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

In the Matter of

NEIGHBORS UNITED BELOW CANAL, JAN LEE, DCTV, EDWARD J. CUCCIA, BETTY LEE, and AMERICAN INDIAN COMMUNITY HOUSE,

Petitioners,

Index No. 100250/2020
(Kelley, J.)

For a Judgment pursuant to Article 78 of the CPLR,

- against -

MAYOR BILL DEBLASIO, THE CITY OF NEW YORK, NEW YORK CITY PLANNING COMMISSION, MARISA LAGO, NEW YORK CITY DEPARTMENT OF CITY PLANNING, NEW YORK CITY DEPARTMENT OF CORRECTION, CYNTHIA BRANN, NEW YORK CITY MAYOR'S OFFICE OF CRIMINAL JUSTICE, ELIZABETH GLAZER, NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES, LISETTE CAMILO, and NEW YORK CITY COUNCIL,

Respondents.

MUNICIPAL RESPONDENTS' MEMORANDUM OF LAW
IN OPPOSITION TO THE PETITION AND IN SUPPORT OF THE ANSWER

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PRELIMINARY STATEMENT

In this Article 78 proceeding, Petitioners seek to halt the City of New York's plan to replace a woefully outdated jail, which has operated at 124-125 White Street since the early 1980's, with a modern, more humanely designed detention facility at the exact same location. The new facility is one of four new jails being constructed as part of a City Council approved plan to end incarceration on Rikers Island and replace it with new, humane and safe facilities that meet the needs of the inmate population and the officers overseeing their detention, and provide better access to visiting family members and lawyers. While replacing the jail is clearly not to Petitioners' liking, they have failed to show that the City's actions were unlawful.

Petitioners present a hodge-podge of arguments, couched as challenges to the project's review under the City's Uniform Land Use Review Procedure (ULURP), the New York State Environmental Quality Review Act (SEQRA), and the City's Fair Share Criteria. None of these claims has merit. The extensive administrative record documents the City's thorough review of this project under ULURP, SEQRA, and Fair Share, and the reasoned basis of the City's decision-making.

Contrary to Petitioners' arguments, the SEQRA review met applicable procedural requirements and satisfied the City's substantive environmental review obligations. First, the public was provided an appropriate opportunity to comment on the review, both during the scoping process and after the draft environmental impact statement was issued. Second, the involved agencies fully complied with the statutory requirement to issue statements of findings, by issuing such finding before or when they individually took the actions triggering their environmental review obligations. Third, the City appropriately considered and responded to all public comments submitted during the environmental review, including in a 200+ page Response

to Comments chapter that was part of the final environmental impact statement. Fourth, the environmental review took an appropriate hard look at the project's potential to cause significant adverse environmental impacts, and did not defer consideration of environmentally significant matters. And finally, the environmental review appropriately considered alternatives to the City's plan for a new Manhattan jail, including adaptive reuse of the existing jail building.

The project's ULURP review also passes muster. Petitioners' main ULURP argument is that site selection for each of the planned four new borough jails necessitated its own, separate ULURP review. This claim fails, as the City Charter and ULURP's implementing rules impose no requirement for Citywide projects to be segmented into their separate borough components for ULURP review. Additionally, contrary to Petitioners' arguments, such multi-borough review is far from novel; indeed, there is much precedent for multi-borough ULURP review, for all sorts of City projects. A single application for Citywide site selection made good sense here, since the City needs to develop all four borough-based jails simultaneously in order to expeditiously close its existing jails, including, most pressingly, on Rikers Island.

Also lacking in merit is Petitioners' challenge to the City Planning Commission's acceptance of a proposal for additional, post-ULURP design review. By providing additional avenues for design input from the Commission and the public, this proposal exceeded, rather than supplanted, the extensive public review requirements of ULURP. Such above-and-beyond transparency is an advantage of this project, not a drawback.

As for Petitioners' arguments that straddle both ULURP and SEQRA: these claims also fail. Contrary to Petitioners' claims, the design-build approach—which the New York State legislature *specifically* authorized for this project—is fully compatible with both ULURP and

SEQRA. Neither ULURP nor SEQRA requires detailed design review; in fact, conceptual plans are routinely reviewed and approved under both ULURP and SEQRA.

Finally, Petitioners' Fair Share claim also lacks merit. The City issued a detailed and thorough Fair Share Statement that explicitly addresses and considers each of the relevant Fair Share Criteria. As with ULURP and SEQRA, Petitioners' disagreement with the City's decision-making fails to raise a colorable Fair Share claim.

For these reasons, Petitioners' legal claims fail, the Petition should be denied, and this proceeding should be dismissed.

STATEMENT OF FACTS

The City's plans for a new, state-of-the-art Manhattan jail—which will be located on the site of the existing Manhattan Detention Center—developed out of the City's pioneering criminal justice reform efforts, and were subject to extensive public review. As explained below, a major impetus behind the City's new borough-based jails plan is the desire to create more humane detention facilities. The public review for this borough-based plan included review by multiple community boards and borough presidents, as well as the City Planning Commission and the City Council; following extensive land use and environmental review, the borough-based plan was duly approved.

I. New York City's *Smaller, Safer, Fairer* Plan

The City's borough-based jails plan was motivated by the desire to close the City's existing, outmoded detention facilities—in particular, Rikers Island, which currently houses most of the City's detained population—and replace them with modern, humane facilities. A major shortcoming of Rikers Island is its very design: outdated large dormitories, long linear hallways with little common space, a lack of both air conditioning and natural light, and insufficient space devoted to programming, visitation, or recreation. Its isolated location also creates additional

hardships for people in detention, their visiting loved ones and attorneys, jail staff, and the court system itself. These features create serious challenges to the safe and humane treatment of those in detention. *See* Ex. 131, Presentation to the Justice Implementation Task Force (JITF) Culture Change Working Group (Mar. 15, 2018)[1] at 14.

Aside from Rikers Island, in recent years the City has detained people at its Manhattan and Brooklyn Detention Centers, and the Vernon C. Bain Correctional Center, located on a barge in the East River docked in the Bronx. These facilities also feature outdated layouts, and do not provide for the quality of life sought in more modern detention facilities, with regard to programming space, daylight, and social and common spaces. *See* Affidavit of Dana Kaplan, sworn to June 01, 2020 ("Kaplan Aff."), ¶ 8.

Recognizing the intractable problems with its existing detention facilities, in 2017 the City committed to a fundamental transformation of its justice system, as set forth in the City's *Smaller, Safer, Fairer* plan. Ex. 96, Mayor's Office of Criminal Justice, *Smaller, Safer, Fairer: a roadmap to closing Riker's Island* (*Smaller, Safer, Fairer*) (June 2017). The centerpiece of the City's plan to transform its justice system is the closure of the jails on Rikers Island and the City's other detention facilities—including the existing Manhattan Detention Center—and their replacement with modern, humane, borough-based jails.

Under the plan, the City will establish a system of four new approximately 886-bed borough-based detention facilities—one in each the boroughs of the Bronx, Brooklyn, Manhattan, and Queens. As discussed in more detail below, the borough-based jails plan for a new Manhattan jail would house slightly fewer people than the existing detention facility (886

[1] All referenced exhibits are attached to the accompanying Affirmation of Nathan Taylor ("Taylor Aff."), dated June 1, 2020.

compared to 898), at the same location, in a facility better designed to promote the safe and humane treatment of detained persons.

The overarching goal informing the design of each facility is to provide a more humane jail. The conceptual design plans for the new borough-based detention facilities have been prepared by City consultant Perkins Eastman, incorporating feedback from multiple city agencies, health service employees, correctional officers, family members, advocacy organizations, neighborhood stakeholders, and elected officials. Kaplan Aff. ¶ 19. The jails will provide sufficient space for effective and tailored programming, such as physical and mental health services and recreational services. By housing people in smaller units, the jails will also be designed to improve relations between detainees, and between detainees and correctional officers, de-escalating conflicts and raising quality of life. *See* Ex. 130, Presentation to the JITF Design Working Group (Feb. 21, 2018) at 20.

II. The Proposed Manhattan Detention Facility

In choosing sites for the new borough-based jail plan, the City prioritized four criteria:

- **City-owned Land**. The City sought land already in its portfolio that would allow for swift development, to ensure that Rikers Island is closed expeditiously.
- **Sufficient Size**. The City sought lots large enough to fit an equitable distribution of the City's projected jail population across four boroughs, with space to provide a humane, safe, and supportive environment.
- **Access to Transit**. The City focused on sites with convenient access to public transit, to facilitate visits by loved ones, lawyers, and service providers.
- **Proximity to Courts**. The City sought sites in close proximity to courthouses to reduce delays in cases and the time people stay in jail.

Ex. 8, Application for Site Selection, Appendix: Fair Share Analysis (Mar. 28, 2019) at 14; *see also* Ex. 1, Citywide Statement of Needs FY 2020–2021 at 30.

The proposed Manhattan facility, like the proposed facilities in Queens and Brooklyn, meets all four of these criteria: (1) it is located on City-owned land (2) of sufficient size to

provide an appropriate facility for the projected number of detainees (which is capped at 886, lower than the existing population of the Manhattan Detention Center at 898) (3) with convenient access to multiple subways and bus lines in lower Manhattan and (4) across the street from the Manhattan Criminal Court.[2]

The Manhattan facility will be located on the current site of the Manhattan Detention Complex, 124 and 125 White Street. The existing jail consists of a 14-story, 173-foot-tall North Tower and a 21-story, 229-foot-tall South Tower, with 898 beds for people in detention. Ex. 92, BBJS FEIS at 4.6–3 to 4. The South Tower is connected by two bridges and at the cellar level to the Manhattan Criminal Court at 100 Centre Street. *Id.* The new jail will be a single structure of comparable capacity to the existing jails, with a taller height than the existing South Tower, at up to 295 feet tall. The new jail will span over White Street commencing at the third-floor level, *id.* at 4.5–18, and will be connected to the Criminal Court building via two new one-story pedestrian bridges constructed at approximately the third story and at a higher floor. *Id.*

The existing Manhattan Detention Center, and the proposed Manhattan site, are in the Manhattan Civic Center area—featuring the courthouses in Foley Square, City Hall, and One Police Plaza. The area is home to numerous high-rise, large-footprint federal, New York State and New York City public institutional facilities. Ex. 41, City Planning Commission Report C 190333 PSY (Lead CPC Report) (Sept. 3, 2019), at 14. Chinatown adjoins the site to the east and north, with Tribeca to the west.

The current jail site also includes a block-long section of White Street, which includes approximately fifty-six parking spaces for authorized vehicles. *Id.* at 15. The project would move

[2] The borough-based jail planned in the Bronx is not adjacent to the local criminal court, but meets the other three criteria. No viable site was identified near the courthouse. Kaplan Aff. ¶ 29 Fn 6.

all on-site parking to an expanded underground garage, and the portion of White Street on the site would be closed to vehicles and redeveloped into a fifty-five-foot-tall retail-lined pedestrian arcade, with the new detention facility spanning high overhead. *Id.* at 70.

The facility would include a total of 20,000 square feet of community facility or retail space at street level. Ex. 94, BBJS Technical Memorandum ("Tech Memo") (Oct. 11, 2019) at 4. In addition to lining both sides of the White Street arcade, retail space would front Baxter Street to better integrate the project into the existing commercial corridor. Ex. 69, Borough-Based Jail Plan Points of Agreement ("Pts. of Agreement"), at 15.

The City incorporated extensive feedback from community organizations and local elected officials into its plan for the new Manhattan borough jail. *See, e.g.*, Ex. 160, Manhattan Neighborhood Advisory Committee Guidelines and Recommendations. The City consulted with the local Community Board, Chinatown civic organizations, area schools, houses of worship, and other relevant stakeholders. *See, e.g.*, Ex. 8, Application for Site Selection, Appendix F: Stakeholder Outreach (Mar. 28, 2019). In addition, the City convened a Neighborhood Advisory Council, which met over a period of five months to discuss specific areas of concern. Exs. 150–161, Records of the Manhattan Neighborhood Advisory Committee. Through this engagement, the community identified priority areas, which generally included: reducing the height and massing of the jail; allowing community input for ground floor community space uses; maintaining 24/7 pedestrian access to White Street; mitigating demolition and construction noise, dust, vibrations, and traffic; and providing economic support to local businesses affected by demolition and construction at the site. Ex. 160, Manhattan Neighborhood Advisory Committee Guidelines and Recommendations.

Over the course of project review, the proposed Manhattan jail was reduced from 1.4 million square feet to 816,900 square feet, and from 1,510 beds to 886. *Compare* Ex. 85, BBJS Draft Scope of Work to Prepare a Draft Environmental Impact Statement (Draft Scope of Work) at 7, *to* Ex. 94, Tech Memo, at 3–4. This reduction in size resulted in a corresponding height reduction from an initially proposed 450-foot-tall building to a jail of up to 295 feet. *Compare* Ex. 85, Draft Scope of Work, at 8 *to* Ex. 94, Tech Memo at 3–4. Furthermore, the maximum zoning envelope has been modified to include a 20-foot setback on the western portion of the building, and a 40-foot setback on the eastern portion, increasing distance from the nearby Chung Pak senior residential facility. Ex. 94, Tech Memo, at 3.

Before deciding to construct the new jail at 124-125 White Street, the City considered a site two blocks south, at 80 Centre Street, which is currently an office building housing the Manhattan District Attorney, courtrooms and court office, and City agencies. Both 124-125 White Street and 80 Centre Street met all of the City's criteria for site selection: they are both adjacent to the courthouse (124-125 White Street to the north, and 80 Centre Street to the south), accessible to transit, of sufficient size, and are controlled by the City. Kaplan Aff. ¶ 36.

When the City first announced preliminary sites in February 2018, the 124-125 White Street site was announced as the planned Manhattan site.[3] Later, the City changed its plans to 80 Centre Street, and the environmental review scoping process, discussed below, focused on the 80 Centre Street site. Public feedback during the scoping process revealed strong community opposition to the 80 Centre Street proposal. Ultimately, the City determined that the complexity

[3] *See* Press Release, *Mayor de Blasio and City Council Reach Agreement to Replace Rikers Island Jails with Community-Based Facilities* (Feb. 14, 2018), https://www1.nyc.gov/office-of-the-mayor/news/094-18/mayor-de-blasio-city-council-reach-agreement-replace-rikers-island-jails-with.

and cost of moving the existing occupants of 80 Centre Street, and the disruption to court operations, made the site not viable. *See* Ex. 87, BBJS Final Scope of Work Appendix at A-8. In the Final Scope of Work and Draft Environmental Impact Statement for the Borough-Based Jails project, the City reverted to its originally announced plan to site the Manhattan facility at 124-125 White Street. *Id.* at 1. As discussed below, the City fully considered and responded to all comments to the Environmental Impact Statement relating to both potential Manhattan sites.

III. The Project's Land Use and Environmental Reviews

The borough-based jails project, including the planned new Manhattan detention facility, went through a thorough land use and environmental review process. The Department of Correction, the Mayor's Office of Criminal Justice, the Department of Citywide Administrative Services, and the Department of Housing Preservation and Development jointly filed the land use applications necessary to facilitate the borough-based jails project under the City's Uniform Land Use Review Procedure ("ULURP") process, as set forth in Sections 197-c, 197-d, and 201 of the New York City Charter. The Department of Correction also served as the lead agency for the project's environmental review under the New York State Environmental Quality Review Act ("SEQRA") (New York State Environmental Conservation Law ("ECL"), § 8-0101, *et seq*. and 6 NYCRR Part 617) and its City counterpart, the City Environmental Quality Review ("CEQR") (62 RCNY Chapter 5 and Mayoral Executive Order No. 91 of 1977) (referred to collectively as "SEQRA/CEQR").

A. Scoping and Draft Environmental Impact Statement

At the beginning of the environmental review, the Department of Correction issued a Draft Scope of Work ("DSOW"), on August 14, 2018. Ex. 84. The DSOW described the overall project, its principal goals and objectives, and the framework for the technical analyses for the project's environmental impact statement ("EIS"). In the DSOW, the planned Manhattan

location for the new jail was identified as 80 Centre Street, reflecting the City's plans at that time. On the same day, the Department of Correction also issued a Positive Declaration, a formal determination by the lead agency that the proposed action may have a significant adverse effect on the environment and thus that an EIS must be prepared. Ex. 83.

In September and October of 2018, DOC held four public scoping meetings on the DSOW and accepted written comments until October 29, 2018. *See* Ex. 87, FSOW at 2. Oral and written comments were submitted by 564 individuals, entities, and organizations, including from Petitioner Neighbors United Below Canal (in addition to form letter and petition submissions).

Subsequent to this process, the City determined that 124-125 White Street was a preferable site for the Manhattan jail, as discussed above. Thus, for the Final Scope of Work, the planned Manhattan jail site is identified as 124-125 White Street. The Final Scope of Work, which was issued on March 22, 2019, also includes a summary of all comments received, grouped based on subject matter, and responses to them. *See* Ex. 87, App. A.

A Draft Environmental Impact Statement ("DEIS") was next prepared based on the Final Scope of Work; the DEIS, which was released on March 22, 2019, was also subject to a public review and comment period. Ex. 89, DEIS (Aug. 23, 2019). Using guidance set forth in the *CEQR Technical Manual*, preliminary screening assessments of the proposed project were conducted in all recommended technical areas.[4] *See id.* at 1-14. These technical analyses

[4] The City's *CEQR Technical Manual*, available at https://www1.nyc.gov/site/oec/environmental-quality-review/technical-manual.page, is the authoritative guidance for environmental reviews in the City, as consistently recognized by New York courts. *See, e.g., Bd. of Mgrs. of the Plaza Condominium v. N.Y.C. Dep't of Transp.*, 131 A.D.3d 419, 419-20 (1st

disclosed that the project has the potential to result in significant adverse impacts, including, in Manhattan, in the categories of historic and cultural resources, transportation, and construction. The DEIS also identified measures that will, in Manhattan, fully mitigate impacts to transportation and from construction, and partially mitigate impacts to historic and cultural resources. The DEIS also evaluated two alternatives to the project: the "No Action Alternative" required by SEQRA regulations, and an alternative with no unmitigated significant impacts. *See id.*, Ch. 7. The "Alternatives" chapter compared the proposed project and both alternatives, and explained why neither alternative would meet the project's goals and objectives. *Id*.

A seven-and-a-half-hour public hearing on the DEIS and ULURP applications was held in conjunction with the City Planning Commission ("the Commission") on July 10, 2019. *See* Ex. 28, Transcript of Commission Public Hearing (July 10, 2019). The Department of Correction received comments from hundreds of governmental officials, agencies, interested organizations, and members of the public on the DEIS. These comments ranged from technical comments on specific chapters of the DEIS to more general support or criticism of the project. A summary of the comments, grouped based on subject matter, along with the Department's responses, are contained in Chapter 10 of the Final Environmental Impact Statement ("FEIS"). *See* Ex. 92, Ch. 10. Copies of the written comments are included in Appendix K of the FEIS. *Id.*

Dep't 2015) (citing the CEQR Technical Manual in concluding that environmental review was appropriately conducted); *Chinese Staff & Workers' Ass'n v. Burden*, 88 A.D.3d 425, 429 (1st Dep't 2011) (upholding environmental review conducted consistent with "accepted methodology," as set forth in the Technical Manual), *aff'd*, 19 N.Y.3d 922 (2012).

B. Community Board and Borough President ULURP Review

Under ULURP, the Community Board and Borough President may issue non-binding recommendations to the Commission.

Manhattan Community Board 1 hosted a presentation and hearing on the proposal on April 8, 2019, and the Community Board's Land Use, Zoning, and Economic Development Committee also held a hearing on May 13, 2019. On May 29, 2019, the Community Board recommended that the Commission disapprove the applications unless various conditions were met, including a reduction in size and density. *See* Ex. 41, Lead CPC Report, at 191.

In addition, Manhattan Community Board 3 passed a resolution also making recommendations to the Commission. Manhattan Community Board 3 does not have an official role in the ULURP process for this project, as the proposed jail is not located in its community district. Nevertheless, the proposed jail's proximity to Manhattan Community Board 3's Chinatown neighborhood prompted Community Board 1 to incorporate into its recommendation Community Board 3's concerns about the proposed jail's height and bulk, capacity, and impact on seniors and local businesses. *Id.* at 192; Ex. 92, BBJS FEIS at 108.

The Manhattan Borough President next considered the applications. The Borough President held a public hearing on June 11, 2019, and on July 5, 2019 recommended approval of the applications, subject to conditions. She conditioned her recommendation on, among other things: a reduction in size of the Manhattan jail; concessions for incumbent retailers and residents of adjacent senior housing; reconfigured parking; an increase in on-site and off-site community facility space; the formation of a community advisory group; and various due diligence measures. Ex. 26, Manhattan Borough President Recommendation, at 1–6.

C. City Planning Commission Review

Next, as discussed above, the City Planning Commission held a joint public hearing on the land use applications and DEIS, on July 10, 2019. *See generally* Ex. 28, Transcript; *see also* Ex. 41, Lead CPC Report at 45–51. A total of 90 speakers testified at the hearing, 55 of whom testified in favor of the project, and 35 of whom testified against the project. Speakers in favor included the Manhattan Borough President Gale Brewer, former New York Court of Appeals Chief Judge Jonathan Lippman, New York Lawyers for the Public Interest, and other public interest groups and individuals, including those previously incarcerated at Rikers Island. Ex. 41 Lead CPC Report at 46. Speakers in opposition included representatives of Manhattan Community Board 1, No New Jails, and numerous civic organizations representing the immediate surroundings of the proposed jails—including Petitioner Neighbors United Below Canal. The public hearing lasted from approximately 10:15 a.m. until 5:45 p.m., and addressed numerous topics concerning the borough-based jail program, including its purpose and need, its siting process, the height and bulk of the proposed jails, the Borough Presidents' and Community Boards' recommendations, changes to the project from its initial proposal, broader criminal justice reform issues, and the project's draft environmental impact statement. During the hearing, members of the Commission questioned representatives of the Mayor's Office of Criminal Justice, as well as others offering testimony.

In the weeks following the public hearing, the Mayor's Office of Criminal Justice submitted numerous memoranda to the Commission responding to the information requests made at the public hearing, and to further requests for information by the Commission at follow-up hearings further discussed below. Copies of these memoranda are annexed as exhibits 32 to 39 ("CPC Follow-up Letters"). The memoranda included additional information regarding: criminal justice reform policies, reasons for a combined site selection ULURP application,

various urban design questions including the configuration of retail and community facility space, community engagement and stakeholder review, and other issues.

The Commission held three follow-up review sessions on the borough-based jails project. The first of these sessions, on July 29, 2019, discussed policy and operational issues concerning the jail program, and featured the Department of City Planning's recommendations concerning setbacks and other urban design issues at all four sites to protect neighboring uses, as well as other issues concerning how to better integrate the jails into their communities. *See* CPC Review Session and Special Presentation (July 29, 2019), *available at* https://youtu.be/owUzHg92cB0?t=5534. The Commission also discussed the design of the pedestrian arcade on White Street. *Id*. at 1:51:03. The Commission discussed raising the ceiling of the arcade from an originally-planned 29 feet to 55 feet, to bring its dimensions in line with successful pedestrian arcades elsewhere in the City. *Id.*

At the second review session, on August 12, 2019, the Commission discussed, among other things, community engagement and facility design. The Commission also discussed updated square footage and heights of the facilities and the design-build process. *See* CPC Review Session and Special Presentation (Aug. 12, 2019), *available at* https://youtu.be/elRRVdoM7Ko?t=12852. The Commission also considered retail studies of the Chinatown area. On the southern side of the White Street pedestrian arcade, retail depth is limited to 20 feet due to space constraints (retail depth on northern side is at least 36 feet). The Commission discussed that existing successful businesses in Chinatown already operate with a diversity of dimensions including some with depths of approximately 20 feet, and that retail is necessary on both sides of White Street due to the community's expressed priorities. *Id.* at 3:36:04.

Finally, on August 26, 2019, the Commission held a third follow-up review session, where the Commission discussed, among other things, the Commission's changes to the proposal, and community and Commission engagement in the design phase of the project, post-ULURP. *See* CPC Review Session and Special Presentation (Aug. 26, 2019), *available at* https://youtu.be/rfCDCZmcqQM?t=8887.

D. The Final Environmental Impact Statement

A Notice of Completion for the Final Environmental Impact Statement ("FEIS") was issued on August 23, 2019. *See* Ex. 93. The FEIS includes the same framework and technical analyses as the DEIS, and underlines text reflecting any changes or additional analyses. Changes between the DEIS and this FEIS included reducing the average daily population of the borough-based jails (reflecting the adoption of New York State bail reform measures and implementation of the strategies in *Smaller, Safer, Fairer*) and revising various chapters based on public comments, new or updated information, or adjustments made to reduce or eliminate specific adverse impacts. *See* Ex. 92A, FEIS at S-2, S-5. The FEIS also incorporated the modifications made to the project, including modifications adopted in response to feedback from the City Planning Commission. The FEIS considered the modified proposal and concluded that the modifications would not result in any new significant adverse impacts.

E. City Planning Commission Approval

On September 3, 2019, at another public hearing, the Commission voted to approve the land use applications, as modified, by a vote of 9-3. *See* Exs. 40–53. The Commission's lead report, Ex. 41, elaborates on the Commission's reasons for modifying and ultimately approving the project. The lead report also summarizes the information received during the public review process. The Commission's reports approving the applications also include the Commission's statement of findings under SEQRA/CEQR, which concluded that the project, to the maximum

extent practicable, minimizes or avoids adverse environmental impacts. *Id.* at 80. Based on this information and analysis, the Commission concurred in the City's assessment that "the borough-based jail system initiative is a significant step forward for the future of criminal justice reform in New York City." *Id.*, at 51.

The Commission also agreed with the City's criteria for site selection, and noted that the sites would "constitute a comprehensive and equitable approach to NYC's long-term criminal justice needs." *Id.* at 53. And the Commission agreed with the City's determination to proceed with a single site selection action for all four jails, noting that "simultaneous consideration of the system of four jails is both appropriate and necessary to meet the goal of closing the jails on Rikers Island." *Id.* at 52.

The Commission expressed approval of the selection of the proposed Manhattan site, noting that that site is City-owned, directly adjacent to the New York County Criminal Court, and already connected to the courthouse via skybridge. *Id.* at 55. The Commission also noted that the site is well-served via public transit, as nine subway lines and four subway stations were accessible within a quarter-mile radius, as well as 11 different MTA public bus routes and a NJ Transit bus route within about a quarter-mile radius. *Id.*

The Commission also stated its belief that both design and community integration of the jails should be considered as part of the ULURP applications, as well as during the design-build phase. *Id.* at 60. To that end, the Commission adopted the design principles that had been developed by the City, and used them to evaluate the applications. *Id.* at 60–61. The Commission explained that it was modifying the applications in light of these principles, to: require ground floor recesses (often found in government buildings), increase minimum depth for active frontage requirements to enhance pedestrian experience, establish minimum setbacks along key

street frontages including Centre and Baxter Streets in Manhattan, and expand the White Street pedestrian arcade to more generous and pleasing proportions. *Id.* at 60–62, 69–73.

F. City Council Review and Approval

The applications were next referred to the City Council's Subcommittee on Landmarks, Public Siting and Maritime Uses, which held a public hearing on the applications, as approved with modifications from the City Planning Commission on September 5, 2019 and was presided over by Council Member and Chair Adrienne Adams. Ex. 55, Transcript, City Council Public Hearing. Speakers from all viewpoints testified at the hearing, which lasted approximately ten hours. At the well attended hearing, 74 people spoke in favor of the proposal and 71 spoke in opposition to the proposal.

Members of the Subcommittee, as well as other Council members, advocated for additional modifications to address community concerns, particularly by reducing height, bulk, and jail capacity in light of the City's expectations for further decreases in jail populations. The proposed modifications were analyzed in a Technical Memorandum, dated October 11, 2019. *See* Ex. 94, Tech Memo. The analysis demonstrated that these project modifications would not result in any significant adverse impacts that were not previously disclosed in the FEIS. *Id.* at 28.

On the morning of October 16, the Subcommittee reconvened to vote on the applications, and recommended approval with modifications. Ex. 63, Transcript, Subcommittee on Landmarks, Public Siting And Dispositions. Council Member and Chair Adrienne Adams explained "the Council has aggressively advocated for design changes, and as a result of the Council's modifications, the heights and densities of the four buildings are being reduced significantly. So, these new buildings will better integrate into their communities." *Id.* at 7:8–13. That afternoon, the Committee on Land Use convened and adopted the Subcommittee's

recommendations. *See* Ex. 62., Transcript of the Minutes of the Committee on Land Use, 25:7–17. (Oct. 16, 2019).

On October 17, 2019, the City Council passed thirteen separate resolutions approving the land use applications, with the modifications proposed by the Land Use Committee. *See* Exs. 70–82. The City Council's resolutions each included the Council's statement of findings under SEQRA/CEQR, which concluded that the project, to the maximum extent practicable, minimizes or avoids adverse environmental impacts.

On March 11, 2020, the Department of Correction, prior to undertaking the ULURP-approved project using its capital funding, issued its statement of findings under SEQRA/CEQR, concluding that the project, to the maximum extent possible, minimizes or avoid adverse environmental impacts. Ex. 95. This statement of findings completed the Department's SEQRA/CEQR review.

ARGUMENT

POINT I

THE CITY'S SEQRA REVIEW COMPLIED WITH APPLICABLE LAW AND WAS RATIONAL IN ALL RESPECTS

1. The City fully complied with SEQRA's procedural requirements.

Petitioners bring two challenges to the City's procedural compliance with SEQRA. Neither has any merit.

A. *The City's Positive Declaration and Draft Scope of Work complied with all applicable requirements.*

Petitioners allege that because the City identified 80 Centre Street as the site for the Manhattan jail facility in the initial DSOW and later updated the plan to identify 124-125 White Street as the proposed site, the public was improperly denied the opportunity to review and

comment on the 124-125 White Street site. *See* Pet. Mem. at 9–10. This claim has no merit. In fact, the public has been afforded ample opportunity for review of the project at the 124-125 White Street location pursuant to SEQRA/CEQR.

The *CEQR Technical Manual* advises that scoping should be sufficiently detailed to allow "the public, agencies and other interested parties the opportunity to help shape the EIS by raising relevant issues regarding the focus and appropriate methods of study," *CEQR Tech Manual* at 1-11, and such an opportunity was plainly afforded here.[5] Here, the public had adequate opportunity to comment on both proposed sites, which are one block apart and required substantially similar considerations during scoping. Affidavit of Linh Do, sworn to June 01, 2020 ("Do Aff."), ¶ 25. Moreover, the public had been on notice that the City was considering the 124-125 White Street site based on the City's initial announcement and public engagement focusing on that site.[6] In the FSOW, the City responded to multiple comments discussing the change from 125 White Street. *See, e.g*, Ex. 87(A), FSOW at A-8 (Response 2).

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[5] Petitioners Neighbors United Below Canal submitted extensive comments on both the Draft Scope of Work, Ex. 87(B) pp. 364–92 (NUBC comment), and the Draft EIS, *see* Ex. 92(J), BBJS FEIS, App'x K pp. 177-461 (same), Petitioners Cuccia and Tsuno (DCTV) affirm that they were denied the opportunity to comment on the Draft Scope of Work because the identification of 80 Centre Street left them unconcerned about the new jail. Tsuno Aff. ¶¶ 50–52; Cuccia Aff. ¶ 8. However, it does not appear that either affiant, or any representative of the DCTV organization or Cuccia Law Office, commented on the Draft EIS either, which clearly identified 125 White Street as the site. *See* Ex. 92(J), BBJS FEIS App'x K, Written Comments on the DEIS. Furthermore, though Petitioner Tsuno claims that DCTV declined to comment on the DSOW or attend one of the four scoping hearings because "DCTV was not particularly concerned about a jail at 80 Centre Street, given its distance from DCTV," Tsuno Aff. ¶¶ 48–49, she also attributes structural issues with the DCTV building to the mid-20th century construction of the downtown federal buildings—further from DCTV than 80 Centre Street. *Id.* at ¶ 31.

[6] *See* Mayor de Blasio and City Council Reach Agreement to Replace Rikers Island Jails with Community-Based Facilities (Feb. 14, 2018), https://www1.nyc.gov/office-of-the-mayor/news/094-18/mayor-de-blasio-city-council-reach-agreement-replace-rikers-island-jails-with.

DOC next provided a full analysis of the potential environmental impacts of the 124-125 White Street site in the DEIS, which was made available for public review and comment over a period of several months. Ex. 89, DEIS (Mar. 22, 2019). Thus, to the extent that members of the public harbored concerns unique to the scope of environmental review for the plan as proposed at 124-125 White Street site, *see* Pet. Mem. at 10, those concerns could have been raised during the City's public review and comment period on the DEIS, leaving time for the City to consider such concerns ahead of the final EIS.

Petitioners cite no authority that supports their claim that that the City should be required to issue a another, new DSOW and conduct further public hearings. *See* Pet. Mem at 13. While Petitioners cite *In re Friends of P.S. 163, Inc. v. Jewish Home Lifecare, Manhattan*, 30 N.Y.3d 416, 426 (2017) for the proposition that SEQRA requires agencies to provide for public comment at each step of the review process, *see* Pet. Mem. at 9, they acknowledge that the City sought public comment during scoping and their can be no doubt that the public had ample opportunity to comment on the 124-125 Worth Street site during the review of the DEIS. *See* Pet. Mem. at 11.

Contrary to Petitioners' assertion, neither SEQRA nor CEQR required that the City reissue the DSOW or hold additional public hearings after revising the site selection based on information learned after issuance of the DSOW. Indeed, both SEQRA and CEQR acknowledge that substantial, relevant information raised after the issuance of even a *final* scope of work—the culmination of the public scoping process—may be subsequently incorporated in the ongoing environmental review. *See* 62 RCNY § 5-07(e) (allowing a FSOW to be amended to incorporate substantial new information received after its issuance); 6 NYCRRR 617.8(g) (providing

procedure for a draft EIS to incorporate relevant information received after issuance of a FSOW).

In conclusion, when the City identified 124-125 White Street as the site of the proposed jail facility in the FSOW, the City fully complied with SEQRA's requirements and comported with *CEQR Technical Manual* guidance.

B. *DOC properly issued a Statement of Findings in compliance with applicable law.*

Petitioners argue that DOC, as lead agency, was required by SEQRA to issue its findings statement "within 30 calendar days after the filing of the final EIS." Pet. Mem. at 13 (citing 6 NYCRR § 617.11(b)). This argument fails. The language Petitioners cite is applicable only in "the case of an action involving an applicant," 6 NYCRR § 617.11(b),[7] and not in circumstances—as here—where the lead agency itself has proposed the action under consideration. *See also* 6 NYCRR § 617.2(d) (defining "applicant" as "any person making an application or other request to an agency to provide funding or to grant an approval in connection with a proposed action").

Rather, where no SEQRA applicant is involved, SEQRA only requires a lead agency to make its finding statement by or before making its "final decision to undertake, fund, approve or disapprove an action," 6 NYCRR § 617.11(c), after "afford[ing] agencies and the public a reasonable time period (not less than 10 calendar days) in which to consider the final EIS." 6 NYCRR § 617.11(a). As discussed below, DOC properly issued its findings statement

[7] Petitioners cite just one case in support of their argument that DOC was required to issue its findings statement within thirty days of issuing the FEIS, and that case provides no such support. *See Glen Head-Glenwood Landing Civic Council v. Town of Oyster Bay*, 88 A.D.2d 484, 492 (2d Dep't 1982) (noting only that a lead agency must make the required findings before the public or the reviewing court can be satisfied that the agency took the required hard look).

after affording a reasonable time for review of the FEIS, and before making its final decision to fund the project. *See* Ex. 95, DOC Statement of Findings (March 11, 2020).

Petitioners further argue that it was "improper for CPC and City Council to rush ahead and make final decisions to approve the Manhattan Jail" ahead of DOC issuing its written findings statement. *See* Pet. Mem. at 14. This argument also fails. No statute or regulation required the Commission or the City Council to await a statement of findings from the lead agency before issuing its own statement of findings and approving the proposed land use actions. Moreover, it is perfectly rational—and regular practice—for the Commission and the City Council to issue their respective statements of findings in connection with their own respective ULURP approvals.

SEQRA requires each involved agency to make *its own* "written findings statement," 6 N.Y.C.R.R. § 617.11(c)–(d), by or before *that agency* makes its final decision to "carry out or approve an action." N.Y. E.C.L. § 8-0109(8). The statute and regulations contain no requirements for any agency to make its findings before or after any other agency.[8] Indeed**,** the last time the New York State Department of Environmental Conservation amended the

[8] Finding no support in the statute or regulations, Petitioners cite *Northern Manhattan is Not for Sale v. City. of New York*, No.161578/2018, 2019 N.Y. Misc. LEXIS 6755, at *11-12 (Sup. Ct. N.Y. County Dec. 16, 2019) for the proposition that City Council's review and approvals of the discretionary land use actions may not proceed ahead of lead agency's issuance of its findings statement. *See* Pet. Mem. at 14–15. Petitioners' reliance on this single decision for their novel argument is misplaced. That case is currently on appeal, and is inconsistent with agency guidance, regulatory history, and at least one prior judicial decision. *See, e.g.*, *Ardizzone v. Bloomberg*, No. 103406/09, 29–30 (Sup. Ct. N.Y. County August 16, 2010), *available at* http://decisions.courts.state.ny.us/fcas/fcas_docs/2010AUG/30010340620090 01SCIV.pdf (holding that the lead agency may make its finding statement subsequent to those of the other involved agencies—including the CPC and the City Council—so long as it does so upon or before making its final decision); *see also Liendo v. City of New York*, 2020 N.Y. Misc. LEXIS 586, *8 (Sup. Ct. N.Y. County February 7, 2020) (noting that the fact that a case is on appeal "makes its precedential value uncertain, at best").

regulations concerning findings statements, it rejected suggestions that the timeframes of agency findings should be tied together, noting that "agencies are not always working within the same timeframes and their findings are usually timed with a final decision on an action." *See Final Generic Environmental Impact Statement on the Proposed Amendments to the State Environmental Quality Review Act (SEQRA) Regulations* ("1995 SEQRA Amendment FGEIS"), N.Y. Dep't of Envtl. Conservation, 85 (Sept. 6, 1995).[9]

Here, the Commission and the City Council each issued their own findings statements in accordance with SEQRA's requirements, 6 N.Y.C.R.R. § 617.11(d), when respectively approving the land use applications. The Commission's findings were set forth in its written reports approving the land use actions on September 3, 2019, which incorporated by reference the analysis contained in the FEIS. *See, e.g.*, Ex. 41, CPC Lead Report at 79–80. Likewise, the City Council included its explicit statement of findings as part of its resolutions approving the land use applications with the modifications proposed by the Land Use Committee, passed on October 17, 2019. *See* Exs. 70–82, City Council Resolutions 1118–1130. The Department of Correction issued its statement of findings pursuant to SEQRA on March 11, 2020, prior to undertaking the ULURP-approved project using its capital funding. Ex. 95. This statement of findings, like those issued by the Commission and City Council, concluded that the proposed action, to the maximum extent practicable, minimizes or avoids significant adverse environmental impacts. *Id.*

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[9] *Available at* https://www.dec.ny.gov/docs/permits_ej_operations_pdf/finalgeis.pdf. The New York State Department of Environmental Conservation most recently amended SEQRA regulations in 2018, but did not alter the section governing findings statements.

Neither the Commission nor the City Council were required to delay their approvals until after the Department of Correction issued its separate statement of findings, and it would have been nonsensical to do so. *See*, 1995 SEQRA Amendment FGEIS, *supra* note 8. Unlike the Department of Correction, the Commission and Council were on a strict statutory timeframe to act on the land use applications pursuant to ULURP, and they could not take their own "final actions"—approving the applications—without making their own SEQRA findings statement. *See* 6 N.Y.C.R.R. § 617.11(c). Meanwhile, the Department of Correction, as the lead agency, could not reasonably be expected to complete its findings—the final step in the environmental review process—until after the Commission and Council voted to approve the project. Issuing findings before the Commission and Council had completed their statutory review process would have been inefficient and illogical because the project could have been disapproved or, as was the case, modified, which could have necessitated an additional statement of findings by the Department of Correction. For these reasons, Petitioners' challenge to DOC's Statement of Findings lacks merit.

2. The City took a "hard look" at the potential for significant adverse impacts.

SEQRA/CEQR require agencies to identify and assess the potential environmental effects of, and alternatives to, certain proposed government actions. *See generally* 6 NYCRR Part 617; 62 RCNY Chapter 5; *see Jackson v. N.Y. State Urban Dev. Corp.*, 67 N.Y.2d 400, 417 (1986). As with Article 78 proceedings in general, a court must limit its review of SEQRA challenges to whether the agency's determination was arbitrary, capricious, an abuse of discretion, or affected by an error of law. *Akpan v. Koch*, 75 N.Y.2d 561, 570 (1990).

Courts reviewing agency compliance with SEQRA/CEQR utilize a "rule of reason," recognizing that agencies have considerable latitude in evaluating potential environmental impacts of a proposed action, as SEQRA/CEQR does not require an agency to act in a particular

manner or reach a particular result. *See, e.g.*, *Aldrich v. Pattison*, 107 A.D.2d 258, 266-67 (2d Dep't 1985); *Coal. Against Lincoln West, Inc. v. City of New York*, 94 A.D.2d 483, 491-92 (1st Dep't 1983), *aff'd*, 60 N.Y.2d 805 (1983). SEQRA/CEQR's "rule of reason" applies "not only to an agency's judgments about the environmental concerns it investigates, but to its decisions about which matters require investigation." *Save the Pine Bush, Inc. v. Common Council of the City of Albany*, 13 N.Y.3d 297, 308 (2009). As the Court of Appeals has explained: "[n]ot every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a FEIS will satisfy the substantive requirements of SEQRA." *See Jackson*, 67 N.Y.2d at 417 (quoting *Aldrich*, 107 A.D.2d at 266).

Petitioners raise numerous claims challenging the sufficiency of the environmental review here. Each claim lacks merit.

A. *The City appropriately considered all public comments.*

Petitioners allege that DOC "completely ignored" a handful of cherry-picked public comments, all of which oppose construction of the Manhattan Jail. *See* Pet. Mem. at 29, 30, 32, 37. Yet DOC provided substantive responses to either these particular comments or the concerns addressed by them. *See generally* Do Aff. Part F. Alternatively, Petitioners allege that DOC "dismissed" selected comments, implicitly acknowledging that DOC did provide responses to them. *See, e.g.*, Pet. Mem. at 38. Petitioners' claims suggest that DOC's responses simply were not to their liking, as DOC provided substantive responses instead of fundamentally altering the project in line with Petitioners' policy objectives or conducting additional extraneous analyses purely at the suggestion of Petitioners.

DOC received comments from 790 individuals and entities on the 1,000+-page DEIS. *See* Do Aff. ¶ 16. Conducting extraneous analyses requested by commenters, such as a public health assessment which is not required under SEQRA/CEQR nor recommended under

applicable guidance, *see infra* page 23-24, would prove excessively time-consuming, needless and beyond the boundaries of reasonableness. *See, e.g., Save the Pine Bush, Inc.*, 13 N.Y.3d at 308 (holding that SEQRA's "rule of reason" applies to an agency's "decisions about which matters require investigation"); *see also Jackson*, 67 N.Y.2d at 417 (1986) ("Not every conceivable environmental impact . . . must be identified and addressed before a FEIS will satisfy the substantive requirements of SEQRA."); *see also, e.g.*, Ex. 92(I) FEIS Chapter 10, comment 5-7 (seeking an inventory of all architectural and archaeological resources within 1 mile of the site—an area covering most of the island of Manhattan from Bowling Green to Greenwich Village).

Moreover, DOC's usage of the well-established guidance and methodology of the *CEQR Technical Manual* supports a finding that the environmental review was rational. *See, e.g., Matter of Friends of P.S. 163, Inc. v. Jewish Home Lifecare, Manhattan*, 46 N.Y.S.3d 540, 545 (1st Dep't 2017) (finding agencies are "entitled to rely on the accepted methodology set forth in the [*CEQR Technical Manual*]"), *aff'd*, 30 N.Y.3d 416 (2017), *reh'g denied*, 31 N.Y.3d 939 (2018); *see also Matter of Rimler v. City of New York*, 50 N.Y.S.3d 28 (Sup. Ct. Kings County 2016), *aff'd*, 101 N.Y.S.3d 54 (2d Dep't 2019).

Contrary to Petitioners' allegations, DOC did not rely on the *Manual* to disregard comments; indeed, the record shows that DOC responded extensively and thoroughly to public comments, including in the areas of public health, neighborhood character, historic and cultural resources, open space, shadows, noise, socioeconomic conditions, and traffic and transportation.

i. Public Health

DOC conducted a thorough review of the potential for significant impacts related to public health. Consistent with *CEQR Technical Manual* guidance, DOC analyzed the potential for significant adverse impacts in the areas of air quality, hazardous materials, and noise. *See* Ex.

92(F), FEIS, Sections 4.7, 4.10, 4.11. Because no unmitigated significant adverse impact was expected in any of these areas, no public health assessment was warranted. DOC explained its conclusion that no public health assessment was warranted in its response to public comments in the FEIS. *See id.* at 10-136 (Response 12-2).

The record does not support Petitioners' allegations that a variety of health concerns were ignored. For example, Petitioners allege that DOC failed to consider the age of the affected population, *see* Pet. Mem. at 31, when in fact, DOC considered age in the FEIS, *see* Ex. 92(I) FEIS at 10-18, 10-144, 10-158, and responded to comments regarding potential impacts on residents of different ages, including senior residents, *see, e.g.*, *id.* at 10-128 (Response 10-12), 10-144 (Response 14-1), 10-146 (Response 14-3), 10-156 (Response 14-18), 10-158 (Response 14-22). Similarly, while Petitioners allege that the issue of construction dust on food vendors was not considered, the FEIS thoroughly discussed dust-control measures that would be implemented during construction, Ex. 92(F) FEIS at 4.14-14, and reasonably concluded that construction at the Manhattan site would not result in the potential for significant adverse air quality impacts from construction. *Id.* at 4.14-16; Do ¶ 66 (summarizing FEIS's discussion of dust control measures).

ii. Neighborhood Character

The FEIS devoted a full chapter to analyzing the project's potential effects on neighborhood character, *Id.* at 4.13, and reasonably concluded that the replacement of one tall Manhattan jail with another at the exact same location, in a neighborhood already featuring an abundance of tall municipal buildings, would not significantly impact neighborhood character, *see id.* The FEIS Response to Comment chapter also included a section responding specifically to comments regarding neighborhood character, including the comments Petitioners incorrectly allege were overlooked. Ex. 92(I), FEIS at 10-136 to 10-142. In particular, the FEIS noted in its

response to comments: "The proposed project is consistent with the land uses in the surrounding area of Manhattan, which contain high-density buildings of varying heights (office towers as well as smaller mid-rise civic buildings), and would not adversely affect Chinatown and Little Italy." *Id.* at 10-141. Thus, while Petitioners disagree with the City conclusions, Pet. Mem. at 32, they fail to show that City acted irrationally.

iii. Historic and Cultural Resources

Petitioners allege that DOC erred in its alleged "exclusion of the landmarked firehouse . . . from any consideration of construction-related impacts." Pet. Mem. at 33. This is false. While the DCTV firehouse was not considered in the analysis of direct, physical construction impacts, its omission was not an error. DOC analyzed architectural resources within a ninety-foot radius, consistent with DOB Technical Policy and Procedure Notice ("TPPN") #10/88. *Id.* at 4.5-18. The DCTV firehouse, at 170 feet from the site, fell outside this radius and thus was reasonably considered not at risk of significant adverse physical construction impacts. DOC's reliance on longstanding procedures implemented by DOB, the expert City agency in this field, was rational. Ex. 92(I), FEIS at 10-81 (Response 5-12, n.8).

iv. Open Space

The FEIS included a thorough open space analysis. DOC conducted a detailed inventory of public open space resources in the study area, finding that under existing conditions, the study area has more than double the City's planning goal of 0.15 acres of open space per 1,000 people, with a variety of active and passive uses available. Ex. 92(E), FEIS 4.3-3 to 8. DOC then considered whether the project would have any direct adverse impacts on open space resources, and concluded that study area open spaces would not experience project-related significant adverse shadows, air quality, or noise impacts. *Id.* at 4.3-10. DOC calculated the impact of the estimated additional 263 daily additional workers and 191 daily additional visitors; even with the

most conservative assumption that all workers would visit the area, the area's open space ratio would decline at most by 1.3%, which would still leave the study area with 0.367 acres per 1,000 people, well above the planning goal. *Id.*

Petitioners list a number of alleged deficiencies in DOC's responses to comments on open space, all of which are belied by the record. For example, contrary to Petitioners' allegations, potential impacts to Columbus and Collect Pond Parks were considered in the FEIS, Ex. 92(E) FEIS at 4.3-6 to 8, 4.4-6. DOC provided a reasoned explanation for the size of its selected study area and substantively responded to a comment on this topic. Ex. 92(I), FEIS at 10-62 (Response 3-1); *see also* Do Aff. ¶¶ 82–91. Petitioners offer no rationale for their arguments that the City should have used a smaller-than-recommended-by-guidance study area, aside from their apparent belief that such gerrymandering would better engineer the identification of an open space impact. Petitioners' suggestion was reasonably rejected by the City.

As for resources Petitioners argue should have been defined as open space, such as the Chung Pak rooftop area, as fully explained in the EIS response to Petitioners' comment, the *CEQR Technical Manual* reasonably recommends limiting quantitative analysis to *public* open space, and does not include space that is not open to the public on a consistent basis.[10] Ex. 92(I), FEIS at 10-66 (Comment 3-8). And even Petitioners concede that the area of White Street they discuss "doesn't function as open space," because it is primarily used for parking, though they argue that it *should* be open space, and is "supposed to be" a pedestrian plaza. Pet. Mem at 36;

[10] Contrary to Petitioners' experts' assertion, the *CEQR Technical Manual* does not recommend that open space analyses consider—even qualitatively—impacts on private open space, but rather suggests that where a "project is likely to have indirect effects on public open space" the environmental review may consider "the ability of private open space to influence or alter those effects." *Compare* Janes Aff. ¶ 13 *to CEQR Technical Manual* at 7-2.

Culhane Aff. ¶ 36; Janes Aff. ¶ 14. The FEIS, however, appropriately considers the open space resources of the neighborhood as they are, not as Petitioners would like them to be.

v. Shadows

Petitioners argue that a number of sunlight-sensitive resources were never analyzed as such, and that various "ornamental facades and other architectural features" of the surrounding neighborhoods were insufficiently considered. Pet. Mem at 36; Culhane Aff. ¶¶ 41–42; Janes Aff. ¶¶ 15–20. However, as the FEIS explains, the resources the Petitioners referred to either were not publicly accessible, did not have sunlight-sensitive features that made them architecturally significant, or were shown to be unaffected by project-generated shadow in the analysis sunlight-sensitive features of these buildings. Ex. 92(I), FEIS at 10-72 (Response 4-10). For example, the Church of the Most Precious Blood, which Petitioners fault DOC for not analyzing as sunlight-sensitive, is listed as a contributing structure to the Chinatown and Little Italy Historic District—not listed in its own right—and is significant for its history of service to Italian immigrants and for its symmetrical Romanesque construction with central gable and flanking towers.[11] Its few stained glass windows did not merit mention in the report establishing the Chinatown and Little Italy Historic District. Because none of the "characteristics or elements that make the resource historically significant depend on sunlight," the *CEQR Technical Manual* does not recommend a detailed shadow impact analysis. *CEQR Technical Manual* § 420. Similarly, the architectural features that make the DCTV firehouse significant—its design in the general style of a private mansion notwithstanding its public purpose—is not sensitive to sunlight. *See* Ex. 162, National Register of Historic Places, Nomination Form, Fire House,

[11] National Register of Historic Places, *Registration document: Chinatown and Little Italy Historic District* at § 7, pp. 15, 19, (Feb 12, 2010), https://www.nps.gov/nr/feature/asia/2010/nychinatownlittleitalyhd.pdf.

Engine Company 31 at § 8 (1972) (describing the building's significance as its "scale, detail and workmanship which is not dissimilar to that of a private mansion."). Indeed, its National Register of Historic Places nomination found it "particularly noteworthy" for its location in a commercial neighborhood surrounded by buildings of more recent construction. *Id.*

Notably, in their extensive comments to the DEIS, Petitioners Neighbors United Below Canal did not object to the exclusion of the DCTV building from assessment as a sunlight-sensitive resource, nor did any other commenter; Petitioner DCTV did not comment on the DEIS at all. *See supra* note 5. In general, "courts have refused to review a determination on environmental matters based upon evidence or arguments not presented during the proceeding before the lead agency." *Aldrich*, 107 A.D.2d at 267–68; *Save Our Parks v. City of N.Y.*, 2006 N.Y. Misc. LEXIS 2365, at *15-16 (Sup. Ct. N.Y. County, Aug. 15, 2006) ("Project opponents should not be able to withhold particular objections during the SEQRA review process, when the public has been given the opportunity to be heard, and then attempt to ambush the agency with unraised objections in an Article 78 proceeding."). Though this non-exhausted claim lacks merit, the Court should not consider it for this additional reason.

vi. Noise

A detailed construction noise analysis was performed for the Manhattan jail in the FEIS, accounting for the proposed construction logistics, equipment list, construction schedule, and the construction noise control measures that had already been established. The FEIS found that the Chung Pak building would have the largest increase in noise from construction, but that this increased noise would occur over eight non-consecutive months during different phases of construction, and would temporarily bring the total noise level at the building to a level that is typical for many Manhattan locations near heavily trafficked roadways. *See* Do Aff. ¶¶ 97–102;

Ex. 92(F) FEIS at 4.14-17 to 26. The FEIS reasonably concluded that construction noise would not cause significant adverse impacts to the Chung Pak building or to any other building.

Petitioners allege that DOC failed to respond to their DEIS comment, which raised nonspecific objections to various components of the noise analysis, for example, by speculating that construction noise control measures will not be enforced, and concluding without analysis that the results of the extensive DEIS noise modeling and measurement—which are set out in Appendix H of the DEIS—amount to "tortured reasoning." However, DOC addressed Petitioners' objections in its response to comments by noting that the eventual design-builder will be contractually obligated to meet noise reduction commitments, and by referring to the DEIS analysis which explains why, for example, noise is reduced when work is performed further from a receptor. Ex. 92(I), FEIS at 10-166 (Response 14-34). The FEIS also explained that "[t]he number and types of equipment used for each site, along with the schedule used for construction, were developed by a construction manager with experience building projects of comparable size in New York City." *See id.* at 10-168 (Response 14-36).

vii. Socioeconomic Conditions

Petitioners allege that DOC arbitrarily dismissed a number of comments regarding socioeconomic impacts, *see* Pet. Mem. at 38, but this allegation is belied by the record. DOC provided substantive responses to each of Petitioners' comments. For example, DOC provided a substantive response to Petitioners' comment that the selected study area was too small, explaining that a study area of ¼ mile was appropriate because "beyond this ¼-mile distance, the influence of the proposed project would be far outweighed by other, more local economic influences." *See* Ex. 92(I), FEIS at 10-55 (Response 2-5). DOC also provided a substantive response to Petitioners' comments regarding alleged indirect business displacement, explaining that access to the businesses would not be impinged, and that if anything, the incremental

increase in travel to the study area would benefit local businesses that serve the public. *Id.* at 10-52 (Response 2-2); 10-61 (Response 2-15).

At base, Petitioners simply disagree with DOC's analysis and conclusions: Petitioners assume that the jail will create insurmountable economic challenges for existing businesses, whereas DOC concludes that almost all existing businesses will continue to operate with little impediment as the existing jail is replaced with a new jail of comparable capacity. Petitioners' disagreement with DOC does not show that DOC acted irrationally. Rather, the only question before the court is whether the City "identified the relevant areas of environmental concern" arising from the BBJS project, "took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination." *See Akpan*, 75 N.Y.2d at 570; *see also Eadie v. Town Bd. of Town of N. Greenbush*, 7 N.Y.3d 306, 318–19 (2006) (rejecting petitioners' second-guessing of an agency's reasoned decision-making).

viii. Traffic and Transportation

DOC prepared an extensive transportation analysis, in coordination with the City's expert transportation agency, the New York City Department of Transportation, and in accordance with guidance in the *CEQR Technical Manual*. That analysis found that one intersection would be significantly adversely affected by the new jail, but that this impact could be fully mitigated through signal timing changes. Ex. 92(F), FEIS 4.15-3, Table 4.15-1.

Contrary to Petitioners' claims, DOC fully responded to Petitioners' comments concerning traffic and transportation. For instance, as DOC explained in its response to Petitioners' comments, only intersections with a potential to be impacted *by the project* were analyzed in the EIS—concerns with *existing* traffic where the project would not add a significant number of trips were appropriately outside the scope of analysis. Ex. 92(I), FEIS at 10-113 (Response 9–42). In response to comments arguing that background rush hours should be studied

rather than correction officer shift change times, DOC explained that staff shift changes are the greatest contributors to transportation demand, and thus, analyzing the typical rush-hour period would capture significantly fewer project-generated trips. *Id.* at 10-110 (Response 9-33). Finally, DOC directly responded to comments raising concerns about emergency vehicle response times. To the extent that the project will cause significant traffic impacts affecting emergency vehicle mobility, DOC was able to fully mitigate those impacts in conjunction with DOT. *See id.* at 10-101 to 102 (Responses 9-1, 9-2).

B. *The City appropriately considered the potential for construction, archaeological, socioeconomic, and hazardous material impacts.*

Petitioners present a meritless argument that DOC improperly deferred analysis of certain environmental impact categories. *See* Pets.' Mem. at 23–29. Not so. The encyclopedic FEIS contained a detailed, thorough analysis of all relevant impact categories, in accordance with the well-established methodologies of the *CEQR Technical Manual*. *See, e.g.*, *Matter of Friends of P.S. 163, Inc.*, 46 N.Y.S.3d at 545 (finding agencies are "entitled to rely on the accepted methodology set forth in the [*CEQR Technical Manual*]"), *aff'd*, 30 N.Y.3d 416 (2017); *see also Matter of Rimler*, 50 N.Y.S.3d at 53–54, *aff'd*, 101 N.Y.S.3d 54 (2d Dep't 2019).

Petitioners' reliance on *In re Bronx Committee for Toxic Free Schools v. New York City School Construction Authority*, 20 N.Y.3d 148 (2012) is entirely misplaced. There, the Court of Appeals held that an agency cannot select environmentally significant maintenance and monitoring measures to implement without conducting additional environmental review, when such measures had not been disclosed in the project's FEIS. Critical to the Court's holding was the fact that the agency admitted the environmental significance of the measures at issue. *Id.* at 156. Indeed, the Court noted that if the dispute had merely concerned "how much detail must be included in an EIS, or over whether events occurring after the EIS was filed were significant

enough to call for a supplement," then the Court "would defer to any reasonable judgment" made by the agency. *Id.*

The facts here are unlike those in *Bronx Committee*. As explained in more detail below, the FEIS has taken a "hard look" at potential environmental impacts, and forthcoming studies and measures will merely refine but are not likely to alter this detailed analysis.[12] *See* Ex. 95, Final DOC Statement of Findings (Mar. 11, 2020). As such, this Court should defer to DOC's reasoned judgment. *In re Bronx Committee*, 20 N.Y.3d at 156. Mere disagreement does not render the City's judgmental irrational. *See, e.g.*, *Save the Pine Bush, Inc.*, 13 N.Y.3d at 308 (holding that SEQRA's "rule of reason" applies to agency's "judgments about the environmental concerns it investigates [and] decisions about which matters require investigation"); *Jackson*, 67 N.Y.2d at 417 ("[n]ot every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a FEIS will satisfy the substantive requirements of SEQRA") (quoting *Aldrich*, 107 A.D.2d at 266).

In each of the categories where Petitioners claim the City allegedly improperly deferred critical environmental analysis, the City did nothing of the sort.

i. Construction.

Petitioners claim that DOC improperly deferred analysis of construction impacts, largely because the final building plans and construction plans are not yet available. This claim fails, as DOC conducted its environmental review based on reasonable and conservative projections regarding the future building and construction schedule. *See supra* Point III discussion of design-

[12] If Petitioners mean to suggest that new information may emerge, or that the project may change significantly, so as to warrant additional environmental in the form of a Supplemental Environmental Impact Statement, such a claim is at best premature at this juncture. Unlike the agency in *Bronx Committee*, DOC is not currently aware of any environmentally significant concerns that have not already been analyzed.

build. Because a thorough environmental review could be prepared based on these reasonable projections, DOC met its SEQRA obligations to consider construction impacts.

Contrary to Petitioners' allegations, the City has not "conceded" a failure to take a hard look at construction-related traffic impacts, Pet. Mem. at 25, but instead has conducted its analysis based on conservative future projections. Based on these reasonable projections, the FEIS concluded that no significant adverse impacts from construction-related traffic would occur, since no analyzed intersection is expected to attract 50 or more vehicle trips during the peak travel hours. Ex. 92(F), FEIS 4.14-11. With respect to construction-period pedestrian trips, the FEIS disclosed the potential number of construction-generated pedestrian trips and pedestrian elements that could be significantly impacted, and measures that could be implemented to address these impacts. *Id.* at 4.14-12 to 13. These analyses comport with the guidance of the *CEQR Technical Manual* and met the "hard look" standard.

Nor is the forthcoming Construction Transportation Monitoring Plan improper. While this monitoring plan will address construction-related traffic with more precision, the scope of potential construction impacts and measures has already been thoroughly disclosed and analyzed in the DEIS and FEIS, and was available for public comment as part of the SEQRA process. For the same reasons, Petitioners' citations to additional, forthcoming construction studies and measures—such as geotechnical review, and landmarks consultation—are of no moment. While DOC will continue to appropriately refine its construction plans, DOC has already fulfilled its SEQRA obligations to take a hard look at potential significant construction impacts.

Finally, Petitioners allege that DOC failed to include a discussion of construction impacts to land use and neighborhood character, community facilities, transit and pedestrians, air quality, noise, and natural resources. *See* Pet. Mem. at 25. This claim also fails, as DOC discussed all of

these areas in Section 4.14 of the FEIS (Construction-Manhattan). Ex. 92(F), FEIS at 4.14-29 (land use and neighborhood character); *id.* at 4.14-30 (community facilities); *see id.* at 4.14-2, 4.14-9 (transit and pedestrians); *id.* at 4.14-14–16 (air quality); *id.* at 4.14-17–27 (noise). Moreover, DOC conducted a preliminary screening assessment of the proposed project in the area of natural resources and determined that no significant impacts would occur. *See* Ex. 92(A), FEIS at S-15.

Thus, consideration of construction impacts was not deferred in the FEIS, but instead was properly conducted based on reasonable and conservative projections. *Save the Pine Bush, Inc.*, 13 N.Y.3d at 308 (SEQRA's "rule of reason" applies to agency's "judgments about the environmental concerns it investigates [and] decisions about which matters require investigation").

ii. Archaeological resources.

Petitioners allege that DOC's future planned consultation with the City's Landmarks Preservation Commission (LPC) constitutes an improper deferral of environmental analyses. *See* Pet. Mem. at 26. This claim also fails, as DOC already satisfied its SEQRA obligations prior to the future LPC consultations.

The DEIS identified, for public review and comment, archaeologically sensitive areas and the measures that would be implemented during project planning and design phases and potential testing or monitoring. *See* Ex. 89(E), DEIS at 4.15-5. Given the historical disturbance associated with the construction of the existing 124-125 White Street buildings (which includes deep sub-basement levels), the project site was not considered sensitive, and the presence of on-site archaeological resources are considered unlikely. *Id.* at 4.5-8. Nevertheless, due to the possibility of deeply buried underground Native American historical resources, borings would be

taken during construction, and LPC would be consulted on the boring results and on any protective measures that may be warranted. *Id.* at 4.14-30.

DOC's commitment to additional archaeological review, in consultation with LPC, was in addition to DOC's SEQRA obligations, not a deferral of such obligations. Consultation with LPC is recommended under the *CEQR Technical Manual*, but is not compulsory under SEQRA/CEQR. Thus, such consultation may properly proceed after a project's SEQRA review has concluded. Moreover, contrary to Petitioners' claims that such investigation will be "completely outside public purview," Pet. Mem. at 27, the analysis will be shared with the public, as per LPC guidelines. *See* Ex. 92(I) FEIS at 10-79.

iii. Hazardous materials.

Contrary to Petitioners' allegations, the potential for significant impacts from hazardous materials was properly considered during the environmental review. The DEIS identified potential contaminants of concern and potential measures that would be incorporated through the Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) to avoid potential impacts at the Manhattan site related to hazardous materials. The measures identified in the DEIS, and made available for public comment, included vapor controls, chemical testing of imported soil, dust control and air monitoring, and real-time air monitoring for dust and VOCs. *See* Ex. 89(E), DEIS at 4.7-6. As for the contaminants of concern, the DEIS identified the likelihood of materials common in older buildings, namely, asbestos, lead-based paint, and PCBs, *id.* at 4.14-31, and also listed and described other contaminants commonly found at New York City sites, such as volatile organic compounds and metals, *id.* at 4.7-3. The DEIS also identified and described recognized environmental conditions at 124-125 White Street, such as underground and above-ground storage tanks. *Id.*

In the FEIS, DOC provided a list of target compounds for which soil samples were analyzed and included an itemized list of compounds that were present in concentrations exceeding relevant standards. *See* Ex. 92, FEIS at 4.7-5. DOC provided a similar listing for groundwater well samples, *see id.* at 4.7-5 to 6, and soil vapor samples, for which there were not exceedances, *see id.* at 4.7-6.

The DEIS's discussion of hazardous materials was sufficiently detailed to enable informed public comment, and thus was appropriate under SEQRA. Petitioners' arguments to the contrary have no merit. In particular, Petitioners complain that the RAP, CHASP, and complete copies of site assessments were not included in the DEIS, but only the FEIS. However, DOC's approach was consistent with well-established guidance of the *CEQR Technical Manual*, which recommends a preliminary site assessment be completed by the DEIS phase, but recognizes that further, more detailed, hazardous testing and remedial plans may be appropriate. *CEQR Technical Manual* § 550. Petitioners cite no authority to the contrary.

iv. Socioeconomic impacts.

Petitioners allege that DOC improperly deferred mitigation analysis for the displacement of five commercial retail storefronts. *See* Pet. Mem. at 28. This is incorrect. Instead, DOC rationally determined, following the well-accepted guidance of the *CEQR Technical Manual* that an analysis of mitigation measures was not warranted here. Nonetheless, the City chose to assist those businesses in relocating anyway.

The displacement of these five businesses would not constitute a significant adverse impact on the socioeconomics of the study area under SEQRA. The five affected businesses did not satisfy any of the *Manual*'s reasonable criteria for further analysis insofar as they do not employ over one hundred employees, and are not uniquely location-dependent as multiple

similar businesses exist within close proximity to the project site. *See CEQR Technical Manual* at 5-2, § 200; Ex. 92, FEIS at 4.2-1 to 2.

Because their displacement would be considered neither an "environmental impact" nor a "significant adverse impact," SEQRA does not require DOC to mitigate it. *See West Village Committee Inc. v. Zagata*, 669 N.Y.S.2d 674 (3d Dept.), *lv. to appeal denied*, 677 N.Y.S.2d 72 (1998) ("the purpose of an EIS is to examine the identified potentially *significant* environmental impacts . . ., not every conceivable impact") (emphasis added); *see also S.P.A.C.E. v. Hurley*, 291 A.D.2d 563, 565 (2d Dep't 2002) (holding that impacts for which mitigation measures are selected are necessarily "significant" under SEQRA). Though not required to do so, the City, as explained in the FEIS, has committed to work with these businesses to help them relocate—and it is this commitment that Petitioners take issue with.

DOC's rationale for not conducting mitigation analysis was explained in the DEIS, Ex. 89(E) at 4.2-1 to 2, and reiterated in the FEIS's response to comments: the future relocation assistance for the businesses is not a mitigation measure under SEQRA, but is a voluntary measure being undertaken by the City precisely because the project will disrupt certain businesses, *see* Ex. 92(I), FEIS at 10-59 to 10-60 (Response 2-13). This relocation assistance does not constitute mitigation under SEQRA because the SEQRA analysis revealed no potential for significant adverse impacts in the first place.

Petitioners' reading of SEQRA would discourage the City and other project sponsors from going above and beyond SEQRA's requirements, by subjecting even voluntary measures to SEQRA's analysis framework, when performing such analysis would not otherwise be warranted. The Court should reject it.

C. *The City appropriately considered alternatives.*

An agency's SEQRA obligation to consider alternatives is subject to a rule of reason, like all substantive SEQRA requirements. Thus, agencies are not required to expressly consider any particular project alternative, or any particular number of alternatives. *See, e.g.*, *Environmental Defense Fund, Inc. v. Flake*, 465 N.Y.S.2d 759, 763 (2d Dep't 1983) (rejecting petitioner's claim that a FEIS was deficient for failing to consider petitioner's suggested alternative and noting that "[t]he requirement that alternatives be considered must be construed in light of reason" and it is "not necessary to discuss every conceivable possibility").

While a failure to consider *any* alternatives may be found unacceptable, *see, e.g.*, *In re Shawangunk Mountain Envtl. Ass'n v. Planning Bd.*, 157 A.D.2d 273, 276 (3d Dep't 1990), courts will defer to an agency's reasonable consideration of alternatives. The cases cited by Petitioners are not to the contrary. *See, e.g.*, *Webster Assocs. v. Webster*, 59 N.Y.2d 220, 228 (1983) (upholding environmental review despite its omission of discussion of a particular alternative); *Aldrich*, 107 A.D.2d at 275–76 (upholding environmental review of alternatives despite petitioners' claims that it was insufficiently detailed). Indeed, *Silver v. Dinkins*, 158 Misc. 2d 550 (Sup. Ct. N.Y. County 1993), cited by Petitioners, is not even a SEQRA case; it concerns Fair Share Review (and is equally unhelpful for Petitioners' Fair Share claims, as explained *infra* in Point IV).

Here, the FEIS thoroughly analyzed two alternatives: the "No Action" alternative without the project, and an alternative with no unmitigated significant adverse impact. Ex. 92(I), FEIS at Chapter 7. The FEIS included a comparative assessment between the proposed project and both alternatives, and demonstrated why neither alternative would meet the project's goals and objectives. *Id.*

Contrary to Petitioners' assertions, the City also considered the possibility of adaptive reuse of the existing Manhattan jail facility, both in Chapter 7 (Alternatives) and Appendix J of the FEIS. *Id.* at 7-18 to 19, App'x J. This analysis pointed to numerous problems with using the existing jail buildings, namely that they are too small to accommodate a modern, humane detention facility with the necessary capacity; that the existing buildings cannot be feasibly reconstructed to provide the necessary additional space; and that the current division of the jail between two separate buildings creates significant operational and security challenges that can be eliminated by consolidation into a single facility. *Id.* at 7-19.

Also contrary to Petitioners' assertions, the City was not required to consider alternative Manhattan sites in different neighborhoods. Since one of the goals of the project is to create borough jails located near borough courthouses, considering sites that were not located near the borough courthouse, when sites meeting the other siting criteria were available near the courthouse, would not have reasonable.[13] Similarly, the City was also not required to analyze 80 Centre Street as an alternative in the EIS after the City had already determined that this site was not feasible for the project due in large part to the difficulty of relocating its existing tenants. Ex. 87(A) FSOW at 17.

Petitioners next cite the reduction in the projected number of beds from 1,150 to 880 in the Manhattan facility in support of their argument that the existing jail buildings could be adaptively reused. *See* Pet. Mem. at 22. Petitioners are mistaken. Even with the number of beds

[13] Petitioners argue that because the Bronx site was remote from the Bronx courthouse, the City should have also considered sites remote from the Manhattan courthouse. Pet. Mem. at 53 n.9. They are mistaken. The Manhattan site easily meets all four site selection criteria of courthouse proximity, sufficient size, transit proximity, and city ownership. The Bronx site was chosen only after sites near the Bronx Courthouse—which does not have an existing adjoining jail—were examined and found infeasible. *See* Ex. 32, July 26, 2019 CPC Follow-up Letter at 5–8; Ex. 163, Presentation to Bronx Community Board 1 (May 2019).

planned in the new facility now approximately equal to the current Manhattan jail capacity, the existing buildings remain unable to meet the project objectives because the project requires more space per detained person to allow for modern, safe, and humane detention. *See* Ex. 32, CPC Follow Up Letter (July 26, 2019) at 1–4.

For these reasons, the City's analysis of alternatives under SEQRA was reasonable and should be upheld.

POINT II

THE CITY'S ULURP REVIEW COMPLIED WITH APPLICABLE LAW AND WAS RATIONAL IN ALL RESPECTS

1. Standard of Review

In an Article 78 proceeding, review of an administrative action is limited to a finding of "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." CPLR § 7804(3). An action is arbitrary only if it lacks any reasonable basis and was taken irrespective of the facts. *See Pell v. Bd. of Educ.*, 356 N.Y.S.2d 833 (1974); *Hunter v. N.Y.C. Bd. of Educ.*, 190 A.D.2d 851, (2d Dep't 1993).

Once the Court finds any rational basis for the determination, judicial review is ended, and the action must be upheld. *Arrocha v. Bd. of Educ.*, 93 N.Y.2d 361, 363 (1999). As the Court of Appeals has stated, "[i]f the acts of the administrative agency find support in the record, its determination is conclusive and the test of judicial review is to determine whether the agency acted arbitrarily or capriciously . . . a court may not overturn an agency's decision merely because it would have reached a contrary conclusion." *Sullivan County Harness Racing Ass'n, Inc. v. Glasser*, 30 N.Y.2d 269, 277-78 (1972) (citations omitted).

2. A single ULURP review of the four borough-based jail sites was lawful and rational.

Petitioners bring a meritless claim challenging the multi-borough ULURP review of all four borough-based jail sites. Petitioners' argument fails, as applicable law, precedent, and simple logic support the City's ULURP process here.

A. *A multi-borough ULURP review is supported by the City Charter, the ULURP regulations, and Department of City Planning precedent.*

Single ULURP review of a multi-borough project, such as the borough-based jails project, is consistent with the City Charter, ULURP regulations, and Department of City Planning precedent.

Both the City Charter and the regulations governing ULURP contemplate and condone multi-borough ULURP reviews. Namely, both the Charter and rules require applications to be referred to "***each*** affected borough President" for review, and the Charter grants "***each*** affected borough president" the right to attend meetings concerning an application. Charter § 127-c (b),(d); 62 RCNY § 2-02(a)(2), (3) (emphasis added). Thus, Petitioners are simply incorrect to argue that "the Charter [and] the applicable regulations . . . clearly contemplate borough-specific review and actions." Pet. Mem. at 43.

Over the years, the Department of City Planning has repeatedly certified multi-borough ULURP applications for a variety of different projects. Affirmation of Susan Amron dated June 01, 2020 ("Amron Aff.") ¶¶ 14–18. Petitioners overlook abundant examples of the certification of multi-borough ULURPs, including one as recently as last year—altering zoning regulations simultaneously in Staten Island and the Bronx.[14] *Id.* ¶ 15. Thus, Petitioners are also simply

[14] Petitioners seek to avoid this precedent by limiting their review to only "non-transportation land action involving a multi-borough project with individual site selection." Pet. Mem at 44.

incorrect to allege that the multi-borough ULURP review here was "unprecedented." Pet. Mem. at 3.

Admittedly, not all multi-borough ULURP actions have been subject to a single review. While the Charter and its implementing rules recognize the validity of multi-borough ULURP reviews, they do not explicitly require a single review for integrated projects spanning multiple boroughs. Thus, the Department of City Planning has certified such multi-borough reviews at its discretion, when a single multi-borough review is deemed reasonable for the particular project at issue. Amron Aff. ¶¶ 19–20. The multi-borough ULURP review of the borough-based jails project is fully consistent with this longstanding agency precedent, since the City has compelling reasons to pursue a multi-borough review here, as explained in more detail below.

Petitioners' attempts to distinguish clear ULURP precedent also fall flat. For example, Petitioners downplay the single ULURP review for the selection of a lessee for both Staten Island ferry terminals—in St. George, Staten Island and lower Manhattan—by arguing that the two site locations were "integrally connected" and thus this project was "dramatically different" than the borough-based jails project. Pet. Mem. at 45. Petitioners offer no statutory or regulatory basis for concluding that multi-borough review is limited to "integrally connected" projects. But at any rate, Petitioners fail to recognize that the four jails sites are *also* integrally connected, as the City's goal to close Rikers Island necessarily depends on the approval of all four sites. In light of this goal, an "all or nothing" single multi-borough review was entirely rational.

Petitioners' attempt to artificially cabin the body of ULURP precedent must be rejected. As the very name of the regime indicates, ULURP's provisions are uniform; they apply uniformly to each of the City actions which are subject to ULURP under the City Charter. Amron Aff. ¶ 12. No separate ULURP provisions exist for transportation projects, or for site-selection actions. Thus, ULURP cannot be interpreted to allow multi-borough applications for transportation projects, or allow multi-borough applications for non-site-selection actions, and forbid multi-borough applications for other types of projects, such as borough-based jails.

Also for this reason, the ULURP precedent of the City's Solid Waste Management Plan (SWMP)—where each new marine transfer station underwent individual ULURP review—is quite distinct. While Petitioners argue that "[a]ll waste stations were necessary for the New York City-wide SWMP to be implemented," Pet. Mem. at 46, the possible "half a loaf" outcome of partial approval of the new marine transfer stations would still have advanced the City's SWMP goals of reducing truck traffic and promoting inter-borough equity. With respect to the borough-based jails project, a "half a loaf" outcome of partial site approval would do nothing to meet the City's driving goal of closing Rikers Island. Thus, a single multi-borough review was sensible here.[15]

The City's single ULURP review of the borough-based jails project was fully consistent with ULURP law and precedent. Petitioners fail to show that the Department of City Planning's longstanding interpretation of its own rules is unreasonable. *See Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v. State of N.Y. Div. of Hous. & Community Renewal*, 46 A.D.3d 425, 429 (1st Dep't 2007).

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[15] Petitioners also argue, unconvincingly, that the construction of New York City Water Tunnel No. 3 is "substantially similar" to the borough-based jails project and thus constitutes "prior controlling precedent." Pet. Mem. at 46. Not so. Water Tunnel No. 3 is a multi-decade, multi-phased project that began in the 1970s and remains ongoing. Unlike the borough-based jail sites, the Water Tunnel No. 3 sites were not selected simultaneously, but over a course of years. *See,* Amron Aff. ¶ 20. There, the City reasonably determined to proceed with site acquisitions as the tunnel approached individual sites where work would soon begin. Moreover, a single ULURP for that project would have been unnecessarily complicated, and practically infeasible given that the project proceeded in phases over several decades. *Id.*

B. *Multi-borough ULURP review was reasonable here.*

Petitioners allege that the single ULURP review of the multi-borough site selection was arbitrary and capricious. This claim fails, as the City's simultaneous ULURP review was eminently reasonable.

First, as discussed above, a single, multi-borough ULURP review made sense as only the approval of all four jail sites would enable the City to achieve its driving goal: the closure of Rikers Island. If fewer than all four sites were approved, the City would be unable to close Rikers Island, and the borough-based jails project would not have achieved its animating goal. A single ULURP application for all four sites facilitated concurrent consideration of these interdependent land use actions. The City Planning Commission recognized this, explaining that simultaneous consideration was "both appropriate and necessary to meet the goal of closing the jails on Rikers Island." Ex. 41, CPC Lead Report at 52.

Second, simultaneous consideration of the multi-borough site selection was sensible as it facilitated the timely closure of Rikers Island, on the City's planned ten-year timeframe.[16] The Department of Correction has repeatedly and consistently explained that closing Rikers Island in the near future would not be possible unless all four site selections were approved simultaneously. *See*, *e.g.*, Ex. 92(I) FEIS at 10–10 (Response 3).

Finally, simultaneous consideration of the multi-borough site selection also enabled the City's use of design-build procurement, a more efficient and cost-effective project implementation method approved by the New York State legislature in the New York City Rikers Island Jail Complex Replacement Act. 2018 Laws of New York Ch. 59, Pt. KKK. As that

[16] *See* Transcript: Mayor de Blasio, Speaker Mark-Viverito Announce 10 Year Plan to Close Rikers Island (Mar. 10, 2017), *https://www1.nyc.gov/office-of-the-mayor/news/196-17/transcript-mayor-de-blasio-speaker-mark-viverito-10-year-plan-close-rikers-island*.

Act expired two years from enactment, the City had a strict deadline to implement design-build for this project. Thus, the necessary land use approvals had to be secured in time for the City to publish a request for qualification of a design-build contractor by April 2020. *Id.* § 14. Therefore, the state's intermediate deadline of April 2020 to use design-build represented an additional reason the City reasonably chose to advance all four sites in a single ULURP review process.

Petitioners present no argument as to why multi-borough review was irrational, besides their belief that this approach facilitated the approval of the borough-based jails project, which they personally oppose. Pet. Mem. at 43. This argument fails. Even assuming that facilitating a critical City project is an improper rationale for a multi-borough ULURP review—which it is not—the record nonetheless demonstrates that the City had multiple other policy reasons to utilize a multi-borough review.

Petitioners purport to quote the Mayor's Office and the City Council Speaker to support Petitioners' proposition that the City allegedly sought to fast-track the ULURP review for this project. Pet. Mem. at 43. Cryptically, the cited source for these quotations is Petitioners' own Petition, which also contains no reference to any source of these purported quotes. In any event, as discussed above, expedience was not the only reason the City pursued a multi-borough review, nor was expedience an improper reason to do so in any event. Even aside from the expedience of a multi-borough review, as a logical matter the City determined that the site selections should be considered concurrently, in light of the project goal of closing Rikers Island. Moreover, the City's desire to proceed expeditiously with the borough-based jails project was informed by the City's ten-year deadline to close Rikers Island, and New York State's two-year deadline to use design-build procurement. For all of these reasons, a single ULURP review of the multi-borough site selection was rational. *Arrocha.*, 93 N.Y.2d 363; *Committee to Preserve*

Brighton Beach & Manhattan Beach v. Council of New York, 214 A.D.2d 335, 337 (1st Dep't 1995) (Where "the city planning commission's resolution of approval has a rational basis in the record, perceived deficiencies in the planning board's formal findings . . . do not invalidate the determination.").

3. The City Planning Commission's acceptance of a proposal for post-ULURP additional design review was entirely reasonable.

Petitioners also argue, without basis, that the post-ULURP review process that the City Planning Commission condoned for the borough-based jails project was *ultra vires*. Pet. Mem. at 48. This claim also fails.

The additional design review contemplated by the Commission is a voluntary process that will provide further opportunities for feedback from the Commission and the public.

As explained further below in Point III, ULURP does not require review of design documents, and indeed, many projects subject to ULURP have advanced without the sort of detailed schematics Petitioners would require. Amron Aff. ¶ 24. Thus, there is no merit to Petitioners' argument that the post-ULURP process was designed to compensate for alleged deficiencies in the ULURP review, as the ULURP review met all legal requirements.

Petitioners also mischaracterize the post-ULURP design review as a requirement imposed by the City Planning Commission. To the contrary, the Commission expressed its agreement with the City's choice to voluntarily provide additional opportunities for input to both the Commission and to the public. *See* Ex. 41 Lead CPC Report at 75–79; Amron Aff. ¶ 28. By accepting this voluntary proposal, and by recognizing its value, the Commission in no way suggested that its ULURP approvals—which were preceded by a lengthy, iterative review process, *see* Exs. 27–39 (CPC record of BBJS deliberations), and memorialized in detailed reports, Exs. 41–53, CPC Reports—were otherwise lacking.

Thus, by proposing periodic post-ULURP presentations to the public and Commission on the project's design, the City has voluntarily provided opportunities for input that goes beyond ULURP requirements. The post-ULURP design review contemplated here would serve to increase transparency and public engagement with the project; there is no legal or practical reason for the City Planning Commission to discourage such a beneficial feature of the project. Therefore, when the project applicants proposed additional post-ULURP presentations regarding project design, the Commission reasonably accepted this proposal.

For these reasons, Petitioners' *ultra vires* claim fails.

POINT III

THE CITY'S USE OF DESIGN-BUILD PROCUREMENT DOES NOT CONFLICT WITH SEQRA OR ULURP

Petitioners argue that the use of design-build procurement—which the New York State Legislature specifically authorized for this exact project, 2018 Laws of New York Ch. 59, Pt. KKK—violated both SEQRA and ULURP, by allegedly precluding appropriate review of the project's features. Pet. Mem. at 47–48. This claim also fails. Neither SEQRA nor ULURP requires the review of final design documents, and in fact projects are routinely reviewed under both regimes based on conceptual or anticipated designs. Do Aff. ¶¶ 31–32 (discussing conceptual review under SEQRA); Amron Aff. ¶¶ 22–28 (same, for ULURP).

Here, the review and approval of the borough-based jails project was reasonable, as the project was reviewed in sufficient detail under both ULURP and SEQRA. The ULURP approval set maximum building envelopes, maximum bulk and density, loading locations, entrance locations, parking volumes, and other land-use features, and the allocation of space between the major project elements, including jails, community facilities, and retail. Amron Aff. ¶ 25. And

the environmental review was based on a reasonable worst-case development scenario based on project and site-specific details, industry practice, and anticipated construction, which formed a reasonable basis for evaluating a range of potential impacts. Do Aff. ¶ 47. Thus, the project plans provided ample detail for the City to take a hard look at the relevant areas of environmental concern. *See, e.g., Jackson v. N.Y. State Dev. Corp.*, 67 N.Y.2d 400, 417 (1986).

Petitioners cite no authority for their demand for additional detailed review of the precise means of demolition and construction. Pets.' Mem. at 47. Indeed, it would be impossible to reconcile the courts' guidance that environmental review should be conducted "at the earliest possible opportunity," *Citizens Concerned for Harlem Val. Envt. v. Town Bd.*, 264 A.D.2d 394, 394 (2d Dep't 1999), with Petitioners' demand for demolition and construction plans, which depend on a degree of specificity not developed until later in the project.

Petitioners are also mistaken that, with the available level of design detail, the City was required to prepare a generic or programmatic EIS. Pet. Mem. at 16–17. SEQRA regulations give agencies the option of proceeding with a broad or conceptual generic EIS where, for example, sequences of smaller actions could otherwise evade review because they individually do not meet SEQRA impact thresholds. 6 NYCRR § 617.10. Generic EISs are often used for area-wide rezonings, and for changes to laws and regulations that are not site-specific, but have the potential for broad environmental impact. However, the SEQRA regulations do not require an agency to adopt this approach. And it would have made little sense to do so here, given that the borough-based jails were, as discussed above, site-specific proposals that included all the information required under SEQRA.

Furthermore, even if the City had chosen to prepare a generic EIS, Petitioners are simply wrong that this would amount to an acknowledgment that "supplemental environmental review

would be necessary." Pet. Mem. at 17. Under SEQRA's rules, and abundant case law, a generic EIS may fully satisfy an agency's environmental review obligations, so long as subsequent actions are carried out following conditions and thresholds in the GEIS. 6 NYCRR § 617.10; *see also Matter of Eadie*, 7 N.Y.3d at 319 ("Town's decision that the analysis in its final GEIS was adequate was not arbitrary and capricious.") *Neville v. Koch*, 173 A.D.2d 323 324–25. (1st Dep't 1991) (reversing Supreme Court's decision requiring the City to supplement a generic EIS if development departed from the illustrative examples provided therein).

Thus, Petitioners' challenge to the design-build project approach fails.

POINT IV

THE CITY'S FAIR SHARE STATEMENT FOR THE PROJECT EASILY MEETS THE APPLICABLE STANDARD

Petitioners also bring a meritless claim challenging the Fair Share review of the borough-based jails project confusingly arguing in turn that the City failed to perform a Fair Share Analysis, and that the City's analysis was inadequate for not considering additional alternative sites, or the unique and special nature of Chinatown. Pet. Mem. at 49–53. This claim fails, as the City's detailed and thorough Fair Share Statement met the applicable legal requirements.

1. The Fair Share Criteria are focused on process, not outcome.

The Fair Share Criteria, codified as Appendix A to Title 62 of the Rules of the City of New York, "are intended to guide the process of siting City facilities, and the intent of the guidelines is to improve, not to obstruct, this process." *Silver v. Dinkins*, 158 Misc. 2d 550, 553 (Sup. Ct. N.Y. Cnty. 1993), *aff'd*, 196 A.D.2d 757 (1st Dep't 1993), *lv. den.*, 82 N.Y.2d 659 (1993); *see also* Fair Share Criteria Preface. While the "agency must consider all the applicable criteria," and siting must be based on "an honest analysis of the Criteria, [such] that any departure from the Criteria must have a rational basis," at the same time "[t]he Criteria do not

require specific siting outcomes." *Ocean Hill Residents Ass'n v. City of New York*, 33 Misc. 3d 1230(A), at *9, 12 (Sup. Ct., N.Y. County 2011). Thus, the "City is given discretion as to what weight it gives particular criteria in a given case and not all of the criteria have to be met." *Id.* at *12.

While "[c]onceivably a flagrant disregard of the Criteria could give rise to a cause of action," *id.*, substantial compliance with the Criteria is the applicable standard. *Community Planning Bd. No. 4 v. Homes for the Homeless*, 158 Misc.2d 184, 191-92 (Sup. Ct. N.Y. County 1993) (noting also that "[s]ome deviation from the Criteria guidelines . . . is anticipated and implicitly allowed"). Applying the standard of substantial compliance, courts consistently deny challenges to the City's Fair Share reviews. *See, e.g., Turtle Bay Ass'n v. Dinkins*, 207 A.D.2d 670 (1st Dep't 1994) (upholding Fair Share review where the City demonstrated substantial compliance with the Fair Share Criteria); *Tribeca Community Ass'n v N.Y.C. Dep't of Sanitation*, 2010 N.Y. Misc. LEXIS 1235 (Sup. Ct., N.Y. County 2010) (same), *aff'd*, 83 A.D.3d 513 (1st Dep't 2011); *Bloomberg v. Liu*, 2014 NY Slip Op 50459(U), at *5-6(Sup. Ct., N.Y. County 2014) (holding that the City's Fair Share Report, which addressed the Fair Share Criteria and included a diagram depicting and identifying facilities within a half-mile radius of the proposed facility, shows substantial compliance with the Fair Share Criteria), *aff'd*, 133 A.D.3d 414 (1st Dep't 2015); *Ass'n for Community Reform Now v. Bloomberg*, 13 Misc.3d 1209(A)* (Sup. Ct., N.Y. County 2006) (upholding Fair Share review where agency considered cost-effectiveness along with other considerations in selecting a site from among alternatives); *Cmty. Planning Bd. No. 4 v. Homes for the Homeless*, 158 Misc. 2d 184, 191-92 (Sup. Ct., N.Y. County 1993) (recognizing that the City's Fair Share Letter demonstrates that the City substantially complied with the Fair Share Criteria).

The sole case on which Petitioners rely, *Silver v. Dinkins*, concerned the siting of a multi-agency garage and fueling facility on Pier 36 in the East River—and is the exception that proves the rule. There, the court took pains to note that it was "not attempting to override the respondents' determination as arbitrary or lacking a rational basis." 158 Misc.2d at 556. Instead, the court found that "*no consideration was accorded* to the factors bearing on 'fair share.'" *Id.* (emphasis added). The *Silver* court found the City failed to address consideration of alternate sites—stating that non-City sites were not considered because their development would take more time and money. *Id.* at 554. The court found that this generalized rationale demonstrated insufficient consideration of the Fair Share Criteria. *Id.* at 555-56. Notably, Fair Share Criterion 4.1(c), relied upon by the *Silver* petitioners, asks for a written explanation of why non-City alternate sites were not deemed reasonable to consider "in this particular instance." The *Silver* court also held that the City, by only examining facilities within a 400-foot radius of the site, did not properly consider the compatibility of the facility with the existing City and non-City facilities in the vicinity of the site. *Id.* at 555. Finally, the court found that the City "completely failed" to consider the extent to which the neighborhood character would be adversely affected by a concentration of City and non-City facilities. *Id.* Ultimately, the City proceeded with the facility in the originally identified location after conducting a new Fair Share review.[17]

2. The Fair Share review for the borough-based jails project appropriately considered all applicable Fair Share criteria.

Here, the Fair Share Statement carefully details the City's consideration of these factors, and meets the disclosure requirements of Fair Share. Ex. 8(A), Site Selection ULURP Application, App'x Fair Share Statement ("Fair Share").

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[17] *See* https://www1.nyc.gov/assets/dsny/downloads/pdf/operations/dsny_garage_locations.pdf (listing two Sanitation garages on Pier 36).

The City's Fair Share Statement describes the project's goals and the four planned facilities. It then walks through each of the applicable Fair Share criteria and analyzes each of the proposed facilities under these criteria. The Statement also discloses, via charts and maps, the concentration, locations, and types of various City and non-City facilities located within a half-mile radius of the proposed sites, and the distribution and capacity of existing correctional facilities in the City. This detailed discussion and disclosure easily meets the substantial compliance requirement for the Fair Share Criteria. *See, e.g.*, *Turtle Bay Ass'n*, 207 A.D.2d 670; *Bloomberg*, 43 Misc. 3d 1203(A), at *5-6, *aff'd*, 133 A.D.3d 414; *Cmty. Planning Bd. No.*, 158 Misc. 2d at 191-92.

In presenting their Fair Share challenge, Petitioners quote, in full, Criteria 4.1(a) through (c), thus suggesting that the City failed to appropriately consider these criteria. Pet. Mem. at 49. Yet each of these criteria was appropriately addressed in the City's Fair Share Statement.

In considering the "[c]ompatibility of the facility with existing facilities and programs, both city and non-city, in the immediate vicinity of the site," Fair Share Criterion 4.1(a), the Fair Share Statement discussed in detail the varied land uses within a 400 foot radius of the Manhattan site, including the numerous justice and correction facilities, residential and cultural uses, public spaces, and parks. Ex. 8(A), Fair Share at 7-8. Unlike in *Silver*, the City expressly considered neighborhood character, recognizing the proximity of Chinatown and Little Italy,[18] but also that the jail site sits within a concentrated core of similar institutional uses sheltered

[18] Petitioners falsely allege that the City's analysis "only discussed government buildings in the area." Pet. Mem. at 53. To the contrary, the Statement discusses the various parks and public plazas in the area, and explains that open space resources of the area could accommodate the increased demand for open space from non-residents workers and visitors. Ex. 8(A) Fair Share Statement at 7–8. The Statement also identifies, by name and location, all cultural facilities and historic sites located within a half mile radius of the site. *Id.*, Table C3, Map C3.

from the residential uses beyond. *Id.* Thus, it reasonably concluded that replacement of an existing, longstanding jail facility with a modern, humane jail facility at the same location will be compatible with existing uses in the neighborhood. *Id*.

In considering the "[e]xtent to which neighborhood character would be adversely affected by a concentration of city and/or non-city facilities," Fair Share Criterion 4.1(b), the Fair Share Statement noted that the site is located within the Civic Center neighborhood, "a dense civic and commercial core of the borough, resulting in a high number of facilities in the area," which, unlike in *Silver*, the Statement identified in detail, in both a chart and a map. *Id.* at 12; *see also* Statement Map C3, Table C3. The Statement notes that the proposed jail "will be compatible with and supportive of surrounding institutional, civic, and government uses, particularly . . . the Manhattan Criminal Courts Building," and concludes that the new facility is not expected to adversely impact neighborhood character. Ex. 8(A), Fair Share at 12.

Fair Share Criterion 4.1(c) concerns the:

> Suitability of the site to provide cost-effective delivery of the intended services. Consideration of sites shall include properties not under city ownership, unless the agency provides a written explanation of why it is not reasonable to do so in a particular instance.

Applying Criterion 4.1(c) to the proposed Manhattan site, the Statement concludes that the proposed Manhattan site "is optimal to provide cost-effective services for the proposed project," due to its "adjacency to the Manhattan Criminal Court," which reduces personnel and transportation costs and missed trials and other case processing delays, and potentially thus reducing an individual's time in detention and associated costs. *Id.* at 16. Moreover, unlike in *Silver* the City provided multiple particularized reasons in addition to cost-effectiveness as to why alternate sites, including alternate non-City sites, were not feasible. The City set a ten-year deadline to close Rikers Island, and has a two-year deadline to use design-build procurement as

per applicable New York State legislation. As the Statement explained, "[g]iven these considerations, acquisition or condemnation of privately-owned sites would have rendered the timelines unachievable." *Id.* Finally, the Statement explains that an alternate proposed site at 80 Centre Street was ultimately removed from consideration "in response to community opposition expressed through the CEQR public scoping process and the City's community engagement efforts, as well as due to challenges associated with relocating various existing offices at 80 Centre Street that would have made siting a jail there far more complicated and costly than had been originally anticipated." *Id.* at 17; *see also Ass'n for Community Reform Now*, 13 Misc.3d 1209(A) (distinguishing *Silver*, and upholding Fair Share review where the City considered additional factors in addition to cost-effectiveness).

As the above discussion shows, the City fully addressed all applicable Fair Share Criteria in its written Fair Share Statement. Contrary to Petitioners' implications, nothing in the Fair Share Criteria required the City to consider alternatives that did not meet the project siting criteria—such as alternative Manhattan sites located far from the borough's courthouse.[19] *See, e.g.*, *Fields v. Giuliani*, 2001 N.Y. Misc. LEXIS 576, at *5 (Sup. Ct., N.Y. County 2001) (in upholding City's Fair Share review for a facility demolition, noting that "the wisdom" of the City's policy decisions "is not an issue for review . . . the City has the absolute right to make that determination"); *see also Silver*, 158 Misc. 2d 550, 554 (Sup. Ct. N.Y. County 1993) (noting that the "guidelines do not dictate that [the City] consider a minimum number of either City or

[19] Nor was the City "disingenuous" to only consider courthouse-proximate sites in Manhattan when such a site could not be developed in the Bronx, as Petitioners allege. Pet. Mem. at 53 n.9. As detailed in the record, no viable sites could be found adjacent to the courthouse in the Bronx. *See, e.g.*, Ex. 32, CPC Follow-up Letter at 5 (July 26, 2019) (discussing in detail the issues with alternate sites in the Bronx). Only for that reason did the City expand its search elsewhere.

privately owned sites in the fair share analysis"). All that Fair Share requires is disclosure of the City's consideration of the Criteria, and that is precisely what the City did here.

In conclusion, the Fair Share Statement easily demonstrates the City's compliance with the Fair Share Criteria.

CONCLUSION

For the reasons explained above, the Petition should be denied.

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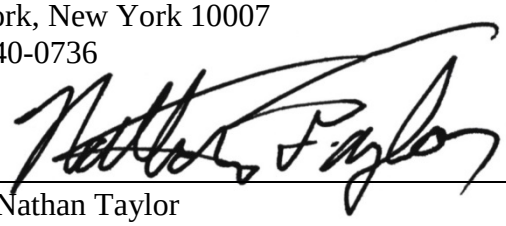
By: 
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