



January 23, 2015

William Heinzen, Esq.
Hudson River Park Trust
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353 West Street
New York, N.Y. 10014
Via Electronic Mail
Pier54comments@hrpt.ny.gov

Re: Riverkeeper and NY/NJ Baykeeper Comments on Proposed Lease between Hudson River Park Trust and Pier 55, Inc. and Proposed Amendment to Park Project Plan

Dear Mr. Heinzen:

On behalf of Riverkeeper, Inc. (“Riverkeeper”) and NY/NJ Baykeeper, and their thousands of members (collectively, the “Commenters”), please accept the following comments on the above-referenced action. Commenters are concerned about the Hudson River Park Trust’s (“HRPT”) consideration of the Pier 55, Inc. application for a new pier within the Hudson River Park Estuarine Sanctuary (“Estuarine Sanctuary”). Specifically, we find that the subject application fails to adequately consider any alternatives to mitigate the potentially significant environmental impacts of a new pier in the Park’s Estuarine Sanctuary, and that the HRPT has failed to conduct sufficient environmental review.

As an initial step in addressing our concerns, we request that the HRPT postpone consideration of the Pier 55 Draft Lease (“Lease”) and proposed General Program Plan (“GPP”) Amendment until the HRPT conducts a full environmental review under the State Environmental Quality Review Act (“SEQRA”),¹ including the following actions:

- (i) publish a positive declaration of significant impact in the New York State Department of Environmental Conservation’s (“DEC”) Environmental Notice Bulletin (“ENB”);
- (ii) conduct public scoping and publish a draft environmental impact statement (“EIS”);
- (iii) provide the appropriate period for public comment on the draft EIS;²

¹ N.Y. COMP. CODES R. & REGS. TIT. 6, § 617 *et seq.*

² “In determining whether or not to hold a SEQR hearing, the lead agency will consider: the degree of interest in the action shown by the public or involved agencies; whether substantive or significant adverse environmental impacts have been identified; the adequacy of the mitigation measures and alternatives proposed; and the extent to which a

- (iv) issue a complete, final EIS; and
- (v) issue a formal findings statement containing requirements to mitigate or avoid impacts.³

Our request is in line with the significant public support (including support from every elected official who submitted a comment) for a full environmental review expressed during the HRPT's January 12, 2015 public hearing held at New York University. HRPT is obligated to follow the steps set forth under SEQRA, as well as the process specified by the City Environmental Quality Review ("CEQR") laws and regulations, before consideration of the Lease or GPP Amendment.⁴ Based on the potential impacts posed by the construction and operation of this project and the conspicuous lack of transparent public process thus far, it is clear that HRPT must follow New York State's well-established environmental law and procedure and furnish the review so clearly sought in the limited public comment received to-date.

I. Background

On November 17, 2014, the HRPT issued a notice of a public hearing and comment period (the "Notice") regarding a proposed amendment to the Hudson River Park (the "Park") GPP and a proposed Lease between the HRPT and Pier 55, Inc. The Notice acknowledged that a public hearing is necessary because the proposed actions qualify as "significant" under the Hudson River Park Act ("the Act").

As described in the Notice, the HRPT intends to remove a designated "public-use" pier (Pier 54),⁵ turn it into a pile field, and construct an entirely new pier to the north in an interpier area (together, "the Pier 55 Project"). The new pier would be sited in an area of the Hudson River defined in the Act as the "Estuarine Sanctuary"⁶ between existing Piers 54 and 57, where no development has ever occurred under the GPP. The proposal also specifies that some portion of the new pier will encroach on both the existing Pier 56 pile field, which is a designated "ecological pier,"⁷ and the newly converted pile field at Pier 54.

The proposed new pier would range from a few feet to over seven stories above the water line, and would result in 2.7 acres of new overwater structure resting on at least 577 new pilings to be installed in the Estuarine Sanctuary. The HRPT prepared a draft Environmental Assessment Form ("EAF")—for which it is also seeking comment—in which it briefly described only some of the many potential significant environmental impacts of this project. The EAF also failed to include a complete alternatives analysis or discussion of mitigation measures to offset impacts.

public hearing can aid the agency decision-making processes by providing a forum for, or an efficient mechanism for the collection of, public comment." *Id.* at § 617.9(4).

³ *Id.* at § 617.11 (explaining findings statement process).

⁴ NEW YORK CITY, N.Y., RULES, TIT. 43, § 6-01 *et seq.*; TIT. 62, § 5-01 *et seq.*

⁵ GPP at 6.

⁶ HUDSON RIVER PARK ACT, § 8-1.

⁷ GPP at 11.

II. The Pier 55 Project is Subject to SEQRA

As a state agency, the HRPT “may not undertake, fund or approve” the Lease or GPP Amendment “until it has complied with the provisions of SEQRA.”⁸ SEQRA requires that:

“all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.”⁹

The DEC specifies in its regulations that State agencies must follow a specific sequence of steps in implementing SEQRA, including but not limited to: (1) determining whether or not their proposed actions have the potential to cause significant environmental impacts; (2) publishing that official determination—in the form of a “positive declaration of significant impact” or “negative declaration of significant impact”—and, when there is at least one potentially significant impact; (3) completing a full, transparent, EIS.

If, as is the case here, the SEQRA lead agency is also the agency “directly undertaking the action, it must **determine the environmental significance** of the action as early as possible in the design or formulation of the action.”¹⁰ Moreover, state regulations require publication of a declaration of significance before an application can be considered complete and approved by the designated agency.¹¹ The draft EAF prepared by the HRPT is clearly not a final determination of significance, under SEQRA, that would supplant the need for the publication of a Positive or Negative Declaration, as the law requires. Here, because this requirement has not been met, the Project cannot be considered complete.

To date, the HRPT has not published a “negative declaration of significant impact (“NegDec”) (nor a conditioned NegDec) or issued a “positive declaration of significant impact” (“PosDec”); yet, the HRPT is presently considering approving the Lease and GPP amendment, and has already solicited public comments on the same. To take official agency action (*i.e.*, approve the GPP amendment or sign the lease with Pier55, Inc.) would be in direct violation of DEC’s regulations. At this point in the SEQRA process, the HRPT may decide only whether or not the Project has “the potential for at least one significant adverse environmental impact.”¹²

Until such time as the HRPT sets forth “its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation,”¹³ under state law and the DEC’s regulations, the HRPT cannot consider approval of either the Lease or GPP amendment.

⁸ N.Y. COMP. CODES R. & REGS. TIT. 6, § 617.3(a); *see also*, HUDSON RIVER PARK ACT, § 7-4 (“The trust shall be subject to article 8 of the environmental conservation law.”).

⁹ N.Y. ENVTL. CONSERV. § 8-0103(8) (McKinney 2014).

¹⁰ N.Y. COMP. CODES R. & REGS. TIT. 6, § 617.6(b)(1)(i) (emphasis added).

¹¹ *Id.* at § 617.3(c).

¹² *Matter of City Council of City of Watervliet v. Town Bd. of Town of Colonie*, 822 N.E.2d 339, 344 (N.Y. 2004) (citing N.Y. COMP. CODES R. & REGS. TIT. 6, § 617.7(a)(1)).

¹³ N.Y. COMP. CODES R. & REGS. TIT. 6, § 617.7(b)(4).

III. Full Environmental Review Required by Law

When the HRPT issues, in writing, a determination of significance, it is legally obligated to issue a PosDec, and consequently conduct a full environmental review, because the Pier 55 Project is a Type I action that has the potential for a significant adverse environmental impact.

The Proposed Pier 55 Project is a Type I Action

The proposed construction of this new pier is a “Type I” action under SEQRA. It qualifies as a Type I action under at least two Type I–action criteria (even though it need satisfy only one). *First*, the proposed project falls under § 617.4(b)(9), which classifies as Type I any project that is “substantially contiguous to . . . [a] historic building [and] structure.”¹⁴ As explained in the HRPT’s draft EAF, the project site “directly abuts” against Pier 57 and the Hudson River bulkhead, which are listed on the National Register of Historic Places, and eligible for listing on the State and National Registers of Historic Places, respectively.¹⁵ Moreover, as is stated in the GPP and the “Final EIS” for the GPP (issued in 1998) (“1998 EIS”), Pier 54 (which will be razed and left as a pile field) is itself an historic pier, and the planned home of historic ships.¹⁶ *Second*, it qualifies as a Type I action under §§ 617.4(b)(6)(v) and 617.4(b)(10), which re-classify projects as Type I that would otherwise be “Unlisted.” The proposed Pier 55 would sit “wholly or partially within or substantially contiguous to . . . a parkland,” and, at 170,000 square feet, it exceeds 25% of the 240,000 square foot threshold—*i.e.*, it exceeds 60,000 square feet—for a project “in a city . . . having a population of more than 150,000 persons,” thereby rendering it a Type I project.¹⁷

The Project is Subject to a Mandatory Presumption of Environmental Significance and HRPT Must Publish a Positive Declaration and Draft an EIS

As a Type I project under SEQRA, the Project is subject to a mandatory “presumption of environmental significance that triggers the preparation of an environmental impact statement.”¹⁸ This presumption means that if the HRPT identifies that the project “may include the potential for at least one significant adverse environmental impact,” it must issue a positive declaration and prepare an EIS.¹⁹ According to the courts, the use of the word “may” means that “there is a relatively low threshold for the preparation of an EIS.”²⁰

When a reviewing agency determines that a Type I SEQRA action might ***have the potential*** for at least one significant adverse environmental impact, the agency must issue a positive declaration.²¹ In other words, only if an agency determines that a Type I action will have absolutely “no adverse environmental impacts or that the identified adverse environmental

¹⁴ As defined in the SEQRA regulations, N.Y. COMP. CODES R. & REGS. TIT. 6, §§ 617.2 and 617.4(b)(9).

¹⁵ Hudson River Park Trust, *Full Environmental Assessment Form* (Nov. 16, 2014), at 13, available at http://www.hudsonriverpark.org/assets/content/general/Pier54_Environmental_Assessment.pdf (“EAF”). (describing location of proposed pier as being near historic sites).

¹⁶ GPP at 11. *See also*, 1998 EIS at S-11, whereby the HRPT included Pier 54 as one of the three sites in the Park that “would be especially devoted to history.”

¹⁷ EAF at A-1.

¹⁸ *Matter of City of Middletown v. Town Bd. of Town of Wallkill*, 54 A.D.3d 333, 336-37 (2d Dep’t 2008) (citing N.Y. COMP. CODES R. & REGS. TIT. 6, §§ 617.2(b)(4) and 617.6(a)(2)).

¹⁹ *City of Watervliet*, 822 N.E.2d at 344 (citing N.Y. COMP. CODES R. & REGS. TIT. 6, § 617.7(a)(1)).

²⁰ *S.P.A.C.E. v. Hurley*, 291 A.D.2d 563, 564 (2d Dep’t 2002) (citations omitted).

²¹ *City of Watervliet*, 822 N.E.2d at 344.

impacts will not be significant” may it issue a negative declaration of significance.²² Here, because the Pier 55 Project has the potential for many (certainly more than “at least one”) significant adverse environmental impacts, the HRPT is required to issue a positive declaration and draft an EIS.

Draft EAF Prepared by HRPT is Inaccurate and Inadequate

The HRPT’s draft EAF inadequately portrays the potential for impacts from this project, and fails to establish that the proposed project—for a razed pier and pile field and a new pier in a previously undeveloped area of the Estuarine Sanctuary designated for preservation as critical State habitat—will not result in “at least one significant adverse impact to the environment.”²³ The draft EAF also entirely overlooks the Act’s stated interest with respect to the Estuarine Sanctuary: that it is in the public’s interest “to protect and conserve this habitat.”²⁴ A new pier consisting of 577 new piles is clearly not protection and conservation of the Sanctuary’s habitat.

Furthermore, the draft EAF is based on a flawed comparison. Notably, in analyzing the potential environmental impacts, the draft EAF relies heavily on the 1998 EIS to show that proposed activities (such as pile driving or sediment disturbance) will not have significant impacts.²⁵ However, the 1998 EIS does not make any such findings; in fact, it underscores the sensitivity of the Estuarine Sanctuary, notes the need for full review of any projects to be conducted therein, and, to the extent it does analyze impacts from activities like pile driving and sediment disturbance, never analyzes the impacts of such activities at the Pier 54 or Pier 55 sites. Indeed, contrary to representations made in the HRPT’s draft EAF, the proposed placement and format of the new Pier 55 was not considered in the 1998 EIS.

The 1998 EIS specifically refers to Pier 56 (an area that the proposed Pier 55 Project will encroach upon), as an “ecological pier” created for use as a “wildlife habitat” with indigenous plants to attract birds and butterflies.²⁶ The 1998 EIS specifically states that Pier 54 was “to be fully restored for public access” in the same location as the previously vacant Pier 54,²⁷ and would utilize the arches and granite bases from the original pier facade of Pier 54.²⁸ The 1998 EIS also indicates that limited maritime activities would be allowed at Pier 54, in that historic ships were anticipated to dock there.²⁹ Notably, there is no mention of Pier 55 in the 1998 EIS, or the interpier space in which the overwhelming majority of the pier will be constructed—a significant omission given that the 1998 EIS consists of more than 900 pages. In sum, this proposed Pier 55 Project was not considered in the 1998 EIS, and therefore conclusions of fact made in that environmental review are inapplicable to the present review.

The draft EAF superficially attempts to piggyback the Pier 55 Project onto the Pier 54 discussion in the 1998 EIS by describing the Pier 55 Project as “renovation and reconstruction activities at Pier 54,” instead of describing the proposed project for what it is: an entirely new

²² N.Y. COMP. CODES R. & REGS. TIT. 6, § 617.7(a)(2).

²³ *Id.* at § 617.7(a).

²⁴ HUDSON RIVER PARK ACT at § 2(d).

²⁵ Allee, King, Rosen and Fleming, Inc., HUDSON RIVER PARK FINAL ENVIRONMENTAL IMPACT STATEMENT. PREPARED FOR EMPIRE STATE DEVELOPMENT CORPORATION IN COOPERATION WITH THE HUDSON RIVER PARK CONSERVANCY. NEW YORK, N.Y. (1998).

²⁶ *Id.* at I-8.

²⁷ *Id.* at I-9.

²⁸ *Id.* at 6-4.

²⁹ *Id.*

idea in an entirely undisturbed Sanctuary that has never before been considered.³⁰ This false equivalency falls flat as unscientific and certainly misleading to the public.

On its face, in the draft EAF, it is clear that the majority of the construction activities necessary to build Pier 55 will take place in the Estuarine Sanctuary between Piers 54 and 56, and in the pile field of Pier 56. Past impact analyses are immaterial to the present review as they never considered this pier proposal's location or design, and never considered a new pier constructed within the Estuarine Sanctuary. The proposal at hand is a project with two pier construction activities (turning Pier 54 into a pile field and constructing a new Pier 55) and should be treated as such with a new EIS.

IV. Potentially Significant Environmental Impacts

Commenters are concerned about myriad significant environmental impacts that are likely to result from the construction and operation of Pier 55, including loss of river habitat in the Estuarine Sanctuary from dredging and pile driving, long term impacts from shading caused by the pier and "actors' barge," impacts of lighting on river habitat, as well as noise, traffic and visual impacts to the Hudson River, adjoining areas of the Park and nearby New York City neighborhoods. The HRPT's dismissal of public concerns related to the risks posed by climate change and sea level rise on a new in-river structure costing \$100 million must also be corrected. As noted below, there are significant problems with the baseline analysis and conclusions regarding impacts that were relied upon by HRPT as the basis of its EAF that must be addressed.

- Overall, the baseline analysis (against which the HRPT is measuring in the draft EAF whether there will be a significant impact from Pier 55's construction) is deeply flawed. Pier 55 is a new pier proposal, to be built in a part of the Estuarine Sanctuary where no pier has been built before. This project will result in new shading where there has been no shading before; 577 piles where there have never been piles; water-facing spotlights where there have never been spotlights before; thousands of people (with the resulting debris and floatable management issues) where people have never been before; and six months of permanent barge presence where there has never been a permanent barge. That there will be habitat creation when Pier 54 is turned into a pile field is not relevant to the new impacts caused by Pier 55. As such, the impacts presented by Pier 55 should be compared against the current conditions in the interpier area where the HRPT wants to build the new Pier 55 – not against the presence of a new pile field where Pier 54 used to be.
- Similarly, the draft EAF judges impacts based on the contention that this project disturbs less than one acre. This is entirely wrong—Pier 55 itself is a 2.7-acre project, and the 1.8-acre Pier 54 conversion to an ecological pier should be evaluated as supplemental to Pier 55. This project, as we have stated repeatedly, is a two-pier proposal being sold as less than one. Were the HRPT proposing to convert Pier 54 into a pile field (a condition not examined by the 1998 EIS, any Park permits, or the GPP), the agency would have had to go through this same SEQRA process and examine the impacts of the proposed change. That the HRPT is proposing this conversion with a new pier alongside Pier 54 does not relieve the agency of its obligations to fully consider the impacts of the proposal compared against the *status quo*.

³⁰ EAF at F-1.

- In the draft EAF, the HRPT states that there will be no loss of habitat, impact on species, or disturbance of natural areas.³¹ This conclusion is based on the contention that increases in habitat from a Pier 54 pile field would offset habitat and species losses, while compliance with pile driving and construction conditions issued by the DEC and Corps would mitigate any impacts from Pier 55 itself. This analysis is entirely backward and baseless. First, there will be loss of habitat—2.7 acres of new overwater area—as well as impacts to species and natural areas (the interpier habitat is, as the 1998 EIS concludes, a unique ecosystem, separate and apart from the pile field habitat³²). These impacts must be studied, not dismissed. Second, that mitigation measures might be available to the HRPT in constructing Pier 55 does not mean that impacts do not first need to be studied and articulated. The HRPT’s inadequate analysis is conclusory and inconsistent with the clear tenets of SEQRA, which requires a careful assessment of impacts, alternatives, ways to avoid or minimize such impacts, and mitigation measures to compensate for unavoidable impacts, well prior to proceeding with a project.
- The Park was created with the principle that very little of the Hudson River within the Park’s boundary (the Estuarine Sanctuary) would ever be disturbed. The Act states that, within the water section, “in the aggregate, no more than eight acres of the water section may be covered or altered by floating structures or minor improvements at any time.”³³ A new 2.7 pier, estimated to cost over \$100 million, represents more than a third of the total allowable alteration of the 400-acre Park, and is by no means just a “minor improvement.” This is a large project with significant impacts to an untouched part of the Sanctuary, and a full SEQRA review is warranted.
- Given that the Pier 55 design would, according to the draft EAF,³⁴ guide all stormwater directly into the Hudson River,³⁵ this project has the potential to have a significant, new, and detrimental impact on the Hudson River ecosystem. As the HRPT’s goal for this new pier is to create a thoroughly landscaped destination for thousands of people every day, we are concerned about the various impacts this intensive use would result in, including waste disposal, use of pesticides and other chemicals, and the risk of floatable debris entering the Hudson River. Even if the baseline for determining significance was set at a rebuilt Pier 54, the differences between a destination theatrical and landscape landmark and an ordinary rectangular pier mean that there will be more plants, more people, and therefore more pollution at the proposed Pier 55. Moreover, even with this erroneous baseline, the design of Pier 55 presents novel stormwater treatment, fertilizer and pest chemical management, debris management, and solid waste disposal challenges that could lead to potentially significant impacts.
- The proposed project also presents new shading impacts where none have existed before, renders a previously-accessible pier inaccessible from the water, would require never-before seen in-water construction practices (for installing “pods” up to seven stories above the water), and would bring six months of public performances and new noise generation, not in

³¹ EAF at B-12.

³² 1998 EIS at 10-36.

³³ HUDSON RIVER PARK ACT at §8(3)(c).

³⁴ EAF at B-12.

³⁵ See EAF at A-6 (“Stormwater management measures would be incorporated in the pier design to carry runoff to the Hudson River.”). Note also that the draft EAF states the project will not create more than one acre of new non-point source pollution (such as stormwater runoff and sheet flow), even though it is a new 2.7 acre pier. See EAF, Part 1, p. 6, Question D.2(e).

the same location as the existing Pier 54, but in a different location where there have been no such performances before. These significant departures from the existing conditions in the interpier area between Piers 54 and 56 (and in the area as a whole), also demand a full SEQRA analysis.

- Beyond the need for a complete assessment of these impacts prior to any final decision on the lease and amendment, the HRPT (as well as DEC and Corps) needs to identify what mitigation measures (for construction, operation, and maintenance) will be required to offset unavoidable impacts of the project. The formal memorializing of such mitigation commitments, and other environmental requirements, is exactly what would be contained in a formal SEQRA Findings statement. As it stands, the draft EAF may discuss mitigation and avoidance of impacts to some degree, but standing alone it does nothing to bind the HRPT or Pier 55, Inc. to carry out these measures, absent a Findings Statement. The Lease and GPP Amendment, as written and proposed, contain no such requirements, nor any limits whatsoever designed to ensure that environmental, noise, construction, operation, and maintenance impacts are mitigated, controlled, or limited at all.
- The HRPT also failed to conduct a proper alternatives analysis. Instead, it simply presented an outdated rebuild proposal of the existing Pier 54 as the only viable alternative in the EAF. At a minimum, the HRPT should have examined other alternative locations, such as building the new “Pier 55” largely in the same footprint as the existing Pier 54, or locating new performance space in other areas of the Park that would not entail building an entirely new project in the Hudson River. If these types of alternatives were ruled out, HRPT is required to provide a detailed explanation as to why a proper alternative analysis was not conducted, and why such alternate locations would not be reasonable.

Given these potential impacts, the HRPT should publish a positive declaration and begin a full SEQRA review. This EIS must include a full analysis of alternatives (including location and design features) and have well-developed mitigation measures for any impacts that cannot be avoided (such as direct discharge of stormwater and permanent loss of virgin estuarine sanctuary habitat). The EIS must focus on the proposed project area, so that the community and all interested stakeholders have the opportunity to comment on the proposed project with a full understanding as to the impacts that the proposed project will have on the environment and surrounding community.

V. Insufficient Public Process

Because the hearing on January 12, 2015, and the proposed final agency action comment period (*i.e.*, the GPP amendment and Lease) were held before a declaration of significance or notice of complete application, the HRPT has failed to conduct the proper public process. Comments on approval of the Lease and GPP amendment should only be considered after a final EIS is issued so that stakeholders and decisionmakers can have all relevant information at their disposal when making such comments or attending a public hearing. As stated in SEQRA’s implementing regulations:

“In adopting [SEQRA], it was the Legislature's intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living

resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.”³⁶

The basic purpose of SEQRA is, according to the regulations, “to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state ... agencies at the earliest possible time.”³⁷ Here, despite an obligation to protect the Estuarine Sanctuary (the Act’s declaration that it is in the “public interest to protect and conserve this habitat”),³⁸ an obligation to protect the environment, and an obligation to incorporate the consideration of the environment at the earliest possible time, the HRPT has fast-tracked this proposal. This failure to account for required public processes is unacceptable.

Specifically, in reviewing the project proposal (both through the materials provided electronically and by way of the public information session), we are concerned that the Pier 55 Project, as proposed and presented to the public, violates the letter and spirit of the Hudson River Park Act. In passing that law, the New York State legislature specifically noted its intention that the Park be managed in a manner that protects the River (“including its role as an aquatic habitat”), preserved as a Sanctuary, no less, while providing “for meaningful public notice, participation, consultation and review.”³⁹ Here, for a variety of reasons, the HRPT has not met these standards:

- The HRPT has issued for comment what it calls a draft Environmental Assessment Statement (herein, above, discussed as the “draft EAF”), even though no such document is provided for under the processes established under the Act or SEQRA. The public should be made aware that this document is not a negative declaration of significance, a complete EIS, nor any part of the SEQRA process—a fact that is not made clear in any materials or statements issued by the HRPT to date.
- Moreover, instead of providing for a separate review of this draft environmental report in order to develop—with meaningful public participation, consultation and review—a robust report, the HRPT developed the Pier 55 Project proposal entirely behind closed doors. A draft EIS would have been developed with public scoping input to frame the issues to be analyzed; here, that initial public input was never sought. Similarly, under SEQRA, impact analyses are reviewed for completeness before consideration of final agency actions—especially when those actions lock in agencies to certain actions (*i.e.*, leases and GPP amendments). Here, the HRPT is reviewing the document in connection with its final agency decision, cutting out any further public process before final action.
- Contrary to representations made in the HRPT’s draft EAF, the various elements of this proposed project, instead of being considered together, have been segmented and mischaracterized. For example, the HRPT claims that the current proposed placement and design of the new Pier 55 was considered in the 1998 EIS developed with the original GPP. This is not the case; no such Pier design was analyzed, nor was the idea to build a new pier in the interpier area of the Estuarine Sanctuary considered. Segmentation is occurring here as the HRPT is analyzing the conversion of the transportation-use Pier 54 into an ecological pier/pile field as the same project (and same Pier) as the new Pier 55. In addition, the HRPT

³⁶ N.Y. COMP. CODES R. & REGS. TIT. 6, § 617.1(b).

³⁷ *Id.* at § 617.1(c).

³⁸ HUDSON RIVER PARK ACT at §2(d).

³⁹ *Id.* at §§ 2(a) and 7(1)(f).

has entirely separated review of the esplanade improvements which are necessary and vital to the Pier 54 and Pier 55 construction operations. The Park should, in a full SEQRA review specific to this proposed Pier 55 action, clarify these mistakes and mischaracterizations and include in its review the specific site of the Pier 55 Project, the conversion of Pier 54 to an ecological pier (from a historic-ship transportation pier) and the proposed Pier 54 Connector Project (referenced in the Lease) as one large development initiative.

- Similarly, the HRPT erroneously states that the existing Army Corps of Engineers (“Corps”) general permit would largely cover the proposed action. In fact, the Corps permit—most recently renewed in 2010—expires in May 2015, and limits the HRPT to rebuilding Pier 54 within the same footprint, not in an interpier part of the Estuarine Sanctuary where no piers, pilings, or structures have ever been placed before. The draft EAF and statements by the HRPT, made wherein this proposed project is described as being consistent with the Corps permits, should be withdrawn and further hearings should be held whereby the actual state of permitted action (*i.e.*, that there are no permits for this kind of project, nor preexisting analyses or conclusions of any kind) can be made clearer for the public.
- Multiple other permits are required for this project. As the HRPT notes in its draft EAF, it would need to obtain New York State DEC authorization under Article 15 of the ECL, a Water Quality Certification under Section 401 of the Clean Water Act, and an individual Corps permit under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. No timeline for these permits is given, nor is information provided about the need for Coastal Zone Management Act review and certification by the New York State Department of State. In order to protect the Estuarine Sanctuary and effectively manage the Park in an open and transparent manner, these other permits should be obtained before the HRPT signs a Lease with a private entity—which would effectively hand over control of the space and limit the ability of the HRPT to change the terms and conditions of its agreement with Pier 55, Inc.—and certainly before it approves a modification to the GPP.
- Finally, the Act requires that there be “timely and reasonable notification” to the public for any “significant plans or proposed actions with respect to the park.”⁴⁰ Here, the public was provided a technically complex lease and a 235-page proposal to review on November 17, 2014—a week before the Thanksgiving holiday and two weeks before the first full public meeting on the project. Indeed, within the 60 days given for review of these dense materials, the Thanksgiving, Hanukkah, Christmas, and New Year celebrations all took place. Considering that this project has been under consideration since at least March 2014, it may be *timely*, but is clearly *unreasonable* to schedule the bare-minimum public participation at this time of year.

We also note the following additional issues (which were raised at the January 12, 2015 hearing), that must be considered by the HRPT before any action is contemplated:

- The Pier 55 Project does not comply with the Act’s requirement that within the Estuarine Sanctuary “only **water dependent uses** shall be permitted.”⁴¹ These uses are limited to those that **depend** on the water (*i.e.*, water is integral to the use), such as boating, swimming,

⁴⁰ *Id.* at §7(1)(f)(ii).

⁴¹ *Id.*, at § 8.3(a) (emphasis added).

sailing, or waterborne commerce (*e.g.*, ferry service).⁴² The Pier 55 Project is clearly not a water dependent use, as defined by the Act,⁴³ or as used in land use, coastal zone management, or waterfront development contexts. Therefore, construction of a non-water-dependent platform in the Hudson River runs afoul of this provision of the Act.⁴⁴

- The “actors’ barge” that will serve as a staging area for performers will have additional environmental impact. Since it will potentially be used six months out of the year, likely during much of the performance season, the impact could be significant. The facilities on the barge will require heating and cooling, power supply, drainage, and other factors not yet considered in the HRPT’s review process. Moreover, the presence of this barge would occupy one of the two barge “slots” allowed in the Park during each season; meaning that because of Pier 55’s theatre space demands, only one other barge would be allowed in any other part of the Park during any given year—a fact that must be made clear to the public for an informed, transparent decision to be reached. Mooring of the barge to the new pier for long periods of time could also result in shading impacts to the riverbed that need to be more fully assessed through the preparation of an EIS.
- We are further troubled that the New York City Uniform Land Use Review Procedures (“ULURP”) have not been followed.⁴⁵ The ULURP process allows for review of construction projects for compliance with zoning and land use requirements. The Pier 55 Project will result in the razing of Pier 54, a pier designated for public use, and its conversion into a pile field, while Pier 55 will be newly constructed in the Estuarine Sanctuary. The zoning and land use designations for Pier 54 are incompatible with the proposed transformation into a pile field without first following the ULURP. Similarly, the Estuarine Sanctuary where Pier 55 is proposed to be built does not have a land use designation, or even a lot number assigned to it. Given the fact that the Pier 57 project followed the ULURP for an existing pier reconstruction, ULURP should clearly be triggered here where there’s a proposal to construct an entirely new pier.

VI. Conclusion

The HRPT is proposing to construct a pier where (and in a manner that) one has never been built—or considered—before. Beyond the impact to undisturbed habitats, the New York

⁴² *Id.*, at § 3(m). The Act defines “Water dependent use” as any use not specifically excluded by the Act that *depends on utilization of resources found in the water section*; recreational activities that *depend on access to the water section*, such as fishing, boating, swimming in such waters, passive enjoyment of the Hudson river and wildlife protection and viewing; facilities and incidental structures *needed to dock and service boats*; **and** scientific and educational activities that by their nature *require access to marine reserve waters.*” *Id.* (emphasis added). Here, Pier 55 does not depend on resources found in the water, does not depend on access to the water, is not a facility for docking and servicing boats, and is not being built for research that requires access to the Estuarine Sanctuary; as such, it does not meet any of the Act’s definitions of “water dependent use” and thus violates the Act’s water section prohibitions.

⁴³ *See Id.*

⁴⁴ We note that later amendments to the Act have not changed this requirement. The 2013 amendments, while allowing Pier 54 to be rebuilt outside of its original footprint (though we do not accept that this footprint exemption meant either that an entirely new pier could be constructed in an entirely new spot, or that reconstruction outside of an original footprint meant that Pier 54 could be converted into a pile field and a new pier constructed), do not allow for a new pier to be built in the Estuarine Sanctuary. As discussed above, Pier 55 is also not a rebuild of Pier 54 outside of its original footprint; Pier 54 will continue to exist, as a pile field, and be considered an “ecological pier.”

⁴⁵ NEW YORK CITY, N.Y., RULES, TIT. 62, § 2-01, *et seq.*

State legislature's intent was that this inter-pier area be preserved as an Estuarine Sanctuary, with a management plan that:

“will provide for conservation of the marine resources found in the area, with special consideration for habitat values; [and ...] public recreational use of the water section, including boating, fishing and swimming.”⁴⁶

The lasting environmental impacts to existing habitats, which go far beyond any studies yet considered by the agencies with direct authority over the Estuarine Sanctuary (the Corps and DEC), should not be ignored. The HRPT should not consider this application complete, let alone hold a vote on the Lease and GPP amendment until, in accordance with the requirements of SEQRA and the Act:

- (i) a final EIS is complete;
- (ii) the community has opportunity to comment on the Lease and the GPP amendment after enjoying the benefit of sufficient time for public review of the final EIS (in accordance with SEQRA's goal of more informed decisionmaking); and
- (iii) the HRPT has an opportunity to consider the final EIS, including all submitted comments, potential mitigation measures, and project alternatives.

Commenters note that the compliance with process we are requesting is entirely consistent with the HRPT's Pier 57 project process;⁴⁷ there, the action was determined to be a Type I action, a draft EIS was issued, and the final EIS was developed with full public review prior to HRPT decision-making. Given the likely impacts posed by the Pier 55 project, the same process must be followed.

It is also against the interest of both HRPT and the general public to execute the Lease prior to the resolution of all issues outlined herein, as taking such action could result in significant harm to both parties. Several provisions in the Lease create a substantial risk for HRPT and the taxpayers of New York if the lease is signed by HRPT and then the proposed project must be altered due to any of the concerns discussed above. Pier 55, Inc. may have several claims against HRPT if such changes to the proposed project are required, including for breach of contract and specific performance.⁴⁸ It is irresponsible and a violation of the public trust, for HRPT to execute the Lease prior to the issuance of a final EIS and the resolution of all other concerns discussed herein.

The proposed Pier 55 Project is decidedly not business as usual for the Park, and should, therefore, be considered carefully and thoroughly. The proposal represents a remarkable shift away from a pier built for water dependent use, in stark contrast to its original plan of utilizing Pier 54 as a location for historic ships. As it stands, the current Pier 55 project is not consistent with the letter and intent of the Park Trust Act. In addition, it is a two pier project being sold to the public as a mere rebuilding of Pier 54. This proposal should be afforded a full environmental review under SEQRA and consideration of entering the Lease and modifying the GPP should be tabled. The HRPT has no authority to lease control over the Estuarine Sanctuary, nor amend the

⁴⁶ HUDSON RIVER PARK ACT, §8(2)(a), (c).

⁴⁷ See PIER 57: DRAFT SCOPE OF WORK FOR AN ENVIRONMENTAL IMPACT STATEMENT, *available at* http://www.nyc.gov/html/mancb4/downloads/pdf/pier_57_draft_scope_of_work.pdf.

⁴⁸ See, e.g., Section 2.02 of the Lease (requirement that all permits for development of Pier 55 be obtained by HRPT is binding at the Execution Date).

GPP, in a manner inconsistent with the Act; certainly it cannot do so for a proposal such as Pier 55 until a final EIS is issued and the public has an opportunity to review and consider that critical information.

Commenters appreciate the opportunity to submit our comments on this proposal.

Respectfully,



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