

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ULSTER

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61 CROWN STREET, LLC, 311 WALL STREET, LLC,  
317 WALL STREET, LLC, 323 WALL STREET  
OWNERS, LLC, 63 NORTH FRONT STREET, LLC,  
314 WALL STREET, LLC, and 328 WALL STREET,  
LLC

Petitioners,

For a judgment pursuant to Article 78 of the CPLR

- against -

NEW YORK STATE OFFICE OF PARKS,  
RECREATION AND HISTORIC PRESERVATION,  
EMPIRE STATE DEVELOPMENT CORPORATION,  
KINGSTON PLANNING BOARD, CITY OF  
KINGSTON, JM DEVELOPMENT GROUP, LLC,  
HERZOG SUPPLY CO., INC., KINGSTONIAN  
DEVELOPMENT, LLC, PATRICK PAGE HOLDINGS  
L.P., BLUE STONE REALTY LLC and WRIGHT  
ARCHITECT, PLLC

Respondents.  
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Petitioners, 61 Crown Street, LLC, 311 Wall Street, LLC, 317 Wall Street, LLC, 323  
Wall Street, LLC, 317 Wall Street, LLC, 323 Wall Street Owners, LLC, 63 North Front Street,  
LLC, 314 Wall Street, LLC and 328 Wall Street, LLC, (“Petitioners”) by and through their  
attorneys, Rodenhausen Chale & Polidoro LLP, as and for their Verified Petition respectfully  
allege as follows:

**PRELIMINARY STATEMENT**

1. This is a CPLR Article 78 proceeding brought to annul a determination of the  
New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”) issued on

February 14, 2020<sup>1</sup>, determining that a proposed mixed use development incorporating a 420 car garage, 143 apartments, 32 room boutique hotel, and 9,000 square foot retail/restaurant space, pedestrian plaza and walking bridge (the “Project”) located at the intersection of Fair Street and North Front Street, within the National Register-listed Kingston Stockade Historic District (“KSHD”), along with the rezoning of approximately 0.313-acres of property to accommodate the same, would not have “no adverse impact” on the KSHD (the “No Adverse Impact Letter”). A copy of the No Adverse Impact Letter is annexed hereto as Exhibit A.

2. The Project is located on several parcels of property in the City of Kingston at 9-17 & 21 North Front Street and 51 Schwenk Drive, tax parcels 48.80-1-25, -26, -24.120 (the “Property”).

3. The issuance of the No Adverse Impact Letter was arbitrary and capricious in that it overturned a prior determination of OPRHP that the Project would “have adverse impacts to the Kingston Stockade Historic District” as set forth in letters dated February 19, 2019 and September 19, 2019 without any rational basis for the new determination.

4. The Determination was issued after a closed-door meeting between representatives of OPRHP and representatives of the Respondents after a CPLR Article 78 petition was filed challenging the City of Kingston Planning Board’s (“Planning Board’s”) adoption of a negative declaration for the Project. The basis for the Article 78 proceeding is the Planning Board’s failure to take a hard look at historic impacts on the KSHD. A copy of the Negative Declaration is attached as Exhibit B. The Article 78 proceeding is filed in the Ulster County Supreme Court as index number EF2020-0253.

5. Petitioners intend to amend or supplement this petition as may be necessary as

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<sup>1</sup> The applicable statute of limitations has been tolled by Executive Order 202.8 and extended by Executive Order 202.55 to September 4, 2020.

more information is received pursuant to a Freedom of Information Law request.

### **PARTIES**

6. Petitioner 61 Crown Street, LLC is a duly created limited liability company organized in the State of New York which owns certain properties located at 61 Crown Street and 156-162 Green Street, identified as tax parcels 48.330-3-10 and 48.330-3-28.100, respectively. Petitioner 61 Crown Street, LLC's properties are located in close proximity to the Project's Property and are within the National Register-listed KSHD.

7. Petitioner 311 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 311 Wall Street, identified as tax parcel 48.331-1-16. Petitioner 311 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

8. Petitioner 317 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 317 Wall Street, identified as tax parcel 48.331-1-15. Petitioner 317 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

9. Petitioner 323 Wall Street Owners, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 323 Wall Street, identified as tax parcel 48.331-1-13. Petitioner 323 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

10. Petitioner 63 North Front Street, LLC is a duly created limited liability company

organized in the State of New York which owns certain property located at 63 North Front Street, identified as tax parcel 48.314-2-15. Petitioner 63 North Front Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

11. Petitioner 314 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 314 Wall Street, identified as tax parcel 48.331-2-10. Petitioner 314 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

12. Petitioner 328 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 328 Wall Street, identified as tax parcel 48.331-2-4. Petitioner 328 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

13. The Petitioners are concerned with the massive size, scope and appearance of the Project which will negatively impact the KSHD.

14. Petitioners will be injured by the Project as it will impact their enjoyment of their respective properties. The Project involves the construction of a massive mixed-use development in a nationally recognized historic district which has the potential to negatively impact the historic resources and character of the KSHD. The Project also involves changes to traffic flow including the closure of the Fair Street Extension. The Project will permanently alter the historic character of the KSHD, in which Petitioners' properties are located, and will interfere with the appearance and environment of the district. Petitioners purchased their properties in part due to the unique setting of the KSHD which the Project will now disrupt.

15. Petitioners have standing to pursue the claims asserted herein because they are

owners of real property in the City of Kingston and have unique property and personal interests that will be adversely affected by the proposed Project.

16. Upon information and belief, Respondent OPRHP serves as New York's State Historic Preservation Office ("SHPO") pursuant to Section 11.03 of the New York State Laws, Parks, Recreation and Historic Preservation Law (the "PRHPL"). SHPO helps communities identify, evaluate, preserve, and revitalize their historic, archeological, and cultural resources. SHPO administers programs authorized by the National Historic Preservation Act of 1966 and the New York State Historic Preservation Act of 1980.

17. Upon information and belief, Respondent Empire State Development ("ESD") is the umbrella organization for the New York State Urban Development Corporation and the Department of Economic Development and is providing funding to the Project.

18. Upon information and belief, Respondent City of Kingston is a municipal corporation and owner of a portion of the Property.

19. Upon information and belief, Respondent Planning Board is a duly created body established by the City of Kingston pursuant to New York General City Law Article 3, whose authorized duties include, among other things, the authority to review actions pursuant to SEQRA.

20. Upon information and belief, Respondent JM Development Group, LLC is a New York limited liability company with offices at 2975 Route 9W South, New Windsor, NY, and a developer of and/or applicant for the Project.

21. Upon information and belief, Respondent Herzog Supply Co., Inc. is a duly created New York business corporation with offices at 151 Plaza Road, Kingston, NY, and the owner in whole or in part of real property located at 9-17 N Front Street and 51 Schwenk Drive,

identified as tax parcel nos. 48.80-1-26 and -24.120, which is a portion of the Project Property.

22. Upon information and belief, Respondent Kingstonian Development, LLC is a New York limited liability company with offices at 2975 Route 9W South, New Windsor, NY, and a developer of and/or applicant for the Project.

23. Upon information and belief, Respondent Patrick Page Holdings, L.P. is a New York partnership with offices at 1613 Route 300, Newburgh, NY, and a developer of and/or applicant for the Project.

24. Upon information and belief, Respondent Blue Stone Realty, LLC is a New York limited liability company with offices at 200 Fair Street, Kingston, NY, and has an interest in the Project.

25. Upon information and belief Respondent Wright Architect, PLLC is a professional service limited liability company with offices at 200 Fair Street, Kingston, NY, and has an interest in the Project.

26. Collectively, Respondents JM Development Group, LLC, Herzog Supply Co., Inc., Kingstonian Development, LLC, Patrick Page Properties, L.P., Blue Stone Realty, LLC and Wright Architect, PLLC are referred to hereafter as the “Applicants.”

### **VENUE**

27. Pursuant to CPLR §§ 7804(b) and 506(b), this Article 78 proceeding is properly venued in New York Supreme Court, Ulster County.

## BACKGROUND

### *A. History of the Stockade District*

28. The KSHD comprises approximately 32.11 acres of uptown Kingston which once housed the Kingston stockade. A copy of the National Register of Historic Places Nomination Form is annexed hereto as Exhibit C.

29. This section of the City of Kingston was laid out as a Dutch village in the mid-seventeenth century. The site of the village was “carefully chosen in relation to topography on a high delta-like plain which provided good drainage, as well as effective strategic protection from attack.” Ex. C at p. 6.

30. In 1658, a log stockade was completed to fortify the village, and the streets along the boundaries of the stockade are still seen in modern uptown Kingston. Ex. C at 6.

31. Since its establishment, the KSHD has had tremendous historical significance. The settlement became the first capital of the State of New York, hosted a constitutional convention to permit the framing of New York’s Constitution, and contained the First Term of the New York Supreme Court, as presided over by future U.S. Supreme Court Justice John Jay. Ex. C at 6.

32. At present, over 300 years after its establishment, remnants of the historic Dutch settlement are evident. The street patterns are intact, and the area contains colonial-era Dutch stone houses. Moreover, even the development that has occurred since the colonial era has contributed to the KSHD’s historic character; “The district contains a number of building[s] which individually exemplify the city’s architectural development from the seventeenth through twentieth centuries. Together, however, with the street patterns and landscaping they form an

environment that is a critical and irreplaceable part of the historical heritage of Kingston and of New York State.” Ex. C at 6.

*B. Proposed Development in the District*

33. The City of Kingston owns a parcel of land located partly within the KSHD which was formerly developed with a parking garage. Upon information and belief, in the spring of 2008 the City demolished the garage due to its dilapidated condition.

34. On October 27, 2016, the Common Council published “Request for Qualifications #K16-10, Adaptive Development of Uptown Parking Sites for Mixed Use” (the “RFQ”). A copy of the RFQ is annexed hereto as Exhibit D.

35. The RFQ sought responses “from qualified developers to design, construct and operate a mixed-use development on three separate parcels owned currently by the City of Kingston” Ex. D. at 1.

36. Upon information and belief, the Common Council awarded the RFQ to Respondent Blue Stone Realty LLC and/or Wright Architect PLLC.

37. Upon information and belief, the Project has been conditionally assigned to JM Development Group, LLC, Patrick Page Properties, L.P., and Herzog Supply Co., Inc., which proposed the Project in its current iteration and submitted applications to the City of Kingston Planning Board for site plan and special use permits for the same.

38. The Project seeks to construct a 420 car garage, 143 apartments, 32 room boutique hotel, and 9,000 square foot retail/restaurant space, pedestrian plaza and walking bridge at the Property, which is located within the City of Kingston’s Central Commercial (“C-2”) District and Mixed Use Overlay (“MUO”) District.

39. On June 3, 2019, after having received site plan and special use permit



applications for the Project, the Planning Board established itself as Lead Agency for the Project pursuant to SEQRA, meaning that it would perform the requisite environmental review of the Project in order to determine the Project's potential to adversely affect the environment and whether additional environmental reviews of the Project were necessary. If the Project has even the potential to have a significant adverse environmental impact, then the lead agency must adopt a "Positive Declaration" requiring that a Draft Environmental Impact Statement ("DEIS") be prepared. It is only when an action does not have the potential to have a significant adverse impact on the environment that a Negative Declaration may be adopted.

40. On March 18, 2019, the Planning Board correctly classified the Project as a Type I action under SEQRA. Type I actions are presumed likely to have a significant adverse environmental impact. 6 NYCRR 617.4(a)(1).

41. Upon information and belief, throughout its environmental review of the Project, the Planning Board has received dozens of oral and written comments regarding the various ways in which the Project will adversely impact the environment, including, *inter alia*, impacts to aesthetics and visual resources, archeological and historical resources, water resources, community character, and traffic.

42. OPRHP participated in the SEQRA process and provided comments to the Planning Board describing the ways in which the Project will impact historic resources, which are considered a part of the environment under SEQRA. 6 NYCRR 617.2(l).

43. On September 19, 2019, OPRHP wrote a letter indicating that it had reviewed the materials pursuant to the Historic Preservation Act and determined that the project "will have adverse effects on the Kingston Stockade Historic District" (the "Adverse Effects Determination"). A copy of the Adverse Effects Determination is attached as Exhibit E. OPRHP

voiced several objections related to design, scale, and destruction of historic features of the historic district, including:

- The design and visibility of the garage building as viewed from Wall Street, creating an adverse visual impact on the KSHD;
- The color scheme of the new construction replacing the Herzog warehouse building at North Front and Fair Street Extension, which would distract from the historic character and sense of place of the KSHD;
- The destruction of “the natural contour [that] clearly marks the northern boundary of the 1658 stockade”;
- Large-scale development beyond the boundaries of the district, thereby impacting its setting and sense of place;
- The elimination of a section of Fair Street Extension north of North Front Street, thereby altering the historic street pattern;
- The monolithic nature and character of the proposed development, in contrast to the scale and material variety of the historic district.

44. Over the next months, several minor changes to the Project were proposed, including reshaping the parking entrance, and changing the cladding on the 6-story residential portion of the structure to brick, and one substantive change, extending that structure one story higher (to seven floors) to accommodate additional residential units.

45. On December 16, 2019, the Planning Board adopted its Negative Declaration, finding that the Project does not have even the potential to have a significant adverse environmental impact.

46. Subsequent to the Planning Board’s adoption of the Negative Declaration, an

article 78 proceeding was filed by Creda LLC challenging the Negative Declaration as arbitrary and capricious and contrary to law. (Index No. EF2020-253) Petitioners have intervened in said proceeding.

47. On February 14, 2020, OPRHP wrote a second letter indicating that it had reconsidered the Project and determined that the Project “will have No Adverse Impact on the district”, the “No Adverse Impact Letter” and subject of this article 78 petition. Ex. A.

48. When asked to provide all materials and correspondence that led to OPRHP’s conclusion in the No Adverse Impact Letter, OPRHP only referred to a February 10, 2020 meeting with the applicant that “provided the necessary information.” A copy of OPRHP’s February 10, 2020 letter is attached as Exhibit F.

49. OPRHP further advised that it had reviewed two computer renderings of the proposed Project that were apparently provided to OPRHP after the meeting.

50. The Project had not undergone any substantive changes that would justify, warrant or support the reversal of the OPRHP’s Adverse Effects Determination.

51. The public was excluded from subsequent consultation process after the issuance of the Adverse Effects Determination.

52. OPRHP has provided no reasonable basis for its reversal of the Adverse Effects Determination.

**AS AND FOR A FIRST CAUSE OF ACTION**

**(EMPIRE STATE DEVELOPMENT AND OPRHP FAILED TO FULFILL THEIR MANDATORY DUTY TO CONSIDER ALTERNATIVES TO THE KINGSTONIAN PROJECT)**

53. Pursuant to Parks Recreation and Historic Preservation Law (“PRHPL”), whenever a state agency undertakes, funds or permits a project that could affect a historic register-listed site, it must consult with OPRHP and endeavor to avoid or mitigate the project’s impacts.

54. PRHPL § 14.01 declares “that the historical, archeological, architectural and cultural heritage of the state is among the most important environmental assets of the state and . . . should be preserved.”

55. PRHPL § 14.09 further recognizes that these assets are “threatened by the forces of change,” and it aims to ensure that the State’s own actions do not add to the damage of historic assets.

56. If upon consultation, OPRHP determines that a proposed project will have adverse impacts on a historic register-listed resource, that determination triggers a mandatory duty for the proposing agency to explore alternatives to the Project:

If it is determined that a project may have an adverse impact on such property, the commissioner [of OPRHP] shall so notify the agency in writing. Upon receipt of such notification from the commissioner, the agency shall immediately contact the commissioner for the purpose of exploring alternatives which would avoid or mitigate adverse impacts to such property consistent with the policy and provisions of this article and other provisions of law relating to historic preservation. PRHPL § 14.09(2).

57. The Adverse Effects Determination constituted a written notification of adverse impacts under PRHPL § 14.09(2) that should have triggered a review of alternatives. The Adverse Effects Determination concludes that “the proposed development will have adverse effects to the Kingston Stockade Historic District.” See Ex. E.

58. ESD and OPRHP are state agencies.

59. Upon receipt of the Adverse Effects Determination, ESD was bound by the PRHPL to contact OPRHP in order to explore alternatives that would avoid or mitigate adverse

impacts to the KSHD, including engaging the public.. 9 § NYCRR 428.8 and 428.9.

60. The formal process ensures that both the developer's and the public's rights are protected and that all parties can move forward in reliance on agency decisions.

61. The law requires that "[e]very agency . . . fully explore all feasible and prudent alternatives and give due consideration to feasible and prudent plans which avoid or mitigate adverse impacts on such property." PRHPL § 14.09(1).

62. ESD did not "fully explore all feasible and prudent alternatives" to the Kingstonian Project.

63. OPRHP did not "fully explore all feasible and prudent alternatives" to the Kingstonian Project.

64. OPRHP claims that it continued the consultation after issuing the Adverse Effects Determination during a closed-door meeting with the Respondents. Ex. F. Observing two computer renderings of the Project prepared by the Respondent Applicants and accepting an informational "kiosk" does not constitute a full exploration of all feasible and prudent alternatives.

65. The proposed changes to the Project include only minor, cosmetic alterations. The most significant changes to the design were a change to the texture and siding on the residential structure, and the addition of another story of height to that structure, as well as reshaping the parking garage door. The siding change and door shape do not alleviate any of the project's impacts in any significant way, and the extra story of height only adds to the impact of the project's uncharacteristic bulk.

66. ESD and OPRHP appear to have only considered one alternative, if the minor exterior changes can even be called an alternative, as no other design changes or alternatives are

discussed in the OPRHP response letter. Ex. F.

67. The consideration of one minor set of alterations does not meet the exacting standard set by PRHPL § 14.09 – that the parties look at “all feasible and prudent alternatives” to the Project that would mitigate its impacts. (emphasis added)

68. ESD and OPRHP therefore failed to perform their duties under the PRHPL. Its purported analysis pursuant to PRHPL § 14.09 should be nullified, and ESD and OPRHP should be ordered to complete a proper analysis of alternatives to the Project as required by law.

### **AS AND FOR A SECOND CAUSE OF ACTION**

#### **(OPRHP ACTED UNLAWFULLY WHEN IT ISSUED THE NO IMPACT LETTER)**

69. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

70. On September 19, 2019, after reviewing the Project and identifying potential impacts to historic resources, OPRHP issued the Adverse Effects Determination, identifying several areas of concern and requesting that the applicant “develop and evaluate modifications to this project that could avoid, minimize or mitigate the adverse effects.”

71. The Adverse Effects Determination identified several areas of concern, including:

- the design and visibility of the garage building as viewed from Wall Street, creating an adverse visual impact on the KSHD;
- The color scheme of the new construction replacing the Herzog warehouse building at North Front and Fair Street Extension, which would distract from the historic character and sense of place of the KSHD;

- The destruction of “the natural contour [that] clearly marks the northern boundary of the 1658 stockade;”
- Large-scale development beyond the boundaries of the district, thereby impacting its setting and sense of place;
- The elimination of a section of Fair Street Extension north of North Front Street, thereby altering the historic street pattern; and
- The monolithic nature and character of the proposed development, in contrast to the scale and material variety of the historic district.

72. No significant modifications were made to the Project to address its impacts on historic resources after OPRHP issued the Adverse Effects Determination.

73. Nonetheless, the Planning Board adopted a negative declaration under SEQRA.

74. Upon information and belief, after receiving pressure from the City of Kingston to rescind the Adverse Effects Determination in response to the article 78 challenging Planning Board’s negative declaration, OPRHP, without justification, reversed its Adverse Effects Determination and issued the No Adverse Impacts Letter. See, Ex. A.

75. The most significant change to the Project between issuance of the Adverse Effects Determination and No Adverse Impacts Letter appears to be a change to the cladding of the residential buildings on the north side of the development, facing away from the historic district. The revised renderings show the view from Schwenk Drive showing different cladding, in gray and brick, with fewer articulations and balconies. Aff. K. Culhane , Ex. G.

76. The revised renderings also show an additional story added to the building.

77. These revisions do not address “the most significant and unmitigable adverse impact on the KSHD, previously acknowledged by the NYSOPRHP: the obliteration of the

legible northern stockade boundary dating to 1658, a defining feature of the eponymous Stockade District.” Aff. K. Culhane ¶ 18.

78. The importance of the stockade was raised as an issue in the Adverse Effects Determination. The Determination states that “the historic boundary remains readily apparent and continues to characterize the district. The new construction would significantly alter the northern district boundary and would be clearly visible from within the historic district.” Adverse Effects Determination, Ex. E.

79. The “revised” Project still involves the obliteration of the historic stockade, yet the No Adverse Impact Letter fails to acknowledge the continued impact to the boundary or the stockade or describe how the “revised” Project mitigates or lessens the impact.

80. Likewise, the elimination of the historic Fair Street extension was raised as an adverse impact in the Adverse Effects Determination.

81. The Adverse Effects Determination states that:

by the mid-19<sup>th</sup> century, when the commercial street front was developed, the section of Fair Street extending north from North Front Street was established to access railroad facilities and the lumber yards. This historic street, which allows pedestrian and vehicular access to the district, would be virtually eliminated as part of the proposed development. Ex. E.

82. The “revised” Project still involves the closure and elimination of the historic Fair Street Extension, yet the No Adverse Impact Letter fails to acknowledge the continued impact from the closure or describe how the “revised” Project mitigates or lessens the impact, other than the token inclusion of an informational kiosk.

83. The “monolithic” structure was identified as an adverse impact in the Adverse



Effects Determination and significant revisions were requested. The Determination states:

The historic commercial and residential buildings of the Kingston Stockade are characterized by a variety of materials, styles and colors. The new construction is monolithic compared with the surrounding district. Though the currently proposed design attempts to reference the historic setting and surrounding architecture, we believe that a much greater effort is warranted for construction of this scale. Ex. E.

84. The “revised” Project still involves a monolithic structure that has been increased by the addition of another floor. The No Adverse Impact Letter barely addresses this issue, stating that the “addition of brick and the “variety of colors and siding materials” helps to break up the monolith. In fact, the colors appear to be unchanged from prior iterations of the Project. See Aff K. Culhane ¶ 26.

85. The garage entrance was only slightly revised to include an additional door and omit the beige lintel over the entrance.

86. There are no substantive changes to the Project that would obviate the multiple impacts OPRHP identified in the Adverse Effects Determination.

87. Once OPRHP issued the Adverse Effects Determination, it was required to follow a consultation process for exploring alternatives and mitigation measures, including engaging the public. 9 § NYCRR 428.8 and 428.9.

88. The formal process ensures that both the developer’s and the public’s rights are protected and that all parties can move forward in reliance on agency decisions.

89. OPRHP reversed the Adverse Effects Determination after a private closed-door

meeting with the applicant and city officials.

90. OPRHP did not follow its own guidelines for consultation and was without authority to issue the No Adverse Impacts Letter.

91. OPRHP's issuance of the No Adverse Impacts Letter was ultra vires and must be annulled.

**AS AND FOR A THIRD CAUSE OF ACTION**

**(OPRHP'S REVERSAL OF THE ADVERSE EFFECTS LETTER WAS ARBITRARY AND CAPRICIOUS)**

92. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

93. OPRHP acted arbitrarily and capriciously when it reversed its Adverse Effects Determination and issued the No Adverse Impact Letter.

94. There are no substantive changes to the Project that would obviate the multiple impacts OPRHP identified in the Adverse Effects Determination. See Ex. F and Ex. G.

95. A determination of an administrative agency is final so that all parties can move forward in reliance on agency decisions and such determination may not be amended without following agency procedures.

96. Here, OPRHP's decision to overturn its Adverse Effects Determination without any substantial changes to the Project was arbitrary and capricious and the No Adverse Impacts Letter must be annulled.

**AS AND FOR A FOURTH CAUSE OF ACTION**

**(OPRHP AND ESD FAILED TO COMPLY WITH THE OPEN MEETINGS LAW)**

97. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

98. The Open Meetings Law, as set forth in Article 7 of the Public Officers Law, states that

[i]t is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of the state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of policy

99. The Open Meetings Law requires that meetings of public bodies be open to the public.

100. OPRHP and ESD were required to engage the public in its consultation process after the Adverse Effects Determination was issued. 9 NYCRR 428.9

101. Instead, the OPRHP conducted a closed-door meeting with the Project developers, excluding the public from its decision-making process.

102. OPRHP reversed the Adverse Effects Letter after holding the closed-door meeting. See Exhibit F, wherein OPRHP advises that “ongoing consultation in the form a meeting in Kingston” took place.

103. OPRHP and ESD violated the Open Meetings Law when it excluded the public

from its decision-making process and the No Adverse Impacts Letter resulting from the illegal meeting must be annulled.

**WHEREFORE**, Petitioners respectfully request that this Court enter a Judgment and Order granting the Verified Petition in its entirety and awarding judgment to Petitioners as follows:

- (a) Ordering ESD and OPRHP to meaningfully review alternatives to the Project; and
- (b) Annuling and vacating the No Adverse Impacts Letter issued for the Project; and
- (c) Awarding Petitioners attorneys fees; and
- (d) Awarding Petitioners such other and further relief as the Court deems just and proper, with the costs and disbursements of this proceeding.

Dated: August 21, 2020  
Rhinebeck, New York

RODENHAUSEN CHALE & POLIDORO LLP

LEWIS & GREER P.C.

By: 

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**VERIFICATION**

STATE OF NEW YORK     )  
  ) Ss.:  
COUNTY OF DUTCHESS    )

Julio Hernandez, being duly sworn, deposes and says as follows:

1. I am an authorized agent of 61 CROWN STREET, LLC, 311 WALL STREET, LLC, 317 WALL STREET, LLC, 323 WALL STREET OWNERS, LLC, 63 NORTH FRONT STREET, LLC, 314 WALL STREET, LLC, and 328 WALL STREET, LLC, the Petitioners in this matter.

2. I have read the foregoing Verified Petition and the same is true to my own knowledge, except those matters stated to be upon information and belief, and as to those matters, I believe them to be true. The source of my belief is my review of the pertinent documents and public information.

  
\_\_\_\_\_  
Julio Hernandez

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF DUTCHESS    )

On the 21st day of August in the year 2020, before me by audio-video conference, the undersigned, personally appeared Julio C. Hernandez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Pursuant to NY Executive Order [Andrew M. Cuomo] No. 202.7 [9 NYCRR 8.202.7, effective March 19 - April 18, 2020, and extended to September 4, 2020, I certify that this notarial act was performed utilizing audio-video technology, which met the following conditions: the video conference allowed for direct interaction between the individual and me; the individual whose name is subscribed to the within instrument presented valid photo ID to me during the video conference if not personally known to me, affirmatively represented that he/she is physically situated in the County of Bronx, State of New

York, and transmitted by fax or electronic means a legible copy of the signed document directly to me on the same date it was signed; and, whereas I may notarize the transmitted copy of the document and transmit the same back to the individual(s), if I repeat the notarization of the original signed document as of the date of execution then I shall have received such original signed document together with the electronically notarized copy within thirty days after the date of execution.

  
\_\_\_\_\_  
Notary Public State of New York

**VICTORIA L. POLIDORO**  
Notary Public, State of New York  
Registration No. 02PO6232211  
Qualified in Dutchess County  
Commission Expires December 6, 2018 