for example, 6 NYCRR § 617.2 lists “human health” in its definition of “environment.” 6 NYCRR § 617.2(1) Consistent with this is the Commissioner of Environmental Conservation’s *SEQRA Manual* (updated version included as Exhibit D), which instructs agencies to consider “community health.”¹¹ (See also and the NYC Office of Environmental Conservation’s *CEQR [City Environmental Quality Review] Manual*, which dedicates an entire chapter to “public health.” See Exhibit F, Chapter 20.) Additionally, agencies must consider whether the action will create “a hazard to human health” or cause a “material conflict with a community’s current plans or goals as officially approved or adopted.” See 6 NYCRR § 617.7(c)(1)(iv), (vii). Thus, agencies must consider whether the proposed action will affect health, and if so, whether that impact would be significant.

New York City Environmental Regulations

22. New York City supplements SEQRA with its own set of regulations, commencing at § 5-02 of the Rules of the City of New York (RCNY), which continues and supplements Executive Order No. 91 [43 RCNY §§ 6-01 *et seq.*] of August 24, 1977, as amended (“Executive Order 91”). A copy of the CEQRA Rules is annexed as Exhibit E. The City Environmental Quality Review Technical Manual, in relevant part, is annexed as Exhibit F.

23. Section 6-02 of Executive Order 91, “Definitions,” contains the following relevant definitions:

⁹ *Chinese Staff Workers Ass’n v. City of New York*, 68 N.Y.2d 359, 367 (1986); N.Y. Envir. Conser. Law § 8-0105(6)

¹⁰ N.Y. Envir. Conser. Law § 8-0105(6)

¹¹ New York State Department of Environmental Conservation, *The SEQRA Handbook* 83 (3rd Ed. 2010), http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf.

a. “Action” means any activity of an agency, other than an exempt action enumerated in § 6-04 of this chapter, including but not limited to the following: (1) non-ministerial decisions on physical activities such as construction or other activities which change the use or appearance of any natural resource or structure;

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

c. “Negative declaration” means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action will not have a significant effect on the environment.

d. “Notice of determination” means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action may have a significant effect on the environment, thus requiring the preparation of an EIS.

24. Section 6-04 of Executive Order 91, like SEQRA, only exempts, with respect to non-emergency work, “maintenance or repairs involving no substantial changes in existing structures and facilities.”

25. Section 6-06 of Executive Order 91 sets forth, in relevant part, the criteria for a Determination of Significant Effect:

Criteria. (a) An action may have a significant effect on the environment if it can reasonably be expected to lead to one of the following consequences:

(1) a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding;

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

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

(5) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure which is eligible for inclusion in an official inventory of such resources), or of existing community or neighborhood character;

(7) the creation of a hazard to human health or safety;

(8) a substantial change in the use or intensity of use of land or other natural resources or in their capacity to support existing uses, except where such a change has been included, referred to, or implicit in a broad "programmatic" EIS prepared pursuant to § 6-13 of this chapter.

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

(10) changes in two or more elements of the environment, no one of which is substantial, but taken together result in a material change to the environment.

26. Section 5.05(c)(6) of the City Regulations mandates that an action listed in 62 RCNY § 5-05(c)(2), (4), (5), (6), (8), or (11)-(13) of these rules "shall remain subject to environmental review if the project site is: (i) wholly or partially within any historic building, structure, facility, site or district that is calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark; (ii) substantially contiguous to any historic building, structure, facility, site or district that is designated, calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark; or (iii) wholly or partially within or substantially contiguous to any historic building, structure, facility, site or district, or archaeological or prehistoric site that is

listed, proposed for listing or eligible for listing on the State Register of Historic Places or National Register of Historic Places.”

27. It is also clear that projects which have a significant impact on transportation, including auto and truck trips, must be classified as Type I projects, with a full analysis of the transportation impacts. See Exhibit I, Chapter 16, especially Section 313.1, pages 16-10 – 16-11.

28. Section 6.07(b)(1) (1) of Executive Order 91 (Exhibit E) describes the requirement that **at minimum** there be a Negative Declaration:

If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§ 6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment, **they shall issue** a Negative Declaration which shall contain the following information: (i) an action identifying number; (ii) a brief description of the action; (iii) the proposed location of the action; (iv) a statement that the lead agencies have determined that the action will not have a significant effect on the environment; (v) a statement setting forth the reasons supporting the lead agencies’ determination. *Emphasis supplied.*

29. Section 6.07(3) of Executive Order 91, titled “Notice of Determination,” states that: “If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§ 6-04 and 6-15 of this chapter, respectively, and that the action may have a significant effect on the environment, they shall issue a Notice of Determination which shall contain the following information: (i) an action description number; (ii) a brief description of the action; (iii) the proposed location of the action; (iv) a brief description of the possible significant effects on the environment of the action.”

30. Section 5-07 of the CEQRA Regulations describes the procedure after issuance of a positive declaration as follows:

Scoping. Following the issuance of a notice of determination (positive declaration), the lead agency shall coordinate the scoping process, which shall ensure that all interested and involved agencies (including the City Council where it is interested or involved), the applicant, the

OEC, community and borough boards, borough presidents and the public are able to participate. The scoping process shall include a public scoping meeting and take place in accordance with the following procedure:

(a) Draft Scope. Within fifteen days after issuance of a notice of determination (positive declaration), the lead agency shall issue a draft scope, which may be prepared by the applicant but must be approved by the lead agency. ...

(b) Public Notice and Comment. Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall publish in the City Record a notice indicating that a draft environmental impact statement will be prepared for the proposed action and requesting public comment with respect to the identification of issues to be addressed in the draft environmental impact statement. Such notice shall be in a format provided by the OEC and shall state that the draft scope and the environmental assessment statement may be obtained by any member of the public from the lead agency and/or the OEC. Such notice shall also contain the date, time and place of the public scoping meeting, shall provide that written comments will be accepted by the lead agency through the tenth day following such meeting, and shall set forth guidelines for public participation in such meeting.

(c) Agency Notice and Comment. Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall circulate the draft scope and the environmental assessment statement to all interested and involved agencies (including the City Council where it is interested or involved) Together with the draft scope and the environmental assessment statement, a letter shall be circulated indicating the date, time and place of the public scoping meeting, and stating that comments will be accepted by the lead agency through the tenth day following such meeting. The lead agency may consult with other agencies regarding their comments, and shall forward any written comments received pursuant to this subdivision to the OEC.

(d) Public Scoping Meeting. The lead agency shall chair the public scoping meeting. In addition to the lead agency, all other interested and involved agencies that choose to send representatives (including the City Council where it is interested or involved) ... may participate. The meeting shall include an opportunity for the public to observe discussion among interested and involved agencies, agencies entitled to send representatives, the applicant and the OEC. Reasonable time shall be provided for the public to comment with respect to the identification of issues to be addressed in the draft environmental impact statement. ...

(e) Final Scope. Within thirty days after the public scoping meeting, the lead agency shall issue a final scope ... Where a lead agency receives substantial new information after issuance of a final scope, it may amend the final scope to reflect such information.

31. Agencies such as DOT may be responsible for the EIS. Executive Order 91 § 6-08(b)(1) (b) states that “When an action which may have a significant effect on the environment is initiated by an agency, the initiating agency shall be directly responsible for the preparation of a draft EIS.”

32. Executive Order 91 describes the EIS content at § 6-09(d) (d):

The body of all draft and final EIS’s shall contain at least the following:

- (1) a description of the proposed action and its environmental setting;
- (2) a statement of the environmental impacts of the proposed action, including its short-term and long-term effects, and typically associated environmental effects;
- (3) an identification of any adverse environmental effects which cannot be avoided if the proposed action is implemented;
- (4) a discussion of the social and economic impacts of the proposed action;
- (5) a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives;
- (6) an identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;
- (7) a description of mitigation measures proposed to minimize adverse environmental impacts;
- (8) a description of any growth-inducing aspects of the proposed action, where applicable and significant;
- (9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant;
- (10) a list of underlying studies, reports or other information obtained and considered in preparing the statement; and

(11) (for the final EIS only) copies or a summary of the substantive comments received in response to the draft EIS and the applicant's response to such comments.

33. Section 6-10 describes the process to follow upon completion of a draft:

Draft Environmental Impact Statements - Procedures.

(a) Notice of Completion. Upon the satisfactory completion of a draft EIS, the lead agencies shall immediately prepare, file and make available for public inspection a Notice of Completion as provided in paragraphs (1), (2) and (3) of this subdivision. Where a proposed action is simultaneously subject to the Uniform Land Use Review Procedure ("ULURP"), the City Planning Commission shall not certify an application pursuant to ULURP until a Notice of Completion has been filed as provided in paragraph (3) of this subdivision.

(1) Contents of Notice of Completion. All Notices of Completion shall contain the following: (i) an action identifying number; (ii) a brief description of the action; (iii) the location of the action and its potential impacts and effects; and (iv) a statement that comments on the draft EIS are requested and will be received and considered by the lead agencies at their offices. The Notice shall specify the public review and comment period on the draft EIS, which shall be for not less than 30 calendar days from the date of filing and circulation of the notice, or not less than 10 calendar days following the close of a public hearing on the draft EIS, whichever last occurs.

(2) Circulating Notice of Completion. All Notices of Completion shall be circulated to the following: (i) all other agencies, including federal and state agencies, involved in the proposed action; (ii) all persons who have requested it; (iii) the editor of the State Bulletin; (iv) the State clearinghouse; (v) the appropriate regional clearinghouse designated under the Federal Office of Management and Budget Circular A-95.

(3) Filing Notice of Completion. All Notices of Completion shall be filed with and made available for public inspection by the following: (i) the Commissioner of DEC; (ii) the regional director of DEC; (iii) the agency applicant, where applicable; (iv) the appropriate Community Planning Board(s); (v) the City Clerk; (vi) the lead agencies.

(b) Filing and availability of draft EIS. [City clerk function transferred to OEC, City Planning Rules § 5-02(b)(4).] All draft EIS's shall be filed with and made available for public inspection by the same persons and agencies with whom Notices of Completion must be filed pursuant to paragraph (a)(3) of this section.

(c) Public hearings on draft EIS.

(1) Upon completion of a draft EIS, the lead agencies shall conduct a public hearing on the draft EIS.

(2) The hearing shall commence no less than 15 calendar days or more than 60 calendar days after the filing of a draft EIS pursuant to subdivision (b) of this section, except where a different hearing date is required as appropriate under another law or regulation. (3) Notice of the public hearing may be contained in the Notice of Completion or, if not so contained, shall be given in the same manner in which the Notice of Completion is circulated and filed pursuant to subdivision (a) of this section. In either case, the notice of hearing shall also be published at least 10 calendar days in advance of the public hearing in a newspaper of general circulation in the area of the potential impact and effect of the proposed action.

34. Section 6-11 describes the process for drafting and releasing the Final

Environmental Impact Statements:

(a) Except as provided in paragraph (1) of this subdivision, the lead agencies shall prepare or cause to be prepared a final EIS within 30 calendar days after the close of a public hearing.

(1) If the proposed action has been withdrawn or if, on the basis of the draft EIS and the hearing, the lead agencies have determined that the action will not have a significant effect on the environment, no final EIS shall be prepared. In such cases, the lead agencies shall prepare, file and circulate a Negative Declaration as prescribed in § 6-07 of this chapter.

(2) The final EIS shall reflect a revision and updating of the matters contained in the draft EIS in light of further review by the lead agencies, comments received and the record of the public hearing.

(b) Immediately upon the completion of a final EIS, the lead agencies shall prepare, file, circulate and make available for public inspection a Notice of Completion of a final EIS in a manner specified in § 6-11(a) of this chapter, provided, however, that the Notice shall not contain the statement described in subparagraph (a)(1)(iv) of such section.

(c) Immediately upon completion of a final EIS, copies shall be filed and made available for public inspection in the same manner as the draft EIS pursuant to § 6-11(b) of this chapter.

35. Again, the process set forth heavily involves public input and oversight.

FACTS RELEVANT TO ALL CLAIMS

36. Fourteenth Street, the central focus of this petition, is a two-way street that runs from Avenue D, on the Eastside, to Route 9a, which borders the Westside of Manhattan. Between Park Avenue/Fourth Avenue and University Place, it is bordered on the north by Union Square Park, a public park built in 1882 which is on the National Register of Historic Places. To the south it borders Greenwich Village, including the Greenwich Village Historic District. See map annexed as Exhibit G. On the north it borders the communities of Chelsea and Flatiron, an area that includes the Ladies Mile Historic District (see map annexed as Exhibit H), the Stuyvesant Square Historic District (Exhibit I), and the Chelsea Historic District (Exhibit J), and runs through the Gansevoort Market Historic District (Exhibit K). These areas are home to hundreds of 150 to 200-year-old structures, both residential and commercial. Thirteenth Street, from Sixth to Ninth Avenue, runs through the Greenwich Village Historic District, as does 12th Street west of Fifth Avenue.

37. In January 2016, the L Line between Bedford Street in Brooklyn and Eighth Avenue in Manhattan was proposed for a partial or full shutdown for a 15-month period so that the MTA could repair the tunnels under the East River, which had been damaged by flooding during Superstorm Sandy in 2012.

38. In around 2016 the MTA secretly prepared a SEQRA Environmental Assessment (EA), which concluded that the work would not have an environmental impact. That study included a brief discussion of the “construction impacts. In relevant part it stated, in connection with what was then called the “full-closure option,” simply that “subway service on the G, J and M lines would be increased to serve as primary alternate subway routes, and the A, C, E, and 7 lines would also serve as alternate routes.” The EA continued: “NYCT would also make

enhancements to current bus service to increase bus capacity. In addition, bus and ferry services may be provided to serve as alternate connections between Brooklyn and Manhattan, and additional bus service would be provided along 14th Street in Manhattan as a partial substitute to L Line subway repair.”

39. Sometime in 2017 the MTA and the New York City Transit Authority (“NYCTA”), its bus and subway subsidiary, in conjunction with the NYC-DOT began to consider how to provide alternate service. The MTA devised a series of preliminary mitigation plans, proposing that the M14A and M14D buses on 14th Street, which continue down Avenues A or D, might be converted to or overlaid with Select Bus Service (a service where passengers can pay off the bus); and, with the concurrence of the DOT, dedicated bus lanes would be placed on 14th Street in Manhattan.

40. In April 2017, a bike-riding advocacy group, Transportation Alternatives, with whom Commissioner Trottenberg is closely associated, announced the winners of a contest about how best to mitigate the effects of the L-Train shutdown. The contest winner proposed, among other things, a “Busway” running across 14th Street, which would bar all traffic other than buses. See Exhibit M.

14th Street Corridor Changes Adopted by the DOT in Late 2017 to Mitigate the Shutdown

41. On or about December 17, 2017, the NYC-DOT, with concurrence of MTA, released what it then described as its “final” Mitigation Plan (see Exhibit N), based on their projections that 80% of riders would transfer to other subway services to get to Manhattan, while 15% would use buses. There was not any discussion of how the MTA and DOT arrived at this projection. In the DOT Mitigation Plan, in relevant part, the DOT, as suggested by Transportation Alternatives, would convert 14th Street between Third and Ninth Avenues in Manhattan into a bus-only corridor (a “Busway”) to accommodate a rapidly moving SBS bus

route across 14th Street, connecting to a ferry route at Stuyvesant Cove Park near 23rd Street.

Finally, the DOT plan included an expansion of New York City's privately-operated bike share system, Citi Bike, and the installation of Manhattan's first two-way crosstown bike lane on 13th Street in Manhattan.

42. According to the MTA, if the L Train service had been suspended, this corridor would need to serve upwards of 84,000 bus transit customers each day.

43. **14th Street Busway.** Under the December 2017 DOT Shutdown Mitigation Plan, the core of 14th Street (Third to Ninth Avenues eastbound and Third to Eighth Avenues westbound) would serve as an exclusive "busway" (meaning no cars or trucks allowed) with peak hour restrictions. Dedicated bus lanes were to be added past both sides of the busway as well. This plan would have brought bus bulbs and expanded sidewalks (12 feet on both the north and south sides) to the corridor. NYC DOT announced it would also add new pedestrian-only space along Union Square West from, 14th to 15th Streets and 16th to 17th Streets, and would close University Place from 13th Street to 14th Street.

44. **Thirteenth Street Two-Way Bikeway During Shutdown.** The December 17, 2017 plan also announced that the DOT would add Manhattan's first two-way "protected" crosstown bike lane to 13th Street providing connection to a new bike parking hub on University Place from 13th to 14th Streets. That block of University Place, which had connected to 14th Street, would be closed (traffic coming north on University Place would either have to turn east on East 12th Street or west on East 13th Street.) DOT planned the bike path to fit on a 32-foot-wide street, even though the actual width is 27 feet.

45. **After** the MTA/NYCTA and NYC-DOT had announced their plans, they held numerous public meetings, several described as Town Hall meetings, and attended at least one

hearing at each of the affected Community Boards, and participated in one City Council hearing. Those community residents attending, including members of the Petitioner organizations, and the individual Petitioners, felt that (a) their complaints and suggestions were being politely listened to, and politely ignored, (b) that there was no available means of challenging statistics and analysis central to the decision making process, either about how to proceed with the project, or how to proceed with mitigation; and (c) that the statistical data was sketchy at best. DOT would not budge on its plan.

The First Round of Litigation and Changes in the Plan

46. NYC-DOT insisted, at all times, that it and the MTA were complying with the National Environmental Policy Act (“NEPA”) and SEQRA. (NEPA applied because the MTA was going to use federal funds administered by the Federal Transit Administration (“FTA”).)

47. On or about April 1, 2018, largely the same group of Petitioners which is bringing suit here, brought suit under NEPA and SEQRA in Federal Court, faulting the FTA with not properly enforcing the law when it failed to review the Canarsie Tunnel Plan Mitigation Plan.

48. On or about April 25, 2018 FTA asserted that it had “not made a final determination about whether the “Categorical Exclusion it granted in 2015 was still appropriate.” This occurred, according to the FTA, because “after the CE [the approval] was granted the plan for the Canarsie Tunnel work ha[d] undergone significant modifications.” In order to receive Federal; funds, the FTA required that the ‘appropriate environmental studies’ be prepared to allow the FTA to evaluate whether the Canarsie Tunnel work is exempt from further NEPA review.”

49. In late June 2018 the DOT announced that it had abandoned its plan for a two-way bike lane of 13th Street in Manhattan and was substituting, instead, one-way bike lanes on 12th and 13th Streets.

50. On around the same date, the DOT announced that under its revised Busway Plan, vehicles would be allowed on to 14th Street to drop off or pick up passengers, as long as they turned at the next intersection, and that delivery vehicles would be allowed onto 14th Street to make deliveries to do the same thing. However, even with these changes, the DOT steadfastly refused to abandon its plan to expand the sidewalks, on the north and south, into one of the existing lanes of traffic, and reduce 14th Street from six lanes to four.

The Federal Supplemental Environmental Assessment

51. In July 2018 the MTA released a “Supplemental Environmental Assessment” (SEA) (portions of which are annexed as Exhibit O) with a series of Appendices. We attach only the Temporary Proposed Alternative Service Plan Figures, as Exhibit P, the 14th Street Corridor Traffic Analysis Overview, as Exhibit Q, and the Greenhouse Gas Emissions, as Exhibit R.

52. In September 2018, after receipt of hundreds of comments opposing the plan and a public hearing where speakers almost uniformly were critical of the SEA, the FTA made a finding of No Significant Impact (see discussion in paragraphs 77–84 and Exhibit FF). Having received this finding from the FTA, the DOT notified residents in the 14th Street corridor that it would immediately be commencing construction of its 14th Street Busway, with an expected commencement date of around April 1, 2019, and that it would immediately build the 12th and 13th Street bike paths, which were opened on or about November 1, 2018.

a. Annexed as Exhibits S and T is the 14th Street Busway Plan as announced in September 2018.

b. Annexed as Exhibit U is the Bike Path Plan as announced in September 2018, constructed in October 2018, and opened in November 2018. Pages 3–4, which address 13th Street, shows 10-foot-wide traffic lanes between Sixth and Seventh Avenues, Fifth Avenue and University Place, University Place and Broadway, Broadway and Fourth Avenue, and 11

feet on the rest of the blocks. Pages 5 and 6 show 12th Street. The block between Sixth Avenue and Fifth Avenue has a 10-foot travel lane, as does the Broadway-Fourth Avenue stretch, Third Avenue to Second Avenue, and First Avenue to Avenue B. The bike lanes, ironically, take up 11 feet.

53. On or about October 1, 2018, a lawsuit was again filed challenging the 14th Street Corridor Plan as violative of SEQRA and CEQRA. A TRO was sought to prevent the construction of the bike lanes, which was denied.

Governor Cuomo Calls Off the Total Shutdown

54. On around January 15, 2019, Governor Andrew Cuomo announced that the MTA would do its repairs to the Canarsie Tunnel without shutting down the L Train. Not only that, the repairs, which would require a reduction in service, would only occur on weekends and overnight on weekdays.

55. Since the Total Shutdown was no longer going to occur, DOT had to decide how to proceed. NYC Council Speaker Cory Johnson reminded DOT that it had promised “a collaborative community process to determine which elements shall be made permanent.” *See Villager*, January 18, 2019 (Exhibit V).

56. On January 10, 2019, Petitioners’ counsel wrote to the DOT and the MTA suggesting that the Second Petition be withdrawn without prejudice and that all plans be reconsidered since the rationale underlying plans no longer existed. In that letter (Exhibit W), counsel (and Petitioner herein, Arthur Schwartz) demonstrated through photographs how the bike lanes and the “protective zone adjacent to the bike lanes had become truck parking areas, demonstrating how the new design was frequently impeding emergency vehicles, which were

now limited to 10-foot-wide lanes on 12th and 13th Streets, instead of the 13-foot-wide vehicle passages which had existed before.”

57. The Petitioners entered into an agreement with DOT (and the MTA) that their Second Petition would be discontinued without prejudice. In return, DOT agreed, *for the first time*, to meet with Petitioners through a coalition they had formed, the 14th Street Coalition. In fact, only two meetings were held.

58. Subsequently, two community meetings were held by DOT, one on West 14th Street and one on East 14th Street, and presentations were made to the impacted Community Boards.

59. As the various meetings progressed, it became clear that DOT again had little intention of modifying its plan and was fully committed to creating the Busway that had been proposed in 2017 by Transportation Alternatives. Its new rationale was a need to “speed up” bus service on 14th Street, even though 14th Street was one of two crosstown streets in Manhattan that had a subway line running across almost its entire length.

60. In fact, the entire bus route of the 14th Street Buses, the M14A and the M14D (one of which traveled on Avenue A and the other of which traveled on Avenue D to the first/last stop at Grand Street and the FDR Drive), was not very long. The schedule being followed on January 7, 2019 (Exhibit X) showed:

a. a 16-minute run eastbound, for most of the day, between West 14th Street and Seventh Avenue, and East 14th Street and Avenue A, increasing to 19 minutes during the evening rush hour.

b. a 27-minute run eastbound between Delancy Street and Columbia Street, and West 14th Street and Seventh Avenue (the M14D), increasing to 34 minutes during the evening rush hour (which includes Williamsburg Bridge traffic).

c. a 33-minute run eastbound between Grand Street and the FDR Drive, and West 14th Street and Seventh Avenue, increasing to 39 minutes during the evening rush hour (which includes crossing traffic headed to the Williamsburg Bridge).

61. On April 24, 2019, utilizing a Press Release from NYC Mayor Bill de Blasio, DOT announced its plan, turning 14th Street into a four-lane busway. See Exhibit Y.

a. Fourteenth Street would become a four-lane street, two lanes in each direction, with the center lanes being open only to buses, “trucks,” and emergency vehicles between Third Avenue and Ninth Avenue; the lanes closest to the sidewalk were designated as “local traffic” “pick-up and drop-off” lanes and cars utilizing those lanes would have to turn right at the next possible street; and no there would be no parking.

b. The 12th and 13th Street bike lanes would remain the same, with “more delineations and loading zones.”

62. DOT announced the plans without any weigh-in from Community Boards.

63. Despite the Mayor’s announcement, DOT stilled framed the plans as a proposal. The statistical evidence it presented at Community Board 2, which includes the Central and West Village below 14th Street, is annexed as Exhibits Z (14th Street Busway) and AA (12th/13th Street Bike Lanes). Similar presentations were made at Community Boards 3, 4, and 5.

a. The 14th Street presentation (Exhibit Z) focused on the current speed of the buses. All that was stated was that buses spent 60% of their trips at bus stops or stopped in traffic. The three “solutions” suggest were to cut the number of bus stops and add off-board

ticked purchase (called SBS Service), and the busway. There was no estimate of how much shorter the bus runs would be.

b. The Bike Lane presentation (Exhibit AA) included “before” and “after” statistics for crosstown bike riding at select locations during peak commuting time. Only a bar graph was presented.

64. Various Community Boards came out with resolutions opposing the Busway. The strongest expression of opposition came from Community Board 4, which covers the area north of 14th Street, west of Fifth Avenue, up to Midtown. That resolution is attached as Exhibit A. Community Board 3’s resolution (Community Board 3 covers the area south of 14th Street from Fourth Avenue to the East River), which focused principally on cutting out bus stops, is annexed as Exhibit B.

65. On May 6, 2019, counsel for Petitioners wrote to Commissioner Trottenberg and NYCTA President Andy Byford (see Exhibit BB) about DOT’s plans and the scenario of the SBS Bus Service and the elimination of stops. Counsel reiterated Petitioners’ position that the 14th Street Busway and 12th/13th Street Bike Path plan (the 14th Street Corridor Plan) was a SEQRA Type I project and required a “hard look” under SEQRA and CEQRA. The letter also asserted that absent the L Train shutdown there was no legitimate rationale for such a radical transformation of the impacted neighborhoods.

66. Neither Commissioner Trottenberg nor President Byford responded to Petitioners’ counsel’s letter.

The FOIL Request

67. On May 30, 2019, Petitioner Schwartz and law student interns working for Advocates for Justice counted bicycles between Sixth Avenue and Broadway, on 13th and 12th

Streets, between 8:00 a.m. and 10:00 a.m. (See Exhibit HH.) The numbers indicated far less use than the numbers presented to Community Board 2.

68. On June 4, 2019 Petitioners' counsel sent a request, pursuant to the Freedom of Information Law, to Commissioner Trottenberg for DOT's actual count. See Exhibit CC. **In addition, counsel requested "all studies, vehicular counts, and any pollution and vibration studies done by DOT which led to its 14th Street Busway decision."**

69. To date neither Commissioner Trottenberg nor any other DOT official has responded to the FOIL Request.

The Final Plan

70. On or about June 14, 2019, DOT published its final plan for the 14th Street Busway. See Exhibit DD. This publication defined a truck as a vehicle with more than two axles and six or more wheels. It barred all left turns between Ninth Avenue and Third Avenue, meaning that any truck entering between Ninth and Third Avenues could not turn until it passed Ninth or Third Avenue (depending on whether it was headed east or west). It also provided for short-term loading zones with meters. Restrictions are to be enforced through automated cameras. The non-truck restrictions will not be imposed between 10:00 a.m. and 6:00 p.m.

Impact of the Busway

71. Closing 14th Street to cars and trucks will reroute that traffic through the side streets north and south of 14th Street—principally 18th, 19th, and 20th Streets, and 12th and 13th Streets. The streets south of 12th Street, running through the already congested Greenwich and East Villages, do not provide direct connections to either West Street or the FDR Drive until one gets down to Houston Street. The streets just north of 14th Street are blocked by Union Square (15th & 16th Streets), by Stuyvesant Town (15th to 19th Streets), and by Peter Cooper Village (21st & 22nd Streets), but are likely to have added traffic. To add to the traffic, NYC DOT has

created a pedestrian mall that has shut down Union Square West from 14th Street to 17th Street, forcing all traffic coming down Broadway to either turn west on East 17th Street or east on East 18th Street, and it has reversed traffic on University Place north of 13th Street (creating a southbound lane), forcing traffic coming north on University Place to turn west on 13th Street.

72. Under the Busway Plan, 12th Street, 13th Street, and 17th to 20th Streets will be the only ways to get across Manhattan between Houston and 23rd Streets. Residents of those three streets and neighboring streets have grave concerns regarding the rerouting of commercial traffic (*i.e.*, vans and trucks that are not planning to travel all the way across 14th Street), livery vehicles, and other passenger vehicles onto those streets. All of these streets are narrow mixed-use/residential streets that are already constantly backed up with traffic. Because of existing building construction, cars, bikes and delivery trucks, traffic on these streets is already often at a virtual standstill. Twelfth and 13th Streets, with a bikeway, would have such a narrow car lane that a car or taxi stopping to pick someone up will stop traffic entirely. An oil delivery truck will shut down the block for 30 to 60 minutes unless it parks, unlawfully, in the bike lane (and that would be for deliveries only on that side of the street).

73. Closing 14th Street to vehicular traffic would not only cause horrific traffic jams on 12th Street, 13th Street, 15th Street, 16th Street, 17th Street, 18th Street (a street with an MTA bus depot at the corner of Sixth Avenue), 19th Street, and 20th Street, it would also cause traffic on north-south avenues including Eighth, Seventh, Sixth, Fifth, Fourth, and Third Avenue, and Broadway, and Park Avenue. The traffic will bring with it air pollution and noise pollution. The streets will be harder to cross.

74. Perhaps most importantly, the movement of ambulance and fire vehicles would be impeded. The western side of the 14th Street corridor has no hospital. The nearest hospital is

Mt. Sinai-Beth Israel Medical Center on First Avenue and 16th Street. Ambulances picking up patients at the Northwell Health “stand alone emergency room,” on 12th Street and Seventh Avenue, must transport often critically ill people from 12th Street and Seventh Avenue across town. They will have to navigate this expanded traffic mess, since there will be no emergency lane on 14th Street, and they would have to jockey with buses and trucks in the one through lane going in each direction.

75. Besides heightened levels of pollution and noise from idling cars, for hire vehicles, and trucks, increased traffic (especially heavy trucks) risks severely damaging the street and neighborhood infrastructure. The whole neighborhood consists of and sits on century-old infrastructure, hollow sidewalks and historic landmarked buildings and includes a high-pressure steam pipes and gas mains running under some of the streets, including 20th Street, and a century-old water main intersects at 20th Street and Fifth Avenue, and then runs down Fifth Avenue. This century-old steam pipe still has sections that use wood and leather gaskets. This steam pipe has exploded twice in the last twelve months.

76. None of these changes now due to occur on July 1, 2019 have been the subject of study. The City calls this an “18 month pilot project,” but given its determination since 2017 to impose these changes, *only* because of the L Train shutdown, there is no reason not to believe that a permanent change is what is in store. Residents of the affected communities should not be treated as subjects in an experiment.

THE 2018 FEDERAL ENVIRONMENTAL ASSESSMENT DOES NOT SUBSTITUTE FOR A PROPER SEQRA ANALYSIS OF THE 2019 PLAN

77. It is likely that DOT will assert that the SEA meets all of its obligations under SEQRA. In fact, it was not sufficient under SEQRA then, *Williamsburg Around the Bridge Block Assn v. Giuliani*, 223 A.D.2d 64 (1st Dept. 1996), nor is it now.

The Mitigation Plan/ASP Analysis Did Not Take a Hard Look at Anything

78. The ASP is fundamentally based on “estimates” of how many people would use various modes of transportation based on the total shutdown scenario. The charts on page 15 of the SEA state that the methodology is described on page 7 of Appendix E (Exhibit Q), but Appendix E contains the exact same information as the charts in the SEA, and is a document created by NYC DOT. There was no backup data supplied, and there is not a single scientific data-based study cited. These charts, with no data, estimated that bus ridership on 14th Street in Manhattan, will increase from some unstated current number, to 84,000 people a day. Appendix E stated, again without any supporting data, that on every date 114,000 of the 250,000 L Train riders have a final destination along 14th Street. This was a made-up number. Fourteenth Street is not a busy commercial strip. It has no department stores, no tall commercial buildings, no movie theatres, one or two pizza shops, and a few fried chicken takeout places, but no high-volume restaurants, bars, or entertainment centers. These numbers were important because they provide a basis for many of the DOT’s proposed extreme action in the wake of a shutdown. But now these fake numbers are irrelevant.

79. The SEA did not discuss alternatives proposed by community leaders. The report stated that because NYC-DOT continues to work with the affected communities “these changed conditions will not generate significant adverse transportation impacts.” The SEA does not explain how this is possible. Nor does it discuss the effect on fire vehicles or ambulances. See Exhibit V.

80. Equally as troubling is where the scant data discussed came from, and one of the fundamental premises for the data. The SEA states that the data came from an “Aimsum model.” The “Aimsum model” is not included as an appendix to the SEA. The SEA simply refers to Appendix E (Exhibit Q), which was a February 2018 document prepared by the NYC-DOT which

again relies on the “Aimsum modeling.” The Aimsum model referred to can be located on line and is annexed as Exhibit EE. The Aimsum report is not based on any actual traffic count. It is based on modeling. And that model was premised on there being a total L Train shutdown.

81. There are four other reasons why the SEA was incomplete.

a. It did not study, even using “modeling,” the impact of the various changes (i.e., closing Union Square West and forcing all traffic coming downtown on Broadway to go east on 18th Street or west on 17th Street) on 17th, 18th, 19th, and 20th Streets, even though those four streets are the first ones north of 14th Street which can be traversed entirely crosstown.

b. The modeling is based on an assumption that only passenger vehicles will use crosstown street like 13th and 12th Streets, and that commercial vehicles will go crosstown on 23rd Street or Houston Street.

c. The 12th and 13th Street bikeway scenario does not appear in the SEA. That scenario shows, on most streets, a 10-foot-wide corridor for vehicles to proceed east or west unless they drive in the bike lane or the protection zone. Currently even the narrowest streets have a 13-foot space for vehicles to pass through. On most blocks this means that a 6-foot-wide car or truck pulled along-side a parked vehicle leaves 7 to 12 feet for another vehicle to pass by. The bike lane plan replaces an 8-foot-wide parking lane, with a bike lane and its barrier which take up 11 to 12 feet. This will leave between 10 feet for through traffic. This means that every time a car stops all traffic will stop. If a truck or car is pulled over into the bike lane (which has occurred; see accompanying Affirmation of Arthur Z. Schwartz and Exhibit GG attached to that Affirmation), nothing will be able to pass. If an oil truck is making deliveries, nothing will be able to pass. Perhaps more importantly is the inadequacy of 10 feet as a space for an urban thoroughfare. Garbage trucks are generally 9 feet wide, as are fire trucks, Access-a-ride

vehicles, and ambulances are 8 feet wide. Even without traffic jams these vehicles will have a hard time getting through. Oil trucks making deliveries will have trouble accessing customers. Access-a-ride vehicles will be unable to unload passengers on the bike-lane side.

d. There is no discussion at all about the impact of the increased traffic on ambulances and fire trucks. However, there is a Northwell-Lennox Health stand-alone Emergency Room on 12th Street between Seventh Avenue and Greenwich Avenue. That location is a major dispatch point for ambulances. The nearest hospitals are on the East Side, either Beth Israel at 16th Street and First Avenue (which is no longer a full-service hospital) or Bellevue or NYU Hospitals around 30th Street and First Avenue. Traffic delays on streets headed eastbound could be life-threatening.

e. Additionally, there is a NYC Fire Department Station on West 10th Street just west of Sixth Avenue and another on 13th Street between Fourth Avenue and Broadway. Trucks are dispatched from these locations to fire emergencies across the area south of 23rd Street. Again, substantial traffic delays could cost lives. Again, this issue was not discussed in any way in the SEA.

82. In addition, there is not a single statistic or study which shows that there will be sufficient need for two crosstown bike paths, requiring the elimination of 550 parking spaces.

83. Most of the conclusions about the lack of impact on the air is based on the “modeling” and a conclusion (a) that trucks will be diverted away from the affected area in Lower Manhattan, and (b) that somehow the closure of 14th Street will result in a lower number of crosstown trips on residential streets like 12th, 13th, and 15th to 20th Streets, a conclusion which is sophistry.

84. Despite testimony and written comments from over 300 people, at a public hearing in early August 2018, not one of which supported the project as described, the FTA, on or about September 13, 2018, issued a Finding of No Significant Impact (FONSI), a copy of which is annexed as Exhibit FF. The finding said nothing about the lack of data backing up various assumptions underlying the SEA, or about the detailed critiques of aspects of the ASP. It accepted, as gospel, the assertion by the MTA that the ASP would not only not increase traffic in the affected area, but might reduce it. The FONSI, in no way, required the MTA/DOT to take the hard look required by SEQRA.

85. Ultimately, in the end, a study done in 2018 to address the Total Shutdown scenario cannot stand as a “hard look” at the current situation, nor does it serve as a basis for rational decision making.

86. The Busway Plan is scheduled to go into effect on July 1, 2019.

AS AND FOR A FIRST CAUSE OF ACTION
(NY State Environmental Quality Review Act)

87. The aforescribed DOT 14th Street Corridor Plan, including the bike lanes, materially affects the environment in a broad geographic area, and, in part, is a large enough project contiguous to a public park and an historic district to be considered a Type 1 Action.

88. The failure to take a “hard look,” and prepare and properly file and publish an Environmental Assessment and an Environmental Impact Statement addressed to the NYC-DOT’s 14th Street Corridor Plan, violates SEQRA, and its attendant regulations.

AS AND FOR A SECOND CAUSE OF ACTION**(City Environmental Quality Review Act)**

89. The failure to take a “hard look,” and prepare and properly file and publish an Environmental Assessment and an Environmental Impact Statement addressed to the NYC-DOT’s 14th Street Corridor Plan, violates CEQRA and NYC Executive Order 91.

AS AND FOR A THIRD CAUSE OF ACTION**(Arbitrary and Capricious Action)**

90. The 14th Street Corridor Plan is an arbitrary and capricious action by DOT, taken without sufficient rationale and without sufficient study.

AS AND FOR A FOURTH CAUSE OF ACTION

91. The Freedom of Information Law, Sections 87 and 89(3)(a) of the Public Officers Law, requires that “each agency ... shall make available for public inspection and copying all records,” and shall make such records available “within five business days of the receipt of a written request for a record reasonably described.” The lack of any response entitles Petitioners to seek appropriate judicial intervention. *Floyd v. McGuire*, 87 A.D.2d 388 (1st Dept. 1982).

92. The failure to supply Petitioners, who represent a significant portion of the affected community, violates the Freedom of Information Law.

INJURY

93. The failure to act in accordance with SEQRA, CEQRA, Executive Order 91, and the Freedom of Information Law has caused the Petitioners, and the residents of Manhattan below 23rd Street, irreparable injury and threatens to cause more. The opening of the 14th Street Busway on July 1, 2019 will cause Petitioners immediate and irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray:

1. That this Court enter a declaratory judgment declaring that by acting as described herein above all Respondent has violated the rights of the various Petitioners under SEQRA, CEQRA, and the Freedom of Information Law, and that Respondent has acted arbitrarily and capriciously;

2. That this Court enter an Order, pursuant to Article 78 of the Civil Practice Law and Rules, the State Environmental Quality Review Act (SEQRA), and the NYC Environmental Quality Review Act (CEQRA), and the Freedom of Information Law, enjoining and restraining Respondents and their agents from

a. proceeding with its plan to restructure traffic on 14th Street in Manhattan, between 3rd Avenue and 9th Avenue, so as to bar through vehicular traffic other than “trucks,” and eliminate one lane of traffic east-bound, and one lane of traffic west-bound, until said plan is properly evaluated, in conjunction with an evaluation of the 13th and 12th Streets bike lane plan, in a SEQRA/CEQRA compliant Environmental Assessment, and if required, an Environmental Impact Statement, and until the documents requested by Petitioners on June 4, 2019, pursuant to the Freedom of Information Law are fully provided;

b. continuing its “bike lanes,” on 13th Street and 12th Street in Manhattan, until the bike lanes are properly evaluated, in conjunction with an evaluation of the 14th Street bus lane plan, in a SEQRA/CEQRA compliant Environmental Assessment, and if required, an Environmental Impact Statement, and until the documents requested by Petitioners on June 4, 2019, pursuant to the Freedom of Information Law, are fully provided; and unless said bike lanes are redesigned so as to allow 16 feet for through vehicular traffic.

3. That this Court enter a Temporary Restraining Order pending the hearing and determination of this Petition, restraining and enjoining Respondents Trottenberg and the City of New York Department of Transportation, and their agents, from proceeding further in any manner with its plan to restructure traffic on 14th Street in Manhattan, between Third Avenue and Ninth Avenue, so as to bar through vehicular traffic other than “trucks,” and eliminate one lane of traffic east bound, and one lane of traffic west-bound;

4. That this Court Order respondent to supply Petitioners and the Court with a documentary response to the Freedom of Information Law request made by Petitioners’ attorney on June 4, 2019.

5. That this Court enter a Temporary Restraining Order, pending the hearing and determination of this Petition, enjoining and restraining Respondent and its agents, from proceeding with its plan to restructure traffic on 14th Street in Manhattan, between Third Avenue and Ninth Avenue, in any manner, so as to bar through vehicular traffic other than “trucks,” and eliminate one lane of traffic east bound, and one lane of traffic west-bound;

5. That this Court enter an award of attorneys’ fees and costs.

6. That this Court grant such other and further relief as is just and equitable.

Dated: June 20, 2019
New York, New York

ADVOCATES FOR JUSTICE
Attorneys for Petitioners

By: _____ /s/
Arthur Z. Schwartz
225 Broadway, Suite 1902
New York, New York 10007
(212) 285-1400
aschwartz@afjlaw.com

VERIFICATION

Arthur Z. Schwartz, a petitioner herein, verifies that the foretasted petition is true to his knowledge, information, and belief.

Dated: June 20, 2019
New York, New York

/s/
ARTHUR Z. SCHWARTZ

Sworn to before me this 20th day
of June, 2019.

/s/
Notary Public