

Matter of Rimler v City of New York

2016 NY Slip Op 32134(U)

July 7, 2016

Supreme Court, Kings County

Docket Number: 506046/2016

Judge: Dawn M. Jimenez-Salta

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At an IAS Term, Part 25 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on July 7, 2016.

PRESENT:
HON. DAWN JIMENEZ-SALTA,
Justice.

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**In the Matter of the Application of:
Marsha Rimler, Individually and as President of
Love Brooklyn Libraries, Inc.; Ellen Kaufman-Nuzzi;
Sheppard Peterson; and Martha Ramos**

Index No: 506046/2016

Petitioners,

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

DECISION AND ORDER

- against -

**The City of New York; The New York City Economic
Development Corporation; The New York City Department
of Citywide Services; The Brooklyn Public Library;
St. Ann’s School; Our Lady of Lebanon Maronite Catholic
Church; The Brooklyn Borough Board; and Cadman
Associates LLC,**

Respondents.

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Recitation, as required by *CPLR 2219(a)*, of the papers considered in the review of:

- 1) Petitioners Marsha Rimler (“Rimler”), Individually and as President of Love Brooklyn Libraries, Inc. (“Love BL”); Ellen Kaufman-Nuzzi (“Kaufman-Nuzzi”); Sheppard Peterson (“Peterson”) and Martha Ramos (“Ramos”) (collectively “Petitioners”) Notice of Petition for a *CPLR Article 78* Review of Respondent City of New York’s (“City”) Approval for a Mixed-Use Residential Tower at 280 Cadman Plaza West (“the Project”); to Require the Mayor’s Office of the City as Lead Agency to Comply with *SEQRA* and to Prepare an Environmental Impact Statement (“EIS”) Prior to Approval of the Action, and for an Injunction to Prevent Further Action in Respondents’ Proposed Construction of the Project Until Compliance with All Pertinent Laws, Rules, Regulations and Ordinances and in Particular with the *New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Act* and for Such Other Relief as the Court May Deem Just and Proper, dated January 15, 2016;
- 2) Petitioners’ Verified Petition to Void the Approval Decisions and Sales/Lease Agreement of the Property to Cadman Associates LLC (“Cadman”) Because of Alleged Violation of the *New York State Environmental Review Act, Environmental Conservation Law Article 8-0101 (“SEQRA”)* by Failing to Follow the Procedural and Substantive Requirements of *SEQRA* and to Obtain an Injunction Until Full Compliance, dated April 15, 2016;
- 3) Respondents the City of New York (“City”), the New York City Economic Development Corporation (“EDC”), the New York City Department of Administrative Services (“DCAS”) and the Brooklyn

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Borough Board’s (“BBB”) (collectively the “Municipal Respondents”) Verified Answer to the Verified Petition (“Petition”), dated June 6, 2016 along with Municipal Respondents’ Memorandum of Law in Opposition to the Petition, dated June 6, 2016;

4) Respondent Brooklyn Public Library’s (“BPL”) Verified Answer to the Verified Petition, dated June 6, 2016 along with Respondent BPL’s Attorney Matthew T. McLaughlin’s Affirmation in Support, dated June 6, 2016; Respondent BPL’s Affidavit of David Woloch, Executive Vice President of BPL, dated June 3, 2016; Respondent BPL’s Affidavit of Richard Reyes-Gavilan, former BPL Director of the Library and Chief Librarian, dated June 3, 2016; and Respondent BPL’s Affidavit of Lisa G. Rosenblum, BPL Chief Librarian and Director of the Library, dated June 3, 2016;

5) Respondent Our Lady of Lebanon Maronite Catholic Church’s (“Church”) Verified Answer to the Petition, dated June 6, 2016;

6) Respondent Cadman Associates LLC’s (“Cadman”) Verified Answer to the Petition, dated June 6, 2016;

7) Respondent St. Ann’s School’s (“St. Ann’s”) Verified Answer to the Petition, dated June 6, 2016;

8) Respondents Cadman, St. Ann and Church’s Memorandum of Law in Opposition to the Verified Petition, filed June 8, 2016;

9) Respondents’ Affidavit of John Neill (“Neill”), Vice President at AKRF, Inc. (“AKRF”) in Opposition to the Verified Petition, dated June 6, 2016;

10) Respondents City, EDC, DCAS, BPL, St. Ann’s, Church, BBB and Cadman’s Notice of Joint Motion to Dismiss the Verified Petition, Pursuant to *CPLR 306-b*, dated May 24, 2016;

11) Notice of Petitioners’ Cross Motion to Extend the Period of Service of the Petition and Notice of Petition to Dates of Service *Nunc Pro Tunc*, dated June 2, 2016 along with Petitioners’ Affidavit of Richard C. Lippes, Esq., dated June 9, 2016;

12) Respondents’ Reply Memorandum of Law in Further Support of the Joint Motion to Dismiss, filed June 9, 2016;

13) Petitioners’ Reply to Motion to Dismiss, dated June 8, 2016, all of which submitted on June 10, 2016.

	<u>Papers Numbered</u>
Notice of Petition and Verified Petition.....	Petitioners 1-2
Verified Answers.....	Municipal Respondents 3 with Affirmations and Exhs. 1-17 BPL 4, BPL Affirmation McLaughlin 5 BPL Affidavit Woloch 6 BPL Affidavit Rosenblum 7 BPL Affidavit Reyes-Gavilan 8

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Others [Memoranda of Law].....	Municipal Respondents 13 Church, Cadman, St. Ann's 14 Respondents Reply 18 Petitioners Reply 19
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Upon the foregoing papers, the Decision/Order on this Motion is as follows:

Respondents the City of New York ("City"), the New York City Economic Development Corporation ("EDC"), the New York City Department of Citywide Services ("DCAS"), the Brooklyn Public Library ("BPL"), St. Ann's School ("St. Ann's"), Our Lady of Lebanon Maronite Catholic Church ("Church"), the Brooklyn Borough Board ("BBB") and Cadman Associates LLC's ("Cadman") joint motion to dismiss the Verified Petition to void the approval decisions and sales/lease agreements of the property to Cadman Associates, LLC, pursuant to *CPLR 306-b* is granted. It denies Respondents' request for costs, disbursements and attorney fees. Petitioners' Petition for a *CPLR Article 78* review, to require the Mayor's office as lead agency to comply with *SEQRA* and to prepare an Environmental Impact Statement ("EIS") prior to approval of the action along with a request for an injunction and cross motion to extend the period of service of the Petition and Notice of Petition to Dates of Service *Nunc Pro Tunc* are dismissed [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

BACKGROUND, PROCEDURAL HISTORY AND ARGUMENTS

The intent of the 280 Cadman West Project ("the Project") is to redevelop 280 Cadman Plaza West (Brooklyn Block 239, Lot 16; the "Project Site") which currently contains a two-story building housing the Brooklyn Heights branch of the Brooklyn Public Library ("BPL") and an associated Business and Career Library into a thirty-six (36) story mixed-use building. The mixed-use building would have 26,620 gross square feet ("gsf") of improved branch library space, making it the largest branch library in Brooklyn. There

would be approximately 9,000 gross square feet devoted to community facility use and approximately 134 market-rate housing units and a below-grade parking facility¹ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The Project plans to develop 114 affordable housing units at two off-site locations at 911-917 Atlantic Avenue as well as 1041-1047 Fulton Street within the Clinton Hill neighborhood of the Project's community district, Brooklyn Community District 2² [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The existing building at 280 Cadman Plaza West has an estimated 32,431 gross square feet of usable space, consisting of 17,471 gross square feet of branch library space and 14,960 gross square feet of Business and Career Library space. The remaining 26,715 gross square feet in the existing building (which is approximately forty-five (45) percent of the building's space) are not accessible to the public since it is mechanical and utility space, including storage³ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

During construction of the Project, there are plans to relocate the branch library to a temporary facility at 95 Remsen Street (Brooklyn Block 249, Lot 16) which is owned by Respondent Our Lady of

¹ Affidavit of Esther Brunner, Deputy Director for Environmental Control & Local Law 86 of 2005 in the New York City's Mayor's Office of Sustainability ("MOS"), dated June 6, 2016. See Municipal Respondents 3 with Affirmations and Exhs. 1-17. According to Ms. Brunner's Affidavit, the New York City Mayor's Office of Sustainability ("MOS") was created on December 3, 2014 by the merger of the Mayor's Office of Environmental Coordination ("MOEC") with the Mayor's Office of Long Term Planning and Sustainability. The MOS oversees the review of environmental assessment statements and environmental impact statements prepared pursuant to the *New York State Environmental Quality Review Act* ("SEQRA") (6 NYCRR Part 617) and its New York City counterpart, the *City Environmental Quality Review* ("CEQR") (62 RCNY Chapter 5 and *Mayoral Executive Order 91 of 1977*) (referred collectively as "SEQRA/CEQR") [Municipal Respondents 3 with Affirmations and Exhs. 1-17].

² See Affidavit of Esther Brunner.

³ See Affidavit of Esther Brunner.

Lebanon Maronite Church (“Church”)⁴ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The Project is expected to benefit the Brooklyn Public Library patrons because approximately \$40 million from the sale of the Project Site will be invested in neighborhood library branches with urgent capital needs. The aging branch library at the Project Site will be replaced with a new facility which will contain additional gross square feet of branch library space. The new library will not only be the largest branch library in Brooklyn but it is also expected to better serve its patrons through planned upgrades⁵ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

In order to develop the Project, the developer must obtain approval of three (3) discretionary actions by the City of New York (“the City”) (the “Proposed Actions”). First, the Project Site, which is currently owned by the City, would be sold to the developer Cadman Associates LLC (“Cadman” or “developer”). Second, the City would acquire a condominium unit for one dollar (\$1.00) within the new mixed-use development for use as the improved Brooklyn Heights branch of the Brooklyn Public Library (“BPL”). Third, a previously-approved height and setback special permit for One Pierrepont Plaza (Brooklyn Block 239, Lot 1), a nineteen-story commercial office building, would be modified to make the special permit applicable to a zoning lot which is proposed to be formed by the merger of the One Pierrepont Plaza lot (Block 239, Lot 1), the Project Site lot (Block 239, Lot 16) and an adjacent lot owned by Respondent St. Ann’s School (“St. Ann’s”) (Block 239, Lot 3)⁶ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The Project would be a stimulus for a City-wide initiative to build and preserve 200,000 affordable housing units over ten (10) years to support New Yorkers with a range of incomes by creating 114 new affordable housing units within Brooklyn Community District 2⁷ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL

⁴ See Affidavit of Esther Brunner.

⁵ See Affidavit of Esther Brunner.

⁶ See Affidavit of Esther Brunner.

⁷ See Affidavit of Esther Brunner.

Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The environmental review process pursuant to *SEQRA/CEQR* identifies, in addition to analyzing, the potential for significant adverse impacts on the environment which may result from a discretionary agency action. Typically, as in the current case, one agency is referred as the "lead agency" which assumes responsibility for performance of a required environmental review. If there is a lead agency determination that the action is subject to *SEQRA/CEQR*, the agency will generally perform an initial review by completing or accepting an Environmental Assessment Statement ("EAS"). The EAS focus is to evaluate whether the action may create significant adverse environmental impacts based upon the *CEQR Technical Manual* ("*Manual*") which governs the environmental review in the City pursuant to *SEQRA/CEQR*. The City agencies developed the *Manual* to guide reviews for assessment of the potential of significant environmental impacts from actions approved, funded or undertaken by City agencies. The most current version of the *Manual* is the 2014 edition. The *Manual* methodologies and standards reflect the considered expert judgment of the City agencies responsible for the specific area of potential impacts. Compliance with it ensures consistency and uniformity in City environmental reviews and predictability for applicants for City approvals⁸ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The *Manual* contains detailed methodologies and standards in the assessment of the potential for significant adverse impacts for each of the nineteen (19) subject matter areas. There are screening assessment methodologies in the determination of whether further analysis of the potential for significant adverse environmental impact is required in each of those nineteen (19) subject matter areas. If a screening threshold is exceeded, a more detailed analysis is required. The analysis framework under the *Manual* compares conditions in the future with the Project (the "With Action" condition) to conditions in the future without the Project (the "No Action" condition). Analysis of the increment between these two scenarios makes it possible for identification of the potential for significant adverse environmental impacts⁹ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

In coordination with other involved agencies, the lead agency must issue a "determination of significance" after its review of the EAS (prepared under the *Manual's* guidance). If the lead agency finds that the action may have one or more potential significant adverse impacts on the environment, the lead agency issues a "Positive Declaration". When a "Positive Declaration" is issued, an Environmental Impact

⁸ See Affidavit of Esther Brunner.

⁹ See Affidavit of Esther Brunner.

Statement (“EIS”) is required. See *6NYCRR Section 617.7(a)(1)*. Certification into the City’s Uniform Land Use Review Procedure (“*ULURP*”) occurs after issuance of the draft EIS. However, if the lead agency finds no significant adverse environmental impacts, it will issue a “Negative Declaration”. See *6NYCRR Section 617.7(a)(2)*. A “Negative Declaration” determines that an EIS is not required, ending the environmental review process. In this case, certification into *ULURP* occurs after the issuance of the “Negative Declaration”¹⁰ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The New York City Mayor’s Office of Sustainability (“MOS”) reviewed the environmental documents prepared for the Project pursuant to the 2014 *Manual*. It coordinated the appraisal of certain subject matter areas by the expert City agencies. It independently assessed the developer’s thorough EAS and consulted with other City agencies along with EDC. After this intense review, MOS ultimately accepted the EAS as compliant with both *SEQRA/CEQR* requirements as well as the *Manual*¹¹ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

There was a screening assessment of the potential for significant adverse impacts within the Project’s EAS Full Form Part II for the following areas: Urban Design and Visual Resources; Natural Resources; Water and Sewer Infrastructure; Solid Waste; Energy; Greenhouse Gas Emissions; Public Health; and Neighborhood Character. Part of the EAS Full Form Part II contained an assessment of a proposed project’s impacts for each analysis category based upon the threshold criteria presented in the *Manual*. For each analysis category where the proposed project will meet or exceed the threshold, a more detailed analysis may be required if there is a potential for significant adverse environmental impacts. Since the EAS Full Form screening analysis revealed no potential for significant adverse environmental impacts in the above-listed subject matter areas, a detailed environmental analysis was not necessary¹² [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The EAS included additional analyses for subject matters exceeding the screening assessment thresholds in EAS Full Form Part II. These subject matter areas are: Land Use; Zoning and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic and

¹⁰ See Affidavit of Esther Brunner.

¹¹ See Affidavit of Esther Brunner.

¹² See Affidavit of Esther Brunner.

Cultural Resources; Hazardous Materials; Transportation; Air Quality; Noise and Construction. There was also an EAS analysis of the potential environmental effects of the two proposed off-site affordable housing developments with a consideration of all nineteen (19) subject areas pursuant to *CEQR*. These more detailed technical analyses were conducted pursuant to the standards and methodologies in the *Manual*. As a result, they concluded that the Project would not result in any significant adverse environmental impacts in any of these areas¹³ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

During its environmental review, MOS staff contacted the New York City Department of Parks and Recreation ("DPR") which reviewed and approved the Project's Open Space and Shadows analyses. MOS contacted the New York City Department of Environmental Protection ("DEP") which reviewed and approved the Project's Hazardous Materials, Air Quality, Noise and Construction analyses. MOS contacted the New York City Landmarks Preservation Commission ("LPC") which certified on November 21, 2014 that the Project Site was of "no archaeological significance". On March 27, 2015, LPC approved the EAS' draft chapter addressing "Historic and Cultural Resources". On April 14, 2015, LPC certified that the locations identified for the affordable off-site housing development were of "no architectural or archaeological significance"¹⁴ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The lead agency issued a Negative Declaration on the Project on June 12, 2015, reflecting the lead agency's determination that based upon the technical analyses presented in the EAS, the Proposed Actions would have no significant adverse effects on the environment. Noting several minor errors in the original EAS, the lead agency issued an Errata Memorandum on July 16, 2015, correcting these errors. It concluded that these corrections did not alter the conclusions of the EAS in any way. These minor corrections were incorporated into the EAS as well as the Negative Declaration which were re-issued¹⁵ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The lead agency issued a technical memorandum on October 22, 2015, examining whether potential modifications to one of the two off-site affordable housing development sites at 1041-1047 Fulton Street

¹³ See Affidavit of Esther Brunner.

¹⁴ See Affidavit of Esther Brunner.

¹⁵ See Affidavit of Esther Brunner.

may result in any significant adverse environmental impacts. Since Project modifications may occur after the conclusion of the environmental review process, technical memoranda are used to analyze whether the conclusions in the completed environmental review would be affected by the proposed modifications. In such an analysis, a technical memorandum examines the increment between the project as originally proposed and the project with the newly proposed modifications. In the present case, the potential modifications consisted of an increase in building stories (from eight to nine) and building height (from 87 feet to 92 feet, including bulkhead), and a reduction in amount of retail (from 1125 gross square feet to 829 gross square feet) and number of units (from 39 to 37). The total size of the building would expand from 34,937 gross square feet to 37,095 gross square feet¹⁶ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The technical memorandum acknowledged that the proposed modification to the planned building at 1041-1047 Fulton Street would not alter the EAS analysis conclusions of no potential significant adverse impacts to the proposed off-site housing development based upon its review of several different subject areas. In particular, those areas include: Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Transportation; Greenhouse Gas and Climate Change; Noise; Public Health; Neighborhood Character; and Construction¹⁷ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Because of the proposed increase in building height, there was a new shadow assessment which showed that shadows from the modified building, like shadows from the originally proposed structure, would not reach any identified sunlight sensitive resources on any of the four analysis days. Since the modified building would introduce fewer residents to the site, the Project-generated demand on publicly-accessible open space would be slightly less than predicted in the EAS. The modified building would result in a reduction in water and sewer demand, and solid waste generated, compared to the amount estimated in the EAS. The modified building would result in a slight increase in the Project's energy consumption. However, the change is negligible and would not overburden the electrical system. The modified building would still fall well below the *Manual's* air quality screening thresholds. Thus, the technical memorandum concluded that the proposed modifications would not result in any new or different significant adverse impacts not already identified in the EAS¹⁸ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit

¹⁶ See Affidavit of Esther Brunner.

¹⁷ See Affidavit of Esther Brunner.

¹⁸ See Affidavit of Esther Brunner.

Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The lead agency issued a second technical memorandum on December 11, 2015. It considered whether the following modifications may result in any significant adverse environmental impacts not previously disclosed in the EAS: an increase in the size of the proposed branch library; the use of the community facility space by the City Department of Education (“DOE”); and the provision of a new, approximately 5,000 gross square foot branch library within a retail storefront at a yet-to-be-identified location in the DUMBO/Vinegar Hill neighborhoods. Under the proposed modifications, the branch library space would expand from the 21,500 gross square feet analyzed in the EAS to 26,620 gross square feet, with a corresponding reduction in the amount of accessory space (such as storage and mechanical areas). The DOE-operated community space would consist of 9,000 gross square feet rather than the 19,800 gross square feet analyzed in the EAS and would be used as a computer lab or similar use. The Brooklyn Public Library would commit to securing approximately 5,000 gross square feet of leased space within an existing retail storefront at a yet-to-be-determined location in the DUMBO/Vinegar Hill neighborhoods of Brooklyn to provide the community with a new branch library including a dedicated children’s area, a browsing collection and a multi-purpose room for programming and collaborative workspace¹⁹ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Because the potential modifications would not alter the proposed building’s massing or form and not materially alter the proposed uses or user populations, the December 2015 technical memorandum concluded that there would be no change in the EAS analysis for: Land Use, Zoning and Public Policy; Socioeconomic Conditions; Shadows; Historic and Cultural Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Air Quality; Noise; and Construction Impacts. The December 2015 technical memorandum concluded that the Project would continue to fall below the thresholds requiring more detailed analysis of Urban Design and Visual Resources; Greenhouse Gas and Climate Change; Public Health; and Neighborhood Character²⁰ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The proposed changes would expand educational opportunities for area students and benefit the larger Brooklyn Heights branch library. Since the number of residential units would not change, the EAS analysis of open space would not change. The potential modification in the size of the library would not

¹⁹ See Affidavit of Esther Brunner

²⁰ See Affidavit of Esther Brunner.

alter the transportation analysis since the modified library is expected to yield a similar level of overall patronage. The DOE-operated community facility would not change the EAS transportation analysis because the DOE-operated community facility would generate fewer trips than the EAS analysis of the YMCA-type community facility. The technical memorandum explained how the provision of a new Brooklyn Public Library in DUMBO/Vinegar Hill would not result in any significant environmental impact in any of the *Manual* analysis categories. The technical memorandum concluded that the potential modifications would not result in any new or different significant adverse impacts not already identified in the EAS²¹ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The Project was reviewed pursuant to the City's *Uniform Land Use Review Procedure* ("ULURP"), a standardized public review procedure mandated by *Section 197-c of the City Charter* for certain types of City land use applications. Pursuant to *Section 197-c of the City Charter*, the City Planning Commission ("CPC") adopted rules, governing the *ULURP* process, *62 RCNY Sections 2-01 through 2-10*. After the Project's *ULURP* application was filed on June 4, 2015, Community Board 2 held a public hearing on the application on June 17, 2015. After hearing testimony from almost sixty (60) persons at the hearing, Community Board 2 adopted a resolution recommending approval by a vote of twenty-five (25) in favor to fourteen (14) opposed with four (4) abstentions²² [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The Brooklyn Borough President ("Borough President") held a public meeting on August 18, 2015 when seventy-two (72) speakers testified. The Borough President recommended on September 8, 2015 that CPC and the City Council disapprove the Proposed Action, according to certain conditions, including that the City establish a municipal library system under Mayoral control²³ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

CPC held a public hearing on the application on September 22, 2015 when fifty-two (52) speakers

²¹ See Affidavit of Esther Brunner.

²² See Affidavit of Esther Brunner.

²³ See Affidavit of Esther Brunner.

testified. CPC approved the Proposed Actions on November 2, 2015²⁴ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

After the application was sent to the City Council for its review, there was a public hearing on the application on November 18, 2015. On December 10, 2015, the Subcommittee on Planning, Dispositions and Concessions approved by a unanimous vote of the three Council members in attendance the Project's planned disposition of City property and acquisition of library space with a modification, requiring that the new library have at least 26,620 square feet of space. The matter was referred to the full Land Use Committee. Also on December 10, 2015, the Land Use Committee approved the Project with the proposed modification by a vote of seventeen (17) in favor, two (2) against and one (1) abstention²⁵ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

On December 14, 2015, CPC determined that the Land Use Committee's proposed modification raised no land use or environmental issues requiring further review²⁶ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

On December 16, 2015, the City Council approved the property disposition with the proposed modification by a vote of forty-five (45) to one (1) with three (3) abstentions. The City Council approval completed the *ULURP* process²⁷ [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Because the Project involves the disposition of City-owned property, the Project was also subject

²⁴ See Affidavit of Esther Brunner.

²⁵ See Affidavit of Esther Brunner.

²⁶ See Affidavit of Esther Brunner.

²⁷ See Affidavit of Esther Brunner.

to review under *Section 384(b)(4) of the City Charter*. The Brooklyn Borough Board approved the Project's disposition of City-owned property pursuant to this *Charter* provision on March 1, 2016 by a vote of thirteen (13) to one (1) with one (1) abstention. On March 21, 2016, the Mayor approved the Project's disposition of City-owned property pursuant to *Section 384(b)(4) of the City Charter* ²⁸[Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Petitioners filed their Notice of Petition, dated January 15, 2016 and Verified Petition, dated April 15, 2016, for a *CPLR Article 78* review, challenging the City's approval of the Project. They argue that the City failed to comply with *SEQRA* by not performing an EIS because they allege that the City failed to consider traffic, facilities, architectural resources as well as shadows. They maintain that the decision to issue a Negative Declaration violated both the procedure and substance of *SEQRA* since it did not require an EIS. Thus, the determination was arbitrary and capricious [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

In their Verified Answer, dated June 6, 2016 as well as Memorandum of Law in Opposition to the Petition, dated June 6, 2016, Municipal Respondents allege that the Petition fails to state a cause of action. They contend that the environmental review of the Project fully complied with *SEQRA/CEQR* because they fully met any and all requirements of *SEQRA* and *CEQR*. Consequently, they argue that their actions were in all respects legal, proper, reasonable and in conformity with all applicable laws and regulations. Moreover, the review was neither arbitrary nor capricious. They allege that because Petitioners failed to serve Respondents within the time limits prescribed in *CPLR Section 306-b*, the Petition should be dismissed. Consequently, they request that the Petition be denied in its entirety with costs and disbursements and such other relief as the Court deems just and proper [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

In the Verified Answers of St. Ann's School, Our Lady of Lebanon Maronite Catholic Church, and Cadman Associates LLC, all dated June 6, 2016, as well as their Memorandum of Law in Opposition to the Petition, dated June 8, 2016, they refute Petitioners' *SEQRA* claims of lack of merit, alleging that the Petition fails in whole or in part to state a claim upon which relief can be granted. They argue that they were not served within the time period prescribed by *CPLR Section 306-b*. They maintain that their individual actions were in all respects legal, proper, reasonable as well as in conformity with all applicable laws and regulations. They request that the Petition be denied in its entirety with prejudice and costs be awarded against Petitioners [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4;

²⁸ See Affidavit of Esther Brunner.

BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

In its Verified Answer, dated June 6, 2016, BPL argues that it did not violate any provisions of *SEORA*. It asserts that Petitioners' claims are barred by the applicable *Statute of Limitations*. It alleges that the Petition fails to state a claim upon which relief can be granted as against BPL. It argues that Petitioners lack the requisite standing to bring the instant proceeding. It contends that Petitioners failed to serve BPL within the time period required by applicable statutes and/or laws. It argues that there is no justiciable controversy between the parties. It maintains that Petitioners have not suffered an injury in fact from any determination by BPL which is different in degree or kind from any purported injury to the community at large. It contends that Petitioners are not within the zone of interest intended to be protected by *SEORA*. It argues that Petitioners have not suffered a legally cognizable injury. BPL expressly reserves and asserts all additional or affirmative defenses available under any applicable law. It contends that it has insufficient knowledge or information regarding whether it may have additional, yet unstated defenses available. It expressly reserves the right to assert additional defenses and/or counterclaims as this proceeding continues. It requests an Order dismissing the Petition with prejudice, an award of costs and reasonable attorneys' fees and such other relief as this Court may deem appropriate [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

In his Affirmation, dated June 6, 2016, Matthew T. McLaughlin, Esq., Attorney for BPL, states that after his review of the submissions of the Municipal Respondents, BPL agrees with their content, joining in all the arguments. BPL also submitted the Affidavits of David Woloch, Executive Vice President for External Affairs at BPL, dated June 3, 2016; Lisa G. Rosenblum, Chief Librarian and Director of BPL, dated June 3, 2016; and Richard Reyes-Gavilan, former Director and Chief Librarian of BPL, dated June 3, 2016, all of which extolled the benefits of the Project by allowing BPL to better serve the library's users [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

In his Affidavit in Opposition to the Verified Petition, dated June 6, 2016, John Neill, Vice President of AKRF, Inc., an environmental consulting firm specializing in the preparation of environmental review documents, refutes Petitioners' arguments regarding the *SEORA* and *CEQR* review of traffic, facilities, architectural resources and shadows [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal

Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Respondents City, EDC, DCAS, BBB, BPL, Cadman, St. Ann's and Church filed their Notice of Joint Motion to Dismiss the Verified Petition, dated May 24, 2016, arguing that Respondents were not served within the proper time pursuant to *CPLR Section 306-b* [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Petitioners filed their Notice of Cross Motion to Extend the Period of Service of the Petition and Notice of Petition to Dates of Service *Nunc Pro Tunc*, dated June 2, 2016 along with the Affidavit of Richard J. Lippes, Esq., dated June 2, 2016, arguing that because the *Statute of Limitations* has not run, service was timely [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Respondents served their Reply Memorandum of Law in Further Support of their Joint Motion to Dismiss the Verified Petition, filed June 9, 2016, refuting Petitioners' *Statute of Limitations* argument [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Petitioners filed their Reply to the Motion to Dismiss, dated June 8, 2016 [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

COURT'S RULINGS

This Court grants the Joint Motion by the Respondents to Dismiss the Verified Petition. It denies their request for costs, disbursements and attorney fees. It dismisses Petitioners' Petition by Order to Show Cause for a *CPLR Article 78* review, to require MOS to comply with *SEQRA* and to prepare an Environmental Impact Statement ("EIS") as well as Petitioners' request for an injunction. The Court denies Petitioners' Cross Motion to Extend the Period of Service of the Petition and Notice of Petition to Dates of Service *Nunc Pro Tunc* [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation

McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

CPLR Section 306-b prescribes that in an action or proceeding when the applicable *Statute of Limitations* is four months or less, service shall be made not later than fifteen (15) days after the expiration date of the applicable *Statute of Limitations*. Challenges to government action under *SEQRA* must be resolved in a special proceeding under *CPLR Article 78*, which provides for a four (4) month *Statute of Limitations*. When a government action is subject to review under both *SEQRA* and *ULURP*, the *Statute of Limitations* for any *SEQRA* claims begins to commence upon the completion of the *ULURP* process which in this case was the City Council approval date of December 16, 2015. See *Sanitation Garage, Brooklyn Districts 3 and 3A v. City of New York*, 32 AD3d 1031 (2nd Dept., 2006); *Throggs Neck Resident Council v. Cahill*, 290 AD2d 324 (1st Dept., 2002) [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Consequently, this Court finds that the four (4) month *Statute of Limitations* expired on April 16, 2016 and the fifteen (15) day service deadline under *CPLR Section 306-b* expired on May 2, 2016. Following the close of the *ULURP* process, this Court notes that although the Brooklyn Borough Board ("BBB") approved the terms of the sales contract pursuant to *New York City Charter Section 384(b)* at a later date, it does not extend the *Statute of Limitations* for Petitioners' *SEQRA* claims. While the BBB was subject to *SEQRA*, it was bound by the prior negative declaration of the lead agency which was MOS. Consequently, it had no authority to revisit the Project's environmental analysis or to reverse MOS' determination of no potentially significant adverse impacts. See *6 Section NYCRR 617.6(b)(iii)*; *Gordon v. Rush*, 100 NY2d 236 (2003). It is well settled that when one or more agencies make successive determinations on a project to which *SEQRA* may be applicable, the *Statute of Limitations* will run from the first such determination. Thus, in this case, the *Statute of Limitations* began to run after the City Council voted its approval on December 16, 2015. See *Metro. Museum Historic Dist. Coalition v. DeMontebello*, 20 AD3d 28 (1st Dept., 2005) [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court observes that Petitioners were apparently aware of the applicable limitations period because they filed their Petition on April 15, 2016, the day before the *Statute of Limitations* lapsed. However, Petitioners did not serve any of the Respondents on or prior to May 2, 2016 based upon each named Respondents' representatives' affidavits. Cadman, Church, City, DCAS and EDC were not served until May 13, 2016. St. Ann's was not served until May 16, 2016. BPL was not served until May 18, 2016. The BBB was not served until May 23, 2016 - more than three (3) weeks after the *Statute of Limitations* expired. None of the Respondents were timely served [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs.

1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Although late service may be excused for “good cause shown” or in “the interests of justice”, this Court finds that neither of those grounds excuses Petitioner’s unexplained delay. See *CPLR Section 306-b*. “Good cause” requires a plaintiff to demonstrate “reasonable diligence” by attempting service within the prescribed period. See *Bumpus v. NYC Transit Authority*, 66 AD3d 26 (2nd Dept., 2009); *Johnson v. Concourse Village, Inc.*, 69 AD3d 410 (1st Dept., 2010); *Leader v. Maroney, Ponzini & Spencer*, 97 NY2d 95 (2001). However, Petitioners cannot meet this standard because in this case reasonable diligence would have resulted in timely service since Respondents are public and private entities which can be readily served during business hours at their known addresses. There is no evidence that Petitioners attempted service within the fifteen (15) days provided pursuant to the *CPLR*. See *Riccio v. Ghulam*, 29 AD3d 558 (2nd Dept., 2006) [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

In the evaluation of “the interests of justice”, this Court may consider diligence or lack thereof along with any other relevant factor in reaching its determination including the expiration of the *Statute of Limitations*, the meritorious nature of the cause of action, the length of delay in service, the promptness of Petitioners’ request for the extension of time and prejudice to Respondents. See *Leader v. Maroney, Ponzini & Spencer*, 97 NY2d 95 (2001). Since no one factor is determinative, this Court must weigh the competing interests of the litigants and a clearly expressed desire by the Legislature that the interests of justice be served [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court notes that Petitioners’ lack of diligence is not in dispute because they made no attempt to serve the Petition within the time period pursuant to *CPLR Section 306-b*. See *Liaros v. City of New York*, 14 AD3d 662 (2nd Dept., 2005); *Anonymous v. NYS Office of Children & Family Services*, 53 AD3d 810 (3rd Dept., 2008) [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann’s 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann’s 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court observes that when a government action is subject to review under both *SEQRA* and *ULURP*, the *Statute of Limitations* for any *SEQRA* claims begins to run upon completion of the *ULURP* process. See *Sanitation Garage Brooklyn Districts 3 & 3A v. City of New York, supra*; *Throggs Neck Resident Council v. Cahill, supra*. Subsequent determinations that do not reopen the environmental review have no

impact on the environmental decisions that aggrieve petitioners and therefore are not triggers for the running of the *Statute of Limitations*. See *Throggs Neck Resident Council v. Cahill*, *supra*; *Jones v. Amicone*, 27 AD3d 465 (2nd Dept., 2006); *Metropolitan Museum Historic District Coalition v. DeMontebello*, 20 AD3d 28 (1st Dept., 2005); *City of New York (Grand Lafayette Props. LLC)*, 6 NY3d 540 (2006); *Gordon v. Rush*, *supra* [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Challenges to government action under *SEQRA* must be resolved in a special proceeding under *CPLR Article 78*, which provides for a four (4) month *Statute of Limitations*. When a government action is subject to review under both *SEQRA* and *ULURP*, the *Statute of Limitations* for any *SEQRA* claims begins to run upon the completion of the *ULURP* process which in this case was December 16, 2015, the date of the City Council approval. Pursuant to *CPLR Section 306-b*, when the applicable *Statute of Limitations* is four months or less, service shall be made not later than fifteen (15) days after the date on which the applicable *Statute of Limitations* expires. Thus, the four (4) month *Statute of Limitations* expired on April 16, 2016 and the fifteen (15) day service deadline under *CPLR Section 306-b* expired on May 2, 2016 [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Although the Brooklyn Borough Board approved the terms of the sales contract pursuant to *New York City Charter Section 384(b)* after the finalization of the *ULURP* process, this Court notes that it does not extend the *Statute of Limitations* for Petitioners' *SEQRA* claims. To the extent that the Brooklyn Borough Board was subject to *SEQRA*, it was bound by the prior negative declaration of the lead agency and had no authority to revisit the Project's environmental analysis or to reverse MOS' determination of no potentially significant adverse impacts. See *6 Section NYCRR 617.6(b)(3)(iii)*; *Gordon v. Rush*, *supra*. In fact, when one or more agencies make successive determinations on a project to which *SEQRA* may be applicable, the *Statute of Limitations* will run from the first such determination. See *Metropolitan Museum Historic District Coalition v. DeMontebello*, *supra* [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Petitioners did not complete service until thirty-seven (37) days after the expiration of the *Statute of Limitations* which is more than twice the fifteen (15) days provided pursuant to *CPLR Section 306-b*. As a result, this Court finds that this delay is both significant and prejudicial in the context of an *Article 78* proceeding which is subject to an abbreviated four (4)-month *Statute of Limitations* in recognition of the strong public policy that the operation of governmental agencies should not be unnecessarily clouded by potential litigation. See *Best Payphones Inc. v. Dept. of Info. Tech. & Telecom. of City of New York*, 5 NY3d 30 (2005). *CPLR Section 306-b* sets a more stringent service deadline for *Article 78* proceedings than most other actions,

servicing a similar purpose of ensuring that government agencies and project applicants are timely apprised of potential litigation. See *CPLR Section 306-b* which requires service of *Article 78* petitions within fifteen (15) days of the expiration of the *Statute of Limitations* compared to one hundred twenty (120) days from filing for most other complaints [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Because Respondents have invested considerable resources and developed plans in reliance on the Project's environmental review and governmental approvals, this Court finds that they are prejudiced by the lingering specter of litigation extending beyond the applicable limitations and service periods. Since Petitioners had ample opportunity to timely commence and serve their pleadings, the interest of justice would not be served by rewarding Petitioners' unexplained and unexcused lack of diligence. See *Hafkin v. N. Shore University Hospital*, 279 AD2d 86 (2nd Dept., 2000) [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court opines that any extension of the deadline for service would not allow meritorious claims to proceed because Petitioners' *SEORA* claims are unavailing. This Court finds that since the environmental review of the Project fully complied with *SEORA/CEQR*, it was not arbitrary, capricious, an abuse of discretion or affected by error of law, See *Akpan v. Koch*, 75 NY2d 561 (1990); *Riverkeeper, Inc. v. Planning Board of Town of Southeast*, 9 NY3d 219 (2007); *Jackson v. N.Y. State Urban Development Corporation*, 67 NY2d 400 (1986) [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court is fully aware that it may not substitute its judgment for that of an agency. Thus, it is limited to a review of whether the agency's determination was arbitrary, capricious, an abuse of discretion or affected by an error of law. See *Jackson v. N.Y. State Urban Development Corporation*, *supra*; *Akpan v. Koch*, *supra*; *Riverkeeper, Inc. v. Planning Board of Town of Southeast*, *supra*. Consequently, when an agency's action has a rational basis, it must be upheld. See *East 13th Street Community Association v. Housing Finance Agency*, 218 AD2d 512 (1st Dept., 1995); *Gallagher v. City of New York*, 307 AD2d 76 (1st Dept., 2003); *Fisher v. Giuliani*, 280 AD2d 13 (1st Dept., 2001). In fact, agencies have considerable latitude in their evaluations of potential environmental impacts of a proposed action because *SEORA* does not require an agency to act in a particular manner or reach a particular result. See *Jackson v. N.Y. State Urban Development Corporation*, *supra*; *Aldrich v. Pattison*, 107 AD2d 258 (2nd Dept., 1985) [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh.

A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court notes that for environmental reviews conducted within New York City, courts have long accepted conformance with guidelines in the *CEQR Technical Manual* as establishing compliance with *SEQRA/CEQR*. See *Board of Managers of the Plaza Condominium v. NYC Department of Transportation*, 131 AD3d 419 (1st Dept., 2015); *Chinese Staff & Workers' Association v. Burden*, 88 AD3d 425 (1st Dept., 2011) aff'd 19 NY3d 922 (2012); *Coal Against Lincoln West, Inc. v. Weinshall*, 21 AD3d 215 (1st Dept., 2005); *Hand v. Hospital for Special Surgery*, 107 AD3d 642 (1st Dept., 2013); *Landmark West! v. Burden*, 15 AD3d 308 (1st Dept., 2005). As a result, this Court observes that an EAS prepared consistent with guidance in the *CEQR Technical Manual* demonstrates compliance with *SEQRA/CEQR* [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Consequently, this Court finds that the Project's EAS environmental review was not arbitrary, capricious, an abuse of discretion or affected by error of law because it took a hard look at areas of environmental concern and contained reasoned elaborations of its conclusions. The environmental review of the Project was thorough and comprehensive. Although Petitioners proffer their personal disagreements with the methodologies and conclusions about the Project's environmental review, this Court finds that they failed to meet their burden of proof in demonstrating that these methodologies and conclusions were arbitrary, capricious, an abuse of discretion or an error of law. See *Akpan v. Koch, supra* [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court finds that the EAS reasonably concluded that the Project will have no significant adverse traffic impacts. Working closely with NYCDOT, the local agency with particularized expertise in the area of transportation, the lead agency consulted with NYCDOT on the methodology and standards of the *CEQR Technical Manual's* chapter on transportation. NYCDOT reviewed and approved the EAS' analysis of transportation for the Project. The analysis in the EAS shows that the incremental vehicle, subway and bus trips generated by the Project would not exceed the *CEQR Technical Manual*. Thus, because it was in conformance with the *CEQR Technical Manual*, no further analysis in these areas was warranted. See *Fisher v. Giuliani, supra* [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court notes that after a careful study, the EAS found no identified significant adverse pedestrian impacts based upon the *CEQR Technical Manual* impact thresholds [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL

Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court observes that the EAS analyzed the possibility of significant adverse traffic impacts during construction. Because the analysis found that construction vehicles, including both construction worker vehicles and construction trucks would not add more than fifty (50) vehicle-trips at any intersection during peak hours, further analysis was not warranted according to guidance under the *CEQR Technical Manual*. Consequently, the temporary traffic increase due to construction activities for the Project would not result in significant adverse impacts [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court finds that Petitioners' claim that the traffic analysis did not consider the cumulative impacts that may result to traffic from reconstruction of both the Brooklyn Queens Expressway and the Brooklyn Bridge upgrades is misplaced because the vehicular screening threshold was not exceeded based upon the *CEQR Technical Manual*. See *Fisher v. Giuliani, supra* [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court notes that the EAS reasonably concluded that the Project will have no significant adverse impacts on community facilities based upon compliance with the *CEQR Technical Manual*. Although the Project would temporarily relocate the Brooklyn Heights branch of BPL during construction, the EAS reasonably concluded that the proposed relocation and permanent improvement of the branch library would not result in any significant adverse impacts to libraries. Although the interim site is smaller, it is of comparable size to that of a typical permanent branch library. It would not only provide the primary services offered at the permanent branch library but it would also be located near the existing library, thus serving the same area [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Moreover, this Court observes that BPL plans to relocate both the Business and Career Library as well as the federal document depository to the Brooklyn Public Library Central Library at 10 Grand Army Plaza either with or without the Project. Thus, any effects of relocation are not impacts of the Project and analysis of the move in the EAS was not warranted [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal

Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court notes that the EAS reasonably concluded that the Project will have no significant adverse impacts on architectural resources. Consistent with the guidance of the *CEQR Technical Manual*, it considered the following historical and cultural resources: 1) designated New York City Landmarks, interior landmarks, scenic landmarks and properties within designated New York City historic districts 2) resources calendared for consideration as one of the above Landmarks Preservation Commission ("LPC") 3) resources listed on, or formally determined eligible for inclusion on the State or National Register of Historic Places or contained within a district listed on or formally determined eligible for listing on the Registers 4) Resources recommended by the New York State Board for Historic Preservation for listing on the State or National Registers of Historic Places 5) National Historic Landmarks and 6) Resources not identified by one of these programs but that meet their eligibility requirements [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court recognizes the EAS finding that the existing library was built in 1962 and designed by the firm of Keally and Patterson. It notes that the existing library building architect Francis Keally along with Alfred Morton Gilherns were the architects for the BPL Central Library on Grand Army Plaza. The Court observes the EAS finding that the existing library facade features shallow reliefs around the main entrance, designed by Clemente Spampinato, depicting literature, crafts, science, knowledge, art, industry and business. However, because it did not fall within any of the categories discussed previously, the existing library was not identified as a potential architectural resource. While the EAS identified eight (8) architectural resources in the study area, the Project would not involve the demolition of any of these architectural resources. Construction of the Project would not have any direct, physical impacts on such structures because of the planned implementation of a Construction Protection Plan. The Project would not cause any indirect, contextual impacts to architectural resources. The Project would not isolate any architectural resource from its setting or visual relationship with the street scape, or otherwise adversely alter a historic property's setting or visual prominence. The proposed building would be of a comparable height and footprint to adjacent and nearby buildings and would not introduce incompatible visual, audible or atmospheric elements to existing resources' setting or incompatible uses [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court finds that Petitioners failed to show that the EAS' analysis pursuant to the *CEQR Technical Manual* was irrational. Although the EAS explicitly considered both the architect and facade sculptor of the existing building, it reasonably determined that the building is not a known or potential architectural resource. This Court observes that Petitioners admit that the existing building is not recognized as an architectural resource by LPC with its specialized expertise in this particular subject area. After LPC reviewed the draft EAS, it approved the EAS analysis of historical and cultural resources. See *Landmark West! v. Burden, supra* [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation

McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

This Court observes that the EAS reasonably concluded that the Project will have no significant adverse shadow impacts because the environmental review was comprehensive, thorough and performed in compliance with the *CEQR Technical Manual*. The EAS identified sunlight-sensitive resources, including public open space, features of architectural resources that depend upon sunlight for their public enjoyment and natural resources. When a screening assessment was performed, it did not eliminate the possibility of new shadows on sunlight-sensitive resources. Consequently, a detailed analysis was conducted. The detailed analysis found that several sunlight-sensitive resources would experience incremental shadows at certain times during the year, concluding that no significant adverse shadow impacts would occur. Many of the incremental shadows generated by the Project would be small in size and brief in duration and not affect large areas of the identified resources. Because all trees and plants in the relevant Greenstreets, parks and Korean War Veterans Plaza would continue to receive an adequate amount of direct sunlight, the Project-generated incremental shadows would not significantly affect the viability of the vegetation of these resources. Seating areas in direct sun would remain available to park users throughout the periods of incremental shadow. The New York City Department of Parks and Recreation, the local agency with specialized expertise regarding parks and open spaces, reviewed and approved the EAS' analysis of shadows [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

The EAS notes that seating areas for park users in direct sunlight will remain available when the parks experience incremental shadows. Regarding any need for park users to move to a different area in a park to avoid shadows, consideration of the available open space resources is appropriate in determining whether an incremental shadow constitutes a significant impact pursuant to the *CEQR Technical Manual*. Thus, the EAS addressed the potential for significant adverse shadow impact in a reasonable and thorough manner [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D; Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

In light of all of the above, the Court finds that Respondents' approval for a mixed-use residential tower at 280 Cadman Plaza West was not arbitrary and capricious. The Court further finds that Petitioners have missed the *Statute of Limitations* and have not met the requirements necessary for the Court to further extend the time of service in the interest of justice [Petitioners 1-2; Municipal Respondents 3 with Affirmations and Exhs. 1-17; BPL 4; BPL Affirmation McLaughlin 5; BPL Affidavit Woloch 6; BPL Affidavit Rosenblum 7; BPL Affidavit Reyes-Gavilan 8; Church 9; Cadman 10; St. Ann's 11; Affidavit Neil 12, Exh. A-D;

Municipal Respondents 13; Church, Cadman, St. Ann's 14; Respondents 15 with Affidavits; Petitioners 16 and Affidavit Lippes 17; Respondents Reply 18; Petitioners Reply 19; Respondents 20].

Therefore, it is ORDERED that:

Respondents the City of New York, the New York City Economic Development Corporation, the New York City Department of Administration Services, Brooklyn Public Library, St. Ann's School, Brooklyn Borough Board and Cadman Associates LLC's joint motion to dismiss the Verified Petition to void the approval decisions and sales/lease agreement of the Property to Cadman Associates, LLC pursuant to *CPLR 306-b* is GRANTED. It DENIES their request for costs, disbursements and attorney fees.

Petitioners Marsha Rimler, Individually and as President of Love Brooklyn Libraries, Inc.; Ellen Kaufman-Nuzzi; Sheppard Peterson; and Martha Ramos' Petition for a *CPLR Article 78* review, to require the Mayor's Office as lead agency to comply with *SEQRA* and to prepare an Environmental Impact Statement ("EIS") along with a request for an injunction is DISMISSED. Their cross motion to extend the period of service of the Petition and Notice of Petition to Dates of Service *Nunc Pro Tunc* is DENIED.

Clerk to enter Judgment.

The foregoing constitutes the Decision and Order of the Court.

Enter:



Hon. Dawn Jimenez-Salta

DAWN JIMENEZ-SALTA
Justice Supreme Court

July 7, 2016
In the Matter of the Application of
Rimler et al v. The City of New York et al
(Index No. 506046/2016)

FILED
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