SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: _____ **PART** _____

Justice

Index Number : 100685/2013
FAMILIES UNITED
vs
MICHAEL BLOOMBERG
Sequence Number : 002
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is

decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____
FOR THE FOLLOWING REASON(S): _____

Dated: 10/4/13

PK , J.S.C.

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
   ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

FAMILIES UNITED FOR RACIAL AND ECONOMIC EQUALITY, LOCAL 46 METALLIC LATHERS and REINFORCING IRONWORKERS, IRONWORKERS LOCAL 361, IRONWORKERS LOCAL 580, ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638, CEMENT LEAGUE, INC. and NEW YORK STATE ASSEMBLY MEMBER WALTER T. MOSLEY,

Petitioners,

For a Judgment Pursuant to Article 78 and § 7001 of the Civil Practice Law & Rules

-against-

MICHAEL BLOOMBERG, as Mayor of the City of New York, ROBERT K. STEEL, as Deputy Mayor for Economic Development and Rebuilding, NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, NEW YORK CITY HOUSING DEVELOPMENT CORPORATION, ACADIA REALTY TRUST, ALBEE DEVELOPMENT LLC, WASHINGTON SQUARE PARTNERS, INC. and BFC PARTNERS DEVELOPMENT LLC,

Respondents.

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Index No. 100685/13

DECISION/ORDER

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits.....	
Cross-Motion and Affidavits Annexed.....	2
Answering Affidavits to Cross-Motion.....	3

Replying Affidavits..... 4
Exhibits..... 5

Petitioners Families United for Racial and Economic Equality ("Families United"), Local 46, Metallic Lathers and Reinforcing Ironworkers ("Metallic Lathers"), Ironworkers Local 361 ("Local 361"), Ironworkers Local 580 ("Local 580"), Enterprise Association Steamfitters Local 638 ("Enterprise"), Cement League, Inc. (the "Cement League") and New York State Assembly Member Walter T. Mosley ("Mr. Mosley") bring the instant proceeding (1) pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to challenge respondents Michael Bloomberg, as Mayor of the City of New York ("Mayor Bloomberg"), Robert K. Steel, as Deputy Mayor for Economic Development and Rebuilding ("Mr. Steel"), New York City Department of Housing Preservation and Development ("HPD") and New York City Economic Development Corporation's ("EDC") determinations (a) refusing to issue a Supplemental Environmental Impact Statement ("SEIS") addressing the cumulative impact of the development in Downtown Brooklyn since 2004 on the City Point Project's (the "Project") impact on the environment; and (b) refusing to issue an SEIS addressing the impact on the communities throughout Brooklyn of the payment of very low wages and no benefits for construction work on the Project; and (2) pursuant to CPLR § 7001 seeking to enjoin respondents Mayor Bloomberg, Mr. Steel, HPD, EDC, New York City Housing Development Corporation ("HDC"), Acadia Realty Trust ("Acadia"), Albee Development LLC ("Albee"), Washington Square Partners, Inc. ("Washington Square") and BFC Partners Development LLC ("BFC") from taking any further actions in connection with financing or constructing the Project unless and until certain obligations are satisfied, including holding a new public hearing on the Project. Respondents Acadia, Albee, Washington Square and BFC (collectively referred to as the "developer

respondents") move for an Order pursuant to CPLR §§ 3211(a)(2), (3) and (5) and 7804(f) dismissing the petition on the grounds that the claims contained in the petition are time-barred, unripe and that petitioners lack standing to bring the petition. Respondents Mayor Bloomberg, Mr. Steel, HPD, EDC and HDC separately cross-move for an Order dismissing the petition on the same grounds. The motions are consolidated for disposition. For the reasons set forth below, the petition is denied and the motions to dismiss the petition are granted.

The relevant facts are as follows. Families United is a not-for-profit corporation composed of residents of Downtown Brooklyn and the surrounding neighborhoods who support equitable community development to ensure equal access to affordable housing, good jobs and support services for low income and working class families. Metallic Lathers, Local 361, Local 580 and Enterprise are labor organizations with members who live within certain neighborhoods near the Project in Downtown Brooklyn. The Cement League is a not-for-profit corporation constituting an association of employers in the concrete construction industry that employ union craftsmen and craftswomen in New York City performing work similar to the work required for the Project. Mr. Mosley is the New York State Assembly Member for the 57th District which consists of the neighborhoods including Clinton Hill, Fort Greene, Prospect Heights, parts of Crown Heights and Bedford Stuyvesant.

Acadia is an equity real estate investment trust which holds title to the Project through Acadia Realty Acquisition III LLC. Albee owns the leasehold in the Project now being developed by the other developer respondents. Washington Square is an equity owner of the Project in partnership with Acadia. BFC is the developer of Tower I of the Project. Mayor Bloomberg is the Mayor of the City of New York and Mr. Steel is the Deputy Mayor of the Office for Economic Development and Rebuilding which is the agency charged with conducting

environmental review of the Project under the New York State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review ("CEQR"). HPD is an agency of the City of New York charged with the responsibility of ensuring compliance with SEQRA for real estate projects for which it provides subsidies and which has provided financial support for the Project and is considering providing additional financial assistance for the Project. Finally, EDC and HDC are agencies of the City of New York which are authorized to make available publicly subsidized bonds for lawful real estate projects built within the City of New York and which have provided financial support for the Project and are considering providing additional financial assistance for the Project.

On April 30, 2004, a Final Environmental Impact Statement (the "2004 FEIS") was issued pursuant to SEQRA and CEQR by the Office of the Deputy Mayor for Economic Development and Rebuilding regarding the Project. The 2004 FEIS was supported by two days of public hearings held on March 24, 2004 and April 7, 2004 and revised the Draft EIS ("DEIS"), issued on November 28, 2003, to account for a potential mixed use arena development in the Atlantic Terminal Area of Brooklyn that could affect the conditions assessed in the DEIS. Petitioner Ms. James and Joy Chatel, a member of Families United, participated in the hearings and submitted oral and written comments on the DEIS. The 2004 FEIS identified a probable impact in six different areas of the 13 separate and distinct public approvals and changes to existing zoning and density rules required by the proposed development, which included Historic Resources, Hazardous Materials, Traffic, Transit and Pedestrians, Air Quality and Noise and forecast some potential negative impacts in each of those areas under the Downtown Brooklyn Development Plan and suggested possible steps to mitigate the expected impacts on the environment. The City Council adopted the Downtown Brooklyn Rezoning in June 2004 and no

legal challenge to the 2004 FEIS was brought.

EDC entered into a long-term ground lease agreement with Albee in 2007 to develop the Project on New York City-owned land at the intersection of DeKalb and Flatbush Avenues in Brooklyn (the "2007 Lease"). The development for the Project set forth in the 2007 Lease differed from that contemplated in the 2004 FEIS in part by its inclusion of 1,064 residential units and a reduction in commercial office space of 1.1 million square feet. The 2007 Lease also contained a provision regarding the wages that must be paid to the construction workers who labor to construct the Project, namely, that "all persons employed by Tenant with respect to Construction Work, shall be paid, without subsequent deduction or rebate unless authorized by law not less than the minimum hourly rate required by law."

The 2007 Lease was the subject of a public hearing held by Mayor Bloomberg's Office of Contract Services ("OCS") on May 25, 2007. Members of Families United participated in the public hearing and submitted oral and written comments critical of the terms of the 2007 Lease. However, neither Families United nor the other petitioners brought a legal challenge to the award of the 2007 Lease to Albee. Also in connection with the proposed Lease, in or around July 2007, New York City issued a Modification Technical Memorandum (the "2007 MTM") to the 2004 FEIS pursuant to SEQRA in order "to determine whether the changes to the previously approved Downtown Brooklyn Development project, which was the subject of the [2004 FEIS], or changes in background conditions from 2004 to 2007 would alter the conclusions presented in the 2004 FEIS and would result in any significant adverse environmental impacts that were not previously identified." The 2007 MTM analyzed, among other things, whether changes to the Project would result in socioeconomic or cumulative impacts that were not identified in the 2004 FEIS. Specifically, the 2007 MTM found that the revised plan for the Project would result in the

displacement of businesses which employed 332 workers in 2007 but that such displacement did not meet the criteria for significant adverse displacement as outlined in the 2001 CEQR Technical Manual and represented less than 1 percent of the 2002 total Study Area employment as reported in the 2004 FEIS. Thus, the 2007 MTM concluded that no new significant environmental impacts would be created and that an SEIS was not warranted. No legal challenge was brought regarding such determination.

In June 2009, Albee applied to the New York City Industrial Development Agency for Recovery Zone Facility Bonds to help fund Phase I of the Project. On September 10, 2009, the New York City Capital Resources Corporation ("CRC") held a public hearing on the issue of whether to approve $20 million in bonds for the Project. Members of Families United submitted written testimony opposing the issuance of the bonds, which were ultimately issued by the City. Also in 2009, the City publicly proposed modifications to the 2007 Lease that would permit the Project to be developed in phases rather than as a single-phase development. Members of Families United participated in the public hearing held on the proposed lease modification on December 22, 2009 and again submitted comments critical of the Project, including comments that the Project would not provide enough affordable housing and was not providing appropriate relocation support to local residents displaced by the Project. HPD prepared responses to Families United's comments, which were submitted to OCS along with a recommendation that the modified lease be approved. The modified ground lease was executed in 2010 (the "2010 Lease") and no legal challenge to the City's action was brought by petitioners.

The first phase of the Project ("Phase I") consisted of a 50,000 square foot retail building and was completed in early 2012. The second phase of the Project ("Phase II") began in July 2012 and will include approximately 600,000 square feet of additional retail space and two

residential towers to be constructed above the space. The first residential tower ("Tower 1"), which is being developed by BFC and financed by HDC, will contain approximately 250 units, half of which will allegedly be earmarked for affordable housing. The second residential tower ("Tower 2"), which is being developed by The Brodsky Organization and Michael Field, will contain approximately 440 market rate units. Phase III, which has not yet begun, will consist of an approximately 560,000 square foot tower with retail, residential and office space.

On October 5, 2012, counsel for petitioners wrote to Acadia advising it that they had reason to believe that on Phase I of the Project, the construction workers were paid an hourly wage of $15 for hours worked with no benefits at all and requested information on the Project concerning the labor conditions, safety record and extent of public financing. On October 16, 2012, Acadia responded but petitioners allege it did not provide any of the requested information regarding the wages, paid time off or employment benefit information and advised that "[a]lthough many of your statements are untrue, we do not believe that a letter is the appropriate forum in which to educate you as to the actual facts regarding the City Point Project."

On March 4, 2013, some of the petitioners sent a letter to the City respondents demanding that they conduct an SEIS to analyze the cumulative impact of the Project on the surrounding neighborhoods and to take into account the failure of the 2004 FEIS and the 2007 MTM to analyze the impact of the low wages to be paid on the Project on the socioeconomic conditions of the communities affected by the Project. These petitioners asserted that the outdated 2004 FEIS, based on hearings held nine years ago, was not a realistic assessment of the burdens being imposed on the Downtown Brooklyn communities given the extraordinary development that has occurred in Downtown Brooklyn in the last nine years. These petitioners further allege that Mr. Steel and the City respondents have ignored the request. Petitioners then commenced the instant

Article 78 proceeding.

This court finds that petitioners do not have standing to bring their claims under SEQRA. Initially, petitioners do not have standing to challenge respondents' alleged failure to prepare an SEIS reviewing the impact of the low wages being paid to the construction workers on the Project on the Downtown Brooklyn communities. In order to establish standing to bring a claim under SEQRA, an individual petitioner must show (1) "that the in-fact injury of which it complains...falls within the 'zone of interests,' or concerns, sought to be promoted or protected by the statutory provision under which the agency has acted"; and (2) "that it would suffer direct harm, injury that is in some way different from that of the public at large." *See Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 773-774 (1991). It is well-settled that economic injury alone will not provide standing to challenge environmental review under SEQRA as only certain socioeconomic impacts have been identified as within its zone of interests. *See Mobile Oil Corp. v. Syracuse Indus. Dev. Agency*, 76 N.Y.2d 428 (1990). In the present case, petitioners have failed to establish that the injury of which they complain falls within the zone of interest of SEQRA as the injuries are purely economic in nature. Notably, petitioners cite no precedent supporting the notion that low wages for construction workers are a recognized environmental impact within SEQRA's purview. Petitioners' assertion that the Project's failure to pay its workers prevailing wages confers standing because it affects existing patterns of population concentration in the community and neighborhood character is without merit as petitioners provide no basis for such assertion.

Petitioners also do not have standing to challenge respondents' failure to prepare an SEIS reviewing the socioeconomic impact of the Project on the Downtown Brooklyn communities since the 2004 FEIS was prepared due to the indirect nature of such harms. The burden of

establishing standing to raise a claim is on the party seeking review. *See Soc'y of Plastics Indus., Inc.*, 77 N.Y.2d 761. Where the issue of standing is disputed, "perfunctory allegations of harm" are insufficient; petitioners "must prove that their injury is real and different from the injury most members of the public face." *Tuxedo Land Trust, Inc. v. Town of Tuxedo*, 34 Misc.3d 1235(A) (Sup. Ct. Orange Cty. 2012), citing *Save the Pine Bush, Inc. v. Common Council of City of Albany*, 13 N.Y.3d 297, 306 (2009). SEQRA does not have a general citizen suit provision, thereby narrowing the class of persons who may bring SEQRA-based challenges to agency action. *Id.* at 771. "Had the Legislature intended that every person or every citizen have the right to sue to compel SEQRA compliance–thus assuring above all else that the EIS process would be scrupulously followed, irrespective of the source of the challenge–it could easily have so provided; it did not." *Soc'y of Plastics*, 77 N.Y.2d at 770.

An allegation of close proximity to a project "may give rise to an inference of injury enabling a nearby party to challenge an administrative determination without proof of actual injury" because of the unique types of environmental or land use injuries that those living near a project may face. *Comm. to Pres. Brighton Beach & Manhattan Beach, Inc. v. Planning Comm'n of City of New York*, 259 A.D.2d 26, 32-33 (1st Dept 1999); *see also Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y.2d 668 (1996). However, "[t]he status of neighbor does not...automatically provide the entitlement, or admission ticket, to judicial review in every instance" because a petitioner's proximity, even if in the neighborhood, still may be far enough away that the effect on the petitioner is no different than that suffered by the public generally. *Sun-Brite Car Wash, Inc. v. Bd. of Zoning & Appeals of Town of North Hempstead*, 69 N.Y.2d 406, 414 (1987). There must also be something about living in the immediate proximity of the Project that exacerbates the direct impact of the Project of which the party complains. *See*

Ziemba v. City of Troy, 37 A.D.3d 68 (3d Dept 2006).

In the present case, petitioners' assertion that they have standing based on the fact that certain members of Families United live in near the Project is insufficient to establish standing. The only allegation made to support such assertion is that increased development in the area around the Project since both the 2004 FEIS and the 2007 MTM were prepared will "place stress on the community's transportation, public protection, water and sewer services and will change the neighborhood character by increasing the availability of luxury housing..." and the petition lists a few members of Families United who live close to or near the Project. However, such an allegation describes the effect of the Project on the community as a whole and is insufficient to establish standing as petitioners have not established that any harm they will experience will be more direct than the harm experienced by others located around the borough. Therefore, petitioners have failed to allege a specific injury based on proximity and have failed to establish standing.

That portion of the petition which seeks to challenge respondents' (a) refusal to issue an SEIS addressing the cumulative impact of the development in Downtown Brooklyn since 2004; and (b) refusal to issue an SEIS addressing the impact on the communities throughout Brooklyn of the payment of very low wages and no benefits for construction work on the Project must also be denied on the ground that it is time-barred. There is a four month statute of limitations to bring an Article 78 proceeding to challenge an administrative determination that is measured from the date the determination becomes final and binding upon the petitioner. *See* NY CPLR § 217. Agency action is "final and binding upon a petitioner" when the agency has reached a definitive position on the issue that inflicts actual, concrete injury and when the injury inflicted may not be prevented or significantly ameliorated by further administrative action or steps

available to the complaining party. *Best Payphones, Inc. v. Department of Information, Technology and Communications of City of New York*, 5 N.Y.3d 30 (2005). Further, the statute of limitations begins to run "when the agency adopts plans committing itself to a course of action which may affect the environment." *Metro. Museum Historic Dist. Coal. v. De Montebello*, 20 A.D.3d 28, 35 (1st Dept 2005).

In this case, all relevant determinations were made more than four months before this action was commenced. The City respondents made their final determination approving plans for the Project in the 2004 FEIS issued on April 30, 2004. Therefore, petitioners had four months from then to challenge the sufficiency of the 2004 FEIS but failed to do so. Additionally, the 2007 MTM, another final determination, was issued in July 2007. Thus, petitioners had four months from then to challenge the sufficiency of the report but again failed to do so. Petitioners have been actively involved in the various public hearings and review processes for the Project and for the Downtown Brooklyn Rezoning, beginning at least as early as 2003, when the DEIS was available for comment. Additionally, petitioners participated in public hearings involving the Project in 2007 and 2009, specifically regarding the 2007 Lease and the 2009 proposed modification to the 2007 Lease. However, petitioners did not commence legal action to challenge the sufficiency of the environmental review for any of these actions.

Petitioners' assertion that their request that respondents prepare an SEIS started the statute of limitations and thus, the petition is timely as this proceeding was brought within four months of that request is without merit. The First Department has specifically held that a request to prepare such a supplemental review may not be used to circumvent the four-month statute of limitations. *See Metro. Museum Historic Dist. Coal.*, 20 A.D.3d at 28. In that case, a group of local residents sued the Metropolitan Museum of Art and various City agencies midway through

a construction project to expand the Museum. The Article 78 petition was filed three years after the New York City Department of Parks had approved the plan for the museum expansion but petitioners argued that the statute of limitations should run from the date of a letter they sent to respondents demanding that SEQRA review be undertaken regarding the impact of the museum expansion and not from the date that project approvals were issued. In denying petitioners' appeal, the First Department stated,

> We reject petitioners' attempt to circumvent the four-month statutory period by characterizing this proceeding as one in the nature of mandamus, as the statute of limitations begins to run from the time of the agency's determination, and not from petitioners' demand that the Parks Department conduct a SEQRA review of the project.

Id. at 36. Thus, the ability to challenge past agency actions on SEQRA grounds cannot be resuscitated by requesting in writing that an SEIS be prepared as the time to challenge alleged deficiencies in the environmental review of an agency action is at the time the agency takes action. *See Sierra Club, Inc. v. Power Auth. of State of N.Y.*, 203 A.D.2d 15 (1st Dept 1994)(petitioners' request for an agency's declaratory ruling on the applicability of SEQRA was merely a subterfuge to revive time-barred claims as the challenge was actually to the prior administrative action and was thus beyond the statute of limitations); *see also Bonar v. Shaffer*, 140 A.D.2d 153 (1st Dept 1988)(Department of State's refusal to provide an advisory opinion concerning the validity of its own regulations was not improper "particularly since it appears that petitioner's renewal of communications with the Department of State after the passage of more than a year following approval of the conditional license may have been a subterfuge to revive the limitations period for the purpose of maintaining an article 78 proceeding").

Petitioners' assertion that the petition is timely because the request for an SEIS was made based on the requirement that respondents review the environmental impact of the Project

pursuant to SEQRA as new information becomes known is also without merit. An agency performing pursuant to SEQRA has a "continuing duty to evaluate new information relevant to the environmental impact of its actions...so that important new information will not be ignored by the decision maker." *Matter of Glen Head-Glenwood Landing Civil Council, Inc. v. Town of Oyster Bay*, 88 A.D.2d 484, 494 (2d Dept 1982); *see also* 6 NYCRR § 617.9(a)(7)(i)(b). However, in this case, petitioners have not established what, if any, new information exists since the 2007 MTM was prepared which would require respondents to prepare an SEIS. The assertion that the payment of non-prevailing wages to construction workers on the Project was "new information" is without basis as the wage requirement for the Project was made final in 2007 and petitioners had the opportunity to challenge it at that time. However, even if that information could be considered "new," any wage claim under SEQRA is foreclosed as any injury based on such claim is purely economic. Additionally, even if petitioners were not aware of the wage issue in 2007, they became aware of such issue as early as October 2012 when they claim to have received information about the wages being paid to the construction workers on the Project. However, petitioners waited over five months to request that the City respondents prepare an SEIS reviewing the impact of these wages. Therefore, such claims are time-barred.

Additionally, that portion of petitioners' petition which seeks to enjoin respondents from taking any further actions in connection with financing or constructing the Project unless and until certain obligations are satisfied, including holding a new public hearing on the Project is denied on that ground that such claims are unripe for review. It is well-settled that an Article 78 proceeding may only be brought to challenge a final agency determination. CPLR § 7801. A court lacks subject matter jurisdiction to issue an opinion in the absence of a genuine legal dispute and thus does not have discretion as to whether to entertain an unripe claim. *See*

Combustion Eng'g, Inc. v. Travelers Indem. Co., 75 A.D.2d 777 (1st Dept 1980). In order for an agency action to be deemed ripe for review, two criteria must be satisfied: (1) "the action must 'impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process...[meaning] a pragmatic evaluation [must be made] of whether the" decision maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury; and (2) there must be a finding that the apparent harm inflicted by the action "may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party." *Gordon v. Rush*, 100 N.Y.2d 236, 242 (2003).

In the instant action, petitioners' request for an injunction preventing respondents from taking any further action in connection with future financing of the Project, including issuing tax exempt bonds, unless and until respondents have satisfied their alleged obligations under SEQRA and CEQR is denied as unripe. Petitioners base their request for such relief on an anticipated failure of the City respondents to conduct reviews under SEQRA and CEQR prior to providing any further financial support for the Project. However, the request is premature as there is no final agency determination for this court to review. *See Town of Riverhead v. Cent. Pine Barrens Joint Planning & Policy Comm'n*, 71 A.D.3d 679 (2d Dept 2010)(claim is not ripe where planning board had not yet made a determination as to approval of a development project). As respondents have affirmed they have not yet made a determination approving the financing or subsidies anticipated in the petition, there has been no actual, concrete injury. Petitioners have also failed to demonstrate that any harm associated with such prospective determinations could not be prevented or significantly ameliorated by further administrative action or by steps available to petitioners such as future opportunities to comment and for the City respondents to consider their comments. *See Hells' Kitchen Neighborhood Ass'n v. N.Y.C. Dep't of City*

Planning, 6 Misc.3d 1031(a) (Sup. Ct. N.Y. Cty. 2004)(claim of SEQRA injury unripe where SEQRA process had not concluded and petitioners still had future opportunities to comment and for the agency to consider their comments).

Accordingly, respondents' motions to dismiss the petition are granted and the petition is denied. The petition is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 10/4/13

Enter: _____
J.S.C.