

## **Exhibit B: Summary of Comments and Responses**

**September 2009**

### Introduction

This document summarizes and responds to comments received by the Empire State Development Corporation (“ESDC”) with respect to the Modified General Project Plan (“MGPP”) for the Atlantic Yards Arena and Redevelopment Project (“the Project”).

### Project History

In November 2006, the ESDC, in cooperation with the Metropolitan Transportation Authority (“MTA”) and the City of New York (the “City”), prepared the Final Environmental Impact Statement (“FEIS”) for the Project. On December 8, 2006, ESDC adopted its State Environmental Quality Review Act (“SEQRA”) findings, pursuant to New York Environmental Conservation Law Article 8, and its implementing regulations adopted by the New York State Department of Environmental Conservation (“NYSDEC”) and codified at Title 6 of the New York Code of Rules and Regulations (N.Y.C.R.R.) Part 617 (the “SEQRA Regulations”). The Project is being implemented pursuant to a modified General Project Plan (the “GPP”) affirmed on December 8, 2006 by the New York State Urban Development Corporation, a public benefit corporation of New York State, doing business as ESDC.

On June 23, 2009, ESDC approved a resolution adopting certain modifications to the GPP as set forth in the MGPP. On that same day, ESDC presented to the Directors a Technical Memorandum that described the proposed modifications, changes related to design development, changes to the Project’s schedule, and changes in background conditions and analysis methodologies under the *CEQR Technical Manual* and assessed whether the Project as currently envisioned would result in any new or different significant adverse environmental impacts not previously identified in the FEIS.

As outlined in the Technical Memorandum, the Project remains substantially the same as the Project that was approved in 2006:

- The Project Site footprint has not changed.
- The total number of buildings would remain unchanged. Consistent with the Master Plan for the Project Site (the “Master Plan”) developed by Frank Gehry and landscape architect Laurie Olin, there would still be 16 buildings plus the Arena.

- The Project will be developed in conformance with the Design Guidelines, which remain unchanged. The Design Guidelines establish a detailed framework for the development of the Project so that it will be consistent with the Master Plan and address a variety of urban design goals such as: building organization, building articulation, cohesive network of open space, and streetscape.
- Neither the proposed uses for the Project's buildings nor their overall densities would change. In addition, they would all still need to conform to the Design Guidelines.
- The provision of an Urban Room on the Arena block would not change.
- The total number of affordable housing units to be created by the Project under the full build-out would remain the same at 2,250 units, and the number of units anticipated to be provided in Phase I is unchanged. The income eligibility of the affordable housing also has not changed; the income bands would continue to be based on the Mixed-Income Program administered by the New York City Housing Development Corporation.
- No changes are proposed to the amount or type of publicly-accessible open space. There would continue to be a total of 8 acres of publicly-accessible open space upon completion of the Project. Moreover, the commitment by the Project to construct the open space incrementally, as each adjacent building is completed would remain unchanged.
- The total number of parking spaces at 3,670 upon full build-out would remain the same as originally approved.

The MGPP would allow for the acquisition of property in two or more phases, rather than one phase as detailed in the FEIS and GPP, and would include a commitment by Forest City Ratner Companies ("FCRC") and affiliates (collectively, the "Project Sponsor") to assess project-generated day care enrollment and capacity as the Project progresses. Certain other changes to the GPP would affect the business terms, but would not affect environmental conditions.

In addition, certain design changes have been proposed, which would affect the Arena block and, to a lesser extent, Block 1129. These changes would not materially affect either the Project's design or the GPP. None of the proposed uses of the Project buildings would change; in addition, they would all still need to conform with the Design Guidelines detailed in the GPP and the principal exterior materials of the building would remain the same. The program, design, configuration, and uses of the proposed buildings on other blocks would not change.

As detailed in the Technical Memorandum, the proposed design changes include:

- The height of Building 1 would be reduced so that this structure would match the height of the nearby Williamsburgh Savings Bank building.
- The design of the Arena façade would be altered from the description in the FEIS. In addition, the footprint of the Arena would be slightly smaller compared to the description in the FEIS, and have a more efficient below-grade configuration.
- The Arena's loading dock would be redesigned to stay within the Arena block footprint, and the LIRR drill track would be relocated partially off the Arena block. Accordingly, the 6th Avenue Bridge would not need to be demolished, as anticipated in the FEIS.

- Up to 100 spaces of parking that would have been provided under Building 2 of the Arena block would be relocated to Block 1129. As noted above, the total number of parking spaces would remain the same as originally approved at 3,670 upon full build-out.
- The Arena roof would not incorporate stormwater detention tanks, a green roof, or rooftop private open space. Instead, the detention tanks would be located in the base of the Arena and enlarged to accommodate the additional stormwater load associated with the elimination of the green roof.
- Heating systems for the Arena block would be decentralized, with the Arena and each of the surrounding buildings on the Arena block having individual HVAC and microturbine/distributed power systems. The Arena boiler exhaust would be vented through a single stack located on the roof of Building 2.
- The proposed design for the Vanderbilt Rail Yard would have seven tracks, compared to the nine described in the FEIS, and the drill track would be moved partially off of the Arena block. While the capacity of the yard would decrease from 76 rail cars to 56 rail cars, the MTA has determined that the new yard would meet its future needs.
- The VIP entry to the Arena would be relocated to Atlantic Avenue, although an entrance from Dean Street would remain.
- The north crosswalk along Carlton Avenue at Dean Street and the north crosswalk along 6th Avenue at Dean Street would each be widened by one foot, compared to the design analyzed in the FEIS.
- No lay-by lane would be created along northbound Flatbush Avenue between 5th Avenue and Dean Street. The lay-by lanes on the other three sides of the Arena block would not change.
- The Urban Room subway entrance may be reconfigured from what was analyzed in the FEIS, creating a greater vertical circulation capacity than the design analyzed in the FEIS.

In addition, FCRC has proposed to make a slight change to the footprint and orientation of the Arena, and to reconfigure the loading area for the Arena. While the number of loading berths would decrease, the amount of space for the loading area would be somewhat larger and would accommodate the same number of trucks. The functionality of the loading operations would remain the same.

### Public Comments

The public review of the MGPP with respect to the Project started on June 23, 2009 with ESDC's adoption of the MGPP. Oral and written comments were received during the public hearings held by ESDC with respect to the Project on July 29 and July 30, 2009. Written comments were accepted from adoption of the MGPP through the public comment period, which ended August 31, 2009.

Section B contains a summary of the comments on the MGPP and the accompanying Technical Memorandum and a response to each. These summaries convey the substance of the comments made but do not quote the comments verbatim. Comments are organized by subject matter and are grouped into three primary categories: comments related to the Modified General Project Plan; comments related to the substance of the Technical Memorandum; and comments related to the disposition of and lease terms for the Project Site property.

A number of commenters submitted statements of support for the Project. Their comments are not summarized or responded to, as they do not relate directly to the MGPP, Technical Memorandum, design changes, or disposition of and lease terms for the Project Site property. In general, individuals and organizations who expressed support for the Project indicated that they were supportive because the Project would: introduce new affordable housing, including housing for seniors; create new jobs; bring a professional sports team to Brooklyn; eliminate blight; serve as a model of sustainable development; result in payments to the MTA; and include a Community Benefits Agreement that would ensure certain benefits to the local community.

In addition, a number of commenters expressed general opposition to the Project or raised issues related to the Project as originally approved. Like the comments expressing support for the Project, these comments have not been summarized or responded to in this document, as they do not specifically relate to the MGPP, project changes described above or the Technical Memorandum. Issues raised in general opposition to the Project or in reference to the previously approved Project plan include concerns that: the density of the proposed development is too great; the Project's architecture, building heights, and density would be out of context with surrounding neighborhoods; the Project would increase asthma from air pollution; the Project would not achieve the borough's goals for economic development; Project Site jobs would be low-wage; the proportion of affordable housing should be higher; and the need to explore other alternatives. Each of these issues was addressed in 2006.

In addition, a number of commenters challenged ESDC's blight determination and expressed opposition to the use of eminent domain in implementing the Project. These comments have not been summarized or responded to in this document, as they were considered and responded to in 2006.

There were also a number of comments related to the MTA's approval of the modified business terms and changes to the proposed LIRR improvements. This document has been prepared to address comments directed to ESDC and, therefore, does not address comments related to the MTA approval process.

In total, approximately 723 individuals or organizations submitted oral or written comments on the Project between issuance of the MGPP (June 23, 2009) and the close of the public comment period (August 31, 2009). Of those who expressed an opinion on the Project, 501 were in favor of the Project, and 222 were opposed to the Project, although this includes one submission that was a petition with 157 signatures. Transcripts of the oral testimony and all written submissions received are included in the CD that accompanies the ESDC Board materials.

## Comments and Responses

### *Comments Related to General Project Plan*

### **Project Review Process and Public Participation**

**Comment 1: Numerous comments were received criticizing the review process for the Project, as well as the oversight role of ESDC. Some comments asserted that the Project should have been subject to the City's Uniform Land Use Review**

**Procedures (ULURP). There were also requests for ESDC to hold more informational meetings on the Project.**

**Response:** The Project is a land use improvement and civic project under the Urban Development Corporation (UDC) Act and ESDC is the appropriate entity to oversee the development of the Project. ESDC has complied with all the statutory procedures and requirements set forth in the UDC Act and will continue to do so. ESDC has held public hearings related to the proposed MGPP. The public comment period spanned from June 23, 2009 to August 31, 2009. Moreover, ESDC has held informational meetings on the proposed modifications and has provided testimony at other forums. There has been ample opportunity for public comment.

**Comment 2: Numerous commenters stated that a preliminary report from the New York City Independent Budget Office (IBO) showed that the Arena would be a financial loss and thus requested that ESDC extend the public comment period beyond August 31st in order to consider an updated IBO report on the Arena.**

**Response:** ESDC received the IBO report on the Arena after the close of the public comment period but has nevertheless considered the report. The analysis was done without consultation with or inputs from the City, State, or FCRC. The report's fiscal estimates focus on the Arena but are based on a number of materially inaccurate assumptions. The report incorrectly assumes that all direct city and state subsidies for the Project are solely for the Arena and also eliminates from consideration the fiscal benefits from the non-Arena portion of the Project. ESDC believes that this methodology does not account for the full fiscal and civic benefits of the Project and does not accurately characterize the direct subsidies. The opportunity cost analysis also contains a number of incorrect assumptions. For example, it relies on a claim that the MTA land sale was below market and uses the difference in the purchase price offered by Extell and FCRC without taking into account the difference in the value of the yard and other improvements that were part of the selected FCRC bid. It also attributes a value of \$3.7 million to the City streets contributed to the Project based on \$60 per square foot; however, the streets do not have development rights and therefore should not be valued according to other land comparables. The report incorrectly states that the Arena site will be leased to an FCRC affiliate for 99 years for \$1.00. The lease will include the obligation to make significant payments in lieu of real estate taxes (PILOT), which will be applied to the payment of debt service on the bonds to be issued by the Local Development Corporation (LDC) for the construction of the Arena. After the term of the bonds (approximately 35 years), the lease would be for fair market value. The option to purchase the Arena would also be at fair market value, and if purchased, the Arena would return to the tax rolls. Revenue assumptions for the

Arena, which are used to estimate tax receipts, are inaccurate, relying on a presumed average ticket price of \$60. Across the entire NBA today, the average ticket price exceeds \$60, and in major markets like New York City, the average ticket price exceeds \$100.

**Comment 3: A number of comments were received stating that ESDC has acted in the interest of a private developer, not the public.**

**Response:** Consistent with the UDC Act, ESDC seeks to work with private entities to create projects with public benefits. The proposed changes to the MGPP would facilitate implementation of a project approved in 2006 that ESDC has determined to be in the public's interest.

**Comment 4: Several commenters stated that ESDC has not responded in a timely manner to Freedom of Information Law (FOIL) requests on the Project.**

**Response:** It is ESDC's policy to respond to document requests in compliance with the Freedom of Information Law. As requests are received, ESDC continues to review documents and correspondence to determine whether or not they are responsive to the request.

**Comment 5: The MGPP requires Public Authorities Control Board (PACB) approval.**

**Response:** The PACB approved ESDC's participation in the Project in December 2006, and ESDC has been implementing the Project since that time. No further PACB approval is required.

## **Project Finances**

**Comment 6: Numerous comments requested that a new cost-benefit analysis be prepared for the Project and stated that more information about project finances, including subsidies, tax exemptions, and payment-in-lieu-of-taxes (PILOTs), should be made available to the public.**

**Response:** The Project's financing program is described in the MGPP. The MGPP sets forth all tax exemptions and PILOT obligations with respect to the Project. The economic and fiscal benefits set forth in the MGPP have been updated and included in the ESDC Board materials.

**Comment 7: The Project's Arena will be a net financial loss for taxpayers.**

**Response:** The MGPP does not affect the State's financial contribution to, or the tax revenues associated with, the Arena or the fiscal benefits of the Project.

**Comment 8: Is the Project cost to the public still \$200 million? What public subsidies are being extended to the Project?**

**Response:** The State's direct funding commitment for the Project remains \$100 million. The city funding commitment for the Project is \$100 million plus additional direct or indirect funding for neighborhood infrastructure improvements or Project-specific improvements as may be agreed to by the City. Affordable housing subsidies from applicable programs are anticipated to be used in the development.

**Comment 9: A number of comments questioned the Project's ability to secure financing for its affordable housing component or whether such tax-exempt bonds would be available under the City or State housing programs in light of today's challenging economic climate.**

**Response:** The MGPP does not include any modifications that would affect the availability of financing for the Project's affordable housing.

**Comment 10: A number of commenters questioned the economic feasibility of the Project and the likelihood of completing the Project by 2019.**

**Response:** ESDC believes that the Project is financially feasible and that the relatively modest changes included in the MGPP do not warrant changing the original 10-year construction period for the Project approved by ESDC in 2006. ESDC and its construction consultant have reviewed the updated construction schedule and determined that it is reasonable.

The 10-year schedule set forth in the FEIS approved by ESDC in 2006 and the Technical Memorandum is based on the assumption that FCRC will proceed with substantial construction promptly after closing and continuously pursue construction to completion of the Project. Those assumptions are reasonable, since: 1) FCR has made a substantial investment to date in acquisition costs, soft cost and preliminary construction activities, and can be expected to seek to recognize a return on those expenditures as soon as possible; and 2) it is reasonable to expect that the market will absorb the additional residential units constructed by FCR in accordance with the schedule. The phased condemnation allowed by the MGPP is intended to facilitate the commencement of the Project and does not change the 10-year construction schedule.

ESDC recognizes that market conditions may impact the Project schedule, but a number of factors support not only the viability, but the need, for the Project on the anticipated 10 year horizon assumed in 2006.

- Population Growth: According to the U.S. Census Bureau, the 2008 population of Brooklyn is approximately 2.56 million, representing a 3 percent increase over the 2000 population of the Borough. According to the most recent DCP projections, the population of the Borough is expected to grow to 2.63

million by 2020. Accommodating this substantial population increase will require the construction of tens of thousands of additional housing units.

- **Housing Crises:** According to the Furman Center Report “Key Findings on the Affordability of Rental Housing from New York City’s Housing and Vacancy Survey 2008” dated June 2009 (the “Furman Report”), Brooklyn currently has the lowest housing vacancy of the five Boroughs at 2.3 percent. This vacancy rate is far below the national vacancy rate of 8.0 percent. A residential vacancy rate of 5% or less is considered a housing emergency under New York State’s rent stabilization law. The severe shortage of housing in New York City – and Brooklyn in particular – implies a significant demand for housing, notwithstanding the anecdotal information of surplus housing submitted by several commenters.
- **Lack of Affordability:** Another indication of the general housing shortage in New York City is the high cost of housing in the City. According to a recent report by the Center for an Urban Future, a smaller share of homes in the New York City region are affordable for those earning the median income than any other metropolitan area in the United States. According to the same report, the City’s average effective rent is nearly triple the U.S. average, pointing to the need for additional housing supply. Similarly, the Furman Report found that in 2008, 53% of New York renters were rent burdened (paying more than 30% of their monthly income on gross rent). The demand for affordable housing remains very high. The Furman Report states that the number of affordable housing units in New York City declined between 2002 and 2008, notwithstanding the construction of many new residential units during this period.

The anticipated population growth, extremely low vacancy rates and shortage of affordable housing imply a significant demand for new housing, notwithstanding the contrary assertions by commenters. The Project is needed to meet the City’s housing goals (as described in PlaNYC 2030), and there is ample demand to absorb the incremental housing stock added by the Project. Although the Project contains more than 6,000 housing units, New York City contains approximately 3,190,000 housing units, according to the Furman Report. The Furman Report states that Brooklyn alone contains 927,472 housing units and that 26,272 housing units were built in the Borough between 2002 and 2008.

The Project plan also includes flexibility to meet the demands of an evolving market over the 10 year build-out. The large affordable housing component – 2,250 units – provides a housing type that is largely impervious to market downturns and could be front loaded in the first phase to address current economic conditions.

Finally, the Project is located at a transit-accessible site, convenient to employment centers in downtown Brooklyn and in Manhattan, and is well

situated to accommodate the growing housing demand in Brooklyn discussed above. Although the current recession has roiled the market for new condominium units in Brooklyn, Manhattan, and many other areas of the country, the current market downturn is not expected to affect the long-term trends pointing to increased population and associated housing demand in Brooklyn, which the Project is well positioned to serve.

**Comment 11: A number of comments expressed a need for market studies to examine the public’s benefits and the benefit to FCRC of splitting condemnation into two phases.**

**Response:** The Project is a single project encompassing Phase I and Phase II. The phased condemnation will facilitate the implementation of the Project, given the current economic climate. ESDC’s approvals are based upon its assessment of the public interest, not of the benefit to FCRC.

**Comment 12: The contemplated financing of the Atlantic Yards Arena by R-TIFC Bonds is something that the Internal Revenue Service (IRS) would permit for the Arena as a “grandfathered” project. This should be illegal.**

**Response:** Financing must and will comply with all applicable IRS regulations.

**Comment 13: A number of comments questioned ESDC’s reliance on FCRC, as the developer of the Project. Given the economic climate and that FCRC’s stock values have declined, does ESDC have any contingencies if FCRC becomes insolvent? ESDC has not explored alternative configurations and companies with a broader financial base who could undertake the Project.**

**Response:** It is currently contemplated that the Project would be implemented by ESDC with FCRC as the developer, in accordance with the MGPP.

#### **General Project Plan Modifications/Design Changes**

**Comment 14: A number of comments raised concerns that the public benefits of the Project, such as the affordable housing and jobs, are not legally binding.**

**Response:** The MGPP has not changed the requirement for 2,250 units of affordable housing upon completion of the Project. Project documentation (e.g., the development agreement, lease agreements, and related contractual documents) will reflect the commitment made in the MGPP.

**Comment 15: The MGPP misstates the current ownership and control of the parcels comprising the Project Site as illustrated on Exhibit E, the Property**

**Ownership and Control Map, attached to the MGPP. The properties on Block 1129, Lots 13, 4, 5, and 6 are owned and controlled by Pacific Carlton Development Corporation and 535 Carlton Avenue Realty Corporation, not FCRC.**

**Response:** Comment noted. The ESDC Board materials have been revised to amend the ownership information on those properties.

**Comment 16: Numerous comments were received asserting that the modified plan is substantially different from the plan that was analyzed in the FEIS and approved in 2006. These commenters made assertions relating to the redesign of the Arena; increased number of surface parking spaces; elimination of the Urban Room and B1 commercial tower; reduction in affordable housing; limited and compromised public space; and a reconfigured rail yard with reduced capacity.**

**Response:** The MGPP does not change the number of parking spaces, the provision of an Urban Room or Building 1, the number of affordable housing units, the amount or type of publicly accessible open space, or the adequacy of the rail yard for MTA's needs. The proposed modifications to the GPP would allow for the acquisition of property in phases, rather than one phase as detailed in the FEIS; would reflect the commitment by the Project Sponsor to assess project-generated day care enrollment and capacity as the Project progresses; and would reflect changes to the Project's business terms. No modifications to the Design Guidelines or overall program are proposed, and the Arena, although redesigned, does comply with the Design Guidelines as required by the GPP. The Design Guidelines, which establish the framework for the design and development of the Project Site, were developed in close consultation with ESDC and DCP staff and are attached as an exhibit to the GPP. The design changes to certain buildings and the elimination of certain Project elements would affect the Arena block and, to a lesser extent, Block 1129; however, none of the proposed uses of the Project buildings on these blocks would change and the program, configuration, and uses of the proposed buildings on other blocks would not change. In addition, all buildings, including the Arena, will continue to conform to the Design Guidelines.

**Comment 17: Numerous comments called for ESDC to release a new site plan and architectural renderings in order for the public to understand and comment on the Project modifications.**

**Response:** An updated site plan was presented at the public hearing to reflect the elimination of the privately-accessible open space on the Arena roof and also to reflect the Arena's smaller footprint. The updated site plan, which is consistent with the Design Guidelines, has been included in the ESDC Board materials.

**Comment 18: A number of comments stated that the Project analyzed in the FEIS was designed by a world-class architect, while the design for the MGPP will now be more pedestrian.**

**Response:** The Project will be developed in conformance with the Design Guidelines, which remain unchanged. The Design Guidelines establish a detailed framework for build-out of the Project. The Guidelines are tailored to assure that a variety of urban design goals fundamental to the Project are achieved in the course of development. These goals relate to:

- Building organization, including creation of an undulating skyline, concentrating density near the Flatbush/Atlantic intersection, and a stepping down in scale as the Project meets Dean Street;
- Building articulation, including introduction of elements to break down the scale of buildings and giving identified buildings within the Master Plan visual prominence through requirements for distinctive design;
- Open space, including creating a cohesive network of open space to knit together surrounding neighborhoods; and
- Streetscape, including developing a vibrant retail experience along Atlantic and Flatbush Avenues.

In order to achieve these and other goals, the Design Guidelines impose a host of controls on the Project, while providing flexibility in finalizing design details over time. Among other things, the Design Guidelines: establish separate development parcels for each of the Project's buildings; create development envelopes for each building that generally step down in scale to the south and east; limit the amount of floor area and lot coverage of each building; require setbacks and other architectural breaks for all buildings and additional distinctive design elements for certain buildings (Buildings 1, 7, 9, 12, 13); include significant ground level retail and transparency requirements; impose additional controls on materials of the buildings in order to create variety and promote visual interest; and establish major design elements for the Project's open space, and define visual and access corridors through the open space to promote north-south connectivity. Altogether, the Design Guidelines provide certainty regarding the organization and overall urban design. Adherence to these guidelines will ensure that the Project will be built in conformance with the Master Plan for the Project developed by Frank Gehry and landscape architect Laurie Olin.

**Comment 19: On September 9, 2009, FCRC released new updated renderings of the proposed Arena. With the re-orientation of the Arena, there is no justification for the closing and de-mapping of Fifth Avenue and Pacific Street between Carlton and Vanderbilt Streets.**

**Response:** The closure of Fifth Avenue and Pacific Street remains necessary in order to develop the Arena block program. The Arena and the Urban Room will continue to occupy portions of Fifth Avenue.

**Comment 20:** **The MGPP indicates that the tallest buildings will be fronting on Atlantic Avenue from Flatbush Avenue to Vanderbilt Avenue. This design will dramatically limit the value of installing solar technologies in the vast overshadowed area of Prospect Heights. ESDC cost-benefit analysis should include the lost opportunity costs incurred by Atlantic Yards' overshadowed neighbors.**

**Response:** With the exception of Building 1, the MGPP does not propose changes to the heights of any of the buildings. Building 1 would be reduced to 511 feet and would match the height of the nearby Williamsburgh Savings Bank building. The MGPP would not result in new or greater impacts than those disclosed in the FEIS regarding Project shadow effects from the buildings.

## **Affordable Housing**

**Comment 21:** **Numerous comments asserted that the MGPP would include fewer affordable housing units, that Phase I would not introduce a substantial number of affordable units, and the affordable housing will not be affordable to anyone who is making less than the Brooklyn median income.**

**Response:** The number of affordable housing units to be developed by the Project has not changed; the MGPP, like the GPP, requires that 2,250 units of affordable housing be created under the full build-out. The profile of affordable housing in terms of income eligibility also has not changed. As with the Project approved in 2006, the income bands continue to be based on the Mixed-Income Program administered by the New York City Housing Development Corporation. The GPP has always specified that 30 percent of the residential units on the Arena block be affordable housing. The only change in the MGPP with respect to affordable housing units would now require no less than 300 affordable housing units to be constructed on the Arena block.

## **Open Space**

**Comment 22:** **ESDC's new modified plan does not take into account proper management of public open space. The original ESDC plan specified that open space is to be turned over to a not-for-profit to maintain and operate the spaces upon completion. The new Atlantic Yards plan has eliminated provision of the Urban Room for the foreseeable future. Unless and until it is built there will**

**be so-called public space instead. But because the Project will not be finished for what could well be decades that space will be under the control of the developer which the GPP did not provide for.**

**Response:** The Urban Room has not been eliminated; it will be built in conjunction with the construction of Building 1. Appendix A of the Technical Memorandum analyzed a scenario in which Building 1 would not be completed by the end of Phase 1. In this scenario, the future Urban Room area at the southeast corner of Flatbush and Atlantic Avenues would be occupied by an outdoor urban plaza. The urban plaza would follow the basic use and design principles of the Urban Room in order to create a significant public amenity. The contract documents between ESDC and FCRC will require compliance with the open space commitments outlined in the Technical Memorandum.

### **LIRR Improvements**

**Comment 23: A number of comments stated that the rail yard included in the MGPP has a smaller capacity than the one analyzed in the FEIS and questioned the effect of this change on LIRR operations.**

**Response:** The proposed changes to the planned improvements to the Vanderbilt Yard have been the subject of detailed review by the MTA. In a staff summary dated June 22, 2009, the Long Island Rail Road determined that the revised design would support the Brooklyn shuttle service that will be implemented at the time that East Side Access service into Grand Central Terminal commences operation. Under a separate approval process, the MTA Board considered the recommendations contained in the staff summary and approved the resolution to accept the proposed rail yard modifications as well as other business terms. The planned reconfiguration also includes a number of other physical upgrades to the Yard that will improve future operations, which have not been changed in the MGPP.

### **Project Phasing/Timeline**

**Comment 24: The ESDC has not provided a useful timetable for full project build-out.**

**Response:** The Technical Memorandum provides an updated detailed construction schedule for the Project.

**Comment 25: The MGPP will delay the creation of publicly accessible open space and extend the amount of time that the Project Site is occupied by surface parking. The MGPP sets aside the timely delivery of most of the public**

**benefits of the Project, such as open space, affordable housing and community facilities.**

**Response:** The Project schedule is not expected to change substantially from that outlined in the Technical Memorandum. It is anticipated that the completion of the open space, affordable housing, and community facilities would occur within the schedule outlined in the Technical Memorandum. Nevertheless, the Technical Memorandum also considers the effects of some delay in the completion of the Project and concluded that such delay would not result in significant adverse impacts not previously addressed in the FEIS.

**Comment 26: Without commitments to build Phase II, the Project fails to meet the basic elements of the findings necessary for a Land Use Improvement or a Civic project.**

**Response:** The Project documentation will obligate the developer to complete the entire Project in accordance with the MGPP.

**Comment 27: A number of commenters strongly disagreed with the conclusion of the Technical Memorandum that the environmental impacts of a delayed Project will not increase relative to a Project completed on schedule. The modification of the Phase I development would radically modify the original strategy of the Project to mitigate the placement of the Arena within residential neighborhoods by integrating it with commercial and residential density.**

**Response:** As discussed above in response to Comment 10, the MGPP does not change the 10-year construction period approved for the Project in 2006, and it is reasonable to expect that the entire Project will be completed in accordance with the 10-year construction schedule detailed in the Technical Memorandum. The MGPP still requires that mixed-use commercial and residential buildings surround the Arena on the Arena block upon full build-out. The Technical Memorandum also analyzed conditions associated with a potential delay in construction of portions of the Project as a result of prolonged adverse economic conditions. As described in the Technical Memorandum, should prolonged adverse economic conditions result in delayed construction of Buildings 3 and 4 on the Arena block, temporary open space and public amenities such as retail kiosks, landscaped seating areas, and plantings would be provided on these building footprints. These amenities would enliven the street-level environment and, along with Building 2, would provide a buffer between the Arena and existing development to the north and south. Moreover, with the construction of Buildings 3 and 4, the condition of the Arena block would be the same as that analyzed in the FEIS. Both the FEIS and SEQRA Findings noted that the Arena would have a localized neighborhood character impact on the immediately adjacent area; however, this was not

considered to be a significant adverse impact because it would be limited to the transition area closest to the Project Site, and these would not create a significant adverse impact on the broader neighborhood. A delay in the construction of the non-Arena buildings on the Arena block would not change this conclusion.

**Comment 28: The deficit of open space will not be corrected until full build-out.**

**Response:** The open space to be developed by the Project would be constructed incrementally, as each adjacent building is completed. As described in the FEIS, providing new open space by the end of Phase I is not practical given that the areas that could be used as open space are needed for construction phasing, worker parking, and materials storage in order to minimize or avoid construction-related impacts on the surrounding neighborhood.

**Comment 29: A number of commenters stated that the Technical Memorandum fails to distinguish between the degree of impact produced by a project delay of short duration and the degree of impact produced from a delay that is longer, if not permanent.**

**Response:** It is anticipated that the full build-out of the Project would be completed by 2019. Nevertheless, the Technical Memorandum does consider a scenario in which full build-out of the Project would be delayed beyond 2019 as a result of prolonged adverse economic conditions, and concludes that such additional delay would not create any significant adverse environmental impacts that were not addressed in the FEIS.

**Comment 30: The MGPP will delay the creation of publicly accessible open space and extend the amount of time that the Project Site is occupied by surface parking.**

**Response:** The projected completion date of 2019 described in the MGPP does not change the length of time that the interim surface parking facilities will be in place. As disclosed in the Technical Memorandum, an unanticipated delay in project completion may prolong the use of the interim parking facilities. During construction, sites not being developed will be used for construction staging and, if feasible, as interim programmed public amenity space.

**Comment 31: What is the timetable for the completion of the Carlton Avenue Bridge? Is it part of Phase I or Phase II? While it is unclear how long those phases will take, it will be much longer than two years.**

**Response:** The proposed MGPP does not change the schedule for the reopening of the Carlton Avenue Bridge, except that it does require that the bridge be open by the time the Arena is operational. As noted in the FEIS, the closure of the Carlton

Avenue Bridge would need to be undertaken consistent with a New York City Department of Transportation-approved plan for the maintenance and protection of traffic, which is currently being implemented.

### **Blight and Eminent Domain**

**Comment 32: The Project has been causing blight, not reducing it, by vacating and demolishing buildings without proceeding with the Project. This blighting effect will worsen if the Project's timetable is extended.**

**Response:** Litigation has delayed the construction of the Project. Demolition was undertaken to clear unsafe or vacant buildings in preparation for construction of the Project. The delay in implementation of the Project has delayed the public benefits of the Project, one of which is to eliminate blight at the Project Site.

### **Security**

**Comment 33: A security analysis for the Project should be conducted in coordination with NYPD. The Arena and Building 1 meet NYPD's classification of "high risk" buildings. Disruptive security measures, such as street closings and barrier placement will need to be put in place if security is not adequately planned for.**

**Response:** The MGPP and the Arena design have not affected security aspects of the Project. From the preliminary phases of project design, the Project Sponsor has retained security consultants to prepare a Threat and Risk Assessment (TARA) to evaluate design and operational aspects of the Project to avoid and minimize security concerns, particularly focused on the Arena and Phase I buildings. The TARA is refined and revised as plans and specifications move forward in detailed design and as new strategies or criteria arise within the state of security planning. The Project Sponsor and its security consultants have and will continue to consult and coordinate with the New York City Police Department's Counterterrorism Bureau to receive law enforcement feedback and recommendations on further strategies on public safety and security. The Project buildings are being designed to be compatible with the traffic and pedestrian flow patterns on the streets surrounding the Arena, as analyzed in the FEIS

### *Comments on Technical Memorandum*

**Comment 34: Numerous comments were received stating that a Supplemental Environmental Impact Statement (SEIS) should be prepared to study the**

**potential impacts of the MGPP. Among the reasons expressed were assertions relating to: changes to the Arena design that diminish mitigation described in the FEIS; newly discovered information, including security concerns; changes in background conditions; delay in the creation of open space and stormwater management measures; the provision of fewer affordable housing units than originally proposed; new impacts on LIRR service given the reduction in proposed railyard improvements; negative economic impact; and potential delay of the decking of the Vanderbilt Yards, resulting in the failure to realize the goals of connecting surrounding neighborhoods and removing its blighting influence.**

**Response:** The Technical Memorandum presented a complete analysis of the proposed MGPP, design changes, changes to the Project’s schedule, and changes in background conditions and analysis methodologies under the *CEQR Technical Manual* and assessed whether the Project—as described in the MGPP—would result in any significant adverse environmental impacts not previously addressed in the FEIS. ESDC staff believes that the additional information that would be developed through an SEIS would not be useful in determining whether the MGPP should be affirmed. A supplemental EIS is not warranted under these circumstances.

## **Historic Resources**

**Comment 35: The Prospect Heights Historic District was recently designated by the Landmarks Preservation Commission (LPC). The Project’s effects on this historic district have not been adequately addressed.**

**Response:** The MGPP does not change the Project Site footprint or program. The FEIS indicated that LPC was exploring the designation of a Prospect Heights Historic District based on potential boundaries identified in 1979 and identified much of the area designated as the district as an historic resource. The potential boundaries of the 1979 area fell wholly within the boundaries of the State and National Register (S/NR) district identified in the DEIS. The FEIS analyzed the potential for the Project to adversely affect both the potential New York City Historic District and the S/NR district. The boundaries of the Prospect Heights Historic District recently designated by LPC are slightly different from those identified in the 1979 study and include the east side of Vanderbilt Avenue (a major thoroughfare) north of Bergen Street, across from the Project Site. As described in the FEIS, the proposed buildings closest to the Prospect Heights Historic District would have streetwalls at the sidewalk of between 60 and 105 feet in height; above these heights the buildings would set back substantially, resulting in buildings more suited to the adjacent context. This would create a scale and design that would not be incompatible with the Prospect Heights Historic District.

The FEIS concluded that the Project would not result in a significant adverse impact to the Prospect Heights Historic District area identified in the FEIS. This finding is equally applicable to the expanded district on the other side of Vanderbilt Avenue as adopted by LPC. The modifications to the GPP do not change the boundaries of the affected Project Site, and thus would not create any new significant adverse effects on this historic district.

**Comment 36: How can the public evaluate the architectural impact of the Atlantic Yards proposal on the landmarked Prospect Heights Historic District without renderings of the Project?**

**Response:** The design for the Project east of Sixth Avenue will continue to be governed by the Design Guidelines that control the scale and envelope on the Project Site.

**Comment 37: Much of the area surrounding the surface parking lots has received City landmark status since the FEIS was released. The Prospect Heights Historic District extends along the surface parking lot on block 1129 lining both Carlton Avenue and Vanderbilt Avenue. In addition, a significant portion of the south side of Dean Street between 6th Avenue and Carlton Avenue has been landmarked and will now be exposed to significant Project traffic. The FEIS analyzes the relationship of these areas to the built project, but does not analyze the impact of surface parking to them. The potential of an extended delay or incomplete build-out requires analysis of the visual impact on the surrounding area of the vast surface parking lots planned for the Phase II site in advance of construction.**

**Response:** It is anticipated that the full build-out of the Project would be completed by 2019. Moreover, as stated in the Technical Memorandum, the Prospect Heights Historic District would add limits on development, thus further strengthening the conclusions in the FEIS, which state that the Project is not expected to spur substantial changes in the firmly established neighborhoods that surround the Project Site. Additionally, while in use, the temporary surface parking lot and construction staging area would have directional lighting and would be screened with fencing and landscaping. Accordingly, there would be no significant adverse impact as a result of the interim parking and construction staging area.

## **Urban Design**

**Comment 38: In the original GPP the vast majority of the parking was designated as permanent underground parking. The “interim,” surface parking facilities constitute wide-open areas without intervening structures that will create nighttime fields of lights, 24/7.**

**Response:** The proposed MGPP does not include any changes to lighting requirements. While in use the temporary surface parking lot and construction staging area would have directional lighting angled to limit light intrusion beyond the site and employing controls to reduce lighting during periods of non-use, consistent with site security. These measures would minimize lighting effects on nearby uses. An SEIS is not required to study this interim condition.

## Open Space

**Comment 39:** Some commenters expressed concern that with the increased background demand, as well as the elimination of the private open space on the Arena roof, and a delay of the Phase II publicly accessible open space, existing permanent public outdoor open space such as the Dean Street Playground, Brooklyn Bears Garden and South Oxford Playground, will have to accommodate unanticipated demand, and claimed that this increase in background condition and the delay in the creation of the Project's open space was not accounted for in the open space analysis.

**Response:** It is anticipated that the full build-out of the Project would be completed by 2019. The open space to be developed by the Project would be constructed incrementally, as each adjacent building is completed; this has not changed from the 2006 approval. As described in the FEIS, providing new open space by the end of Phase I is not practical given that the areas that could be used as open space are needed for construction phasing, worker parking, and materials storage in order to minimize or avoid construction impacts on the surrounding neighborhood. The Technical Memorandum also analyzed conditions associated with a potential delay in construction of portions of the Project as a result of prolonged adverse economic conditions. As described in the FEIS and Technical Memorandum there would be a temporary significant adverse open space impact between the completion of Phase I and the completion of Phase II. Under a delayed build-out scenario, this temporary impact would be extended, but would continue to be addressed by the Phase II completion of the 8 acres of publicly accessible open space. Moreover, as each of the buildings is completed, a certain amount of open space would be provided in conformance with the GPP's Design Guidelines, thereby offsetting some of this temporary open space impact.

Moreover, the Technical Memorandum did consider changes in background conditions in the assessment of open space in accordance with the methodology set forth in the FEIS. It concluded that the Project would not affect the baseline conditions, as the Project's publicly-accessible open space has not changed since the FEIS and the demand generated by the project-generated population would remain the same. There would be no new significant adverse impacts. The open

space analysis accounts for all project-generated population and did not exclude those that would have used the private open spaces.

**Comment 40: The 2009 MGPP offers no minimum commitment of interim open space. The character of interim open space, if delivered at all, will differ from permanent open spaces because there can be no permanent greenery like trees.**

**Response:** The Technical Memorandum describes the possible program for interim open space. Should prolonged adverse economic conditions result in delayed construction of Buildings 3 and 4 on the Arena block, temporary open space and public amenities such as retail kiosks, landscaped seating areas, and plantings would be provided on these building footprints, as described in the Technical Memorandum. In addition, as noted in the Technical Memorandum, if Building B1 is delayed to a later time in the construction schedule, the area that will be incorporated into the Urban Room will instead be improved as a temporary publicly accessible open space.

## **Infrastructure**

**Comment 41: Will the city's construction of storm water and sewage systems be affected by the interim plan? Will infrastructure be added and then destroyed in later construction and at the taxpayer's expense?**

**Response:** As each of the Project's buildings are constructed, the appropriate stormwater and sewage systems would be installed in accordance with New York City Department of Environmental Protection (NYCDEP) site drainage requirements and in conformance with the SEQRA findings. There would be no interim public infrastructure that will require future demolition to complete the Project.

**Comment 42: The interim surface parking lots and long-term construction staging areas will have different effects on stormwater runoff than previously considered. Runoff from parking lots contains toxic automotive products and petrochemicals. An SEIS should be undertaken to look at water runoff into the sewer system.**

**Response:** Temporary parking and construction staging areas, when paved, would have on-site detention systems, equipped with standard NYCDEP Type 2 catch basins with oil/water separators, in conformance with NYCDEP requirements. Thus, the parking and construction staging areas would not result in the release of toxic automotive products or petrochemicals to the sewer and would not result in different effects from those disclosed in the FEIS.

**Comment 43: The elimination of the living roof and acres of open space (in Phase I) will dramatically change the impact on infrastructure.**

**Response:** As described in the Technical Memorandum, the expanded detention tanks would be located in the base of the Arena and enlarged to accommodate the additional stormwater load associated with the elimination of the green roof. An analysis using the same methodology as the FEIS determined that the changes to the stormwater detention system would achieve the same performance expected from the green roof with respect to reductions in the peak volume of stormwater runoff from the Project Site during and after precipitation events. It would also maintain the level of CSO volume reduction and the frequency of CSO events achieved using the green roof. This modification would not result in significant adverse infrastructure impacts.

**Comment 44: The elimination of the green roof on the Arena has forced an increase in the scale of the retention tanks in the Arena block and forced the shifting of 100 parking spaces under Building #2 to surface parking. The surface parking lot, which will be a feature of the Project for an indefinite period of time, will pose storm water issues not addressed by the mitigation measures described in the MGPP. The parking lot, the Arena roof, and the new railyard location may cumulatively exceed the amount of impervious surface that was previously considered. Retained storm water run-off was anticipated to be reused to water the open space.**

**Response:** The location of the rail yard has not changed. Also as noted above, the detention tanks would be enlarged to accommodate the additional stormwater load associated with the elimination of the green roof. The shifting of the 100 parking spaces would not affect the expected run-off from Block 1129 because it is not expected to change the amount of paving required for the interim parking and construction staging areas. Temporary parking and construction staging areas, when paved, would have on-site detention systems in conformance with NYCDEP requirements.

**Comment 45: Storm water retention basins, which are a major sustainable element of the Project as well as a new visual resource for the community, cannot be put in place until the open space is created.**

**Response:** The Phase I analysis in the FEIS analyzed the stormwater impacts after the construction of Phase I, which did not account for the presence of the proposed water feature in the Project's open space. The FEIS conclusion stated that there would be no significant adverse impact in the Phase I condition. That stormwater analysis was updated to account for the elimination of the Arena green roof and relocation of the detention tanks and incorporated into the Technical Memorandum.

**Comment 46: A number of commenters noted that the annual rainfall volume from 1988 is no longer valid for CSO analysis under US Environmental Protection Agency (EPA) standards. The 30 year Normal Rainfall data has changed significantly to warrant a new EIS analysis of the impact development over the present day gravel rail yards as the new impermeable surfaces replace the gravel bed rail yards. Additionally, the rezoning of the Gowanus area for housing should be a trigger for a SEIS to completely evaluate the adverse sewage effects of the Project on the entire wetlands area.**

**Response:** As described in the Technical Memorandum, the Project is expected to be fully built out by 2019. As stated in the FEIS, based on NYCDEP data, the year 1988 is an average rainfall year historically, and for that reason continues to be used by NYCDEP in its water quality modeling and analyses pertinent to CSOs. Since the issuance FEIS, NYCDEP has not changed its assumptions with respect to this rainfall data. The background growth assumptions included in the FEIS analysis of sewage and stormwater adequately accounted for growth in the Red Hook and Gowanus Pumping Station catchment areas.

**Comment 47: The old EIS was based on completion of the Reconstructed Gowanus Pumping station that has not occurred. The mayor's office is currently considering revoking this Project under current EPA action along the Gowanus Canal. The parameters used in the Project's 2006 EIS may not be reliable for this Project's planning purposes.**

**Response:** The Facility Plan for the Gowanus Pumping Station project has been approved by NYSDEC and the Project is included in NYCDEP's Capital Improvement Plan. In response to the comment, ESDC consulted with NYCDEP and was told that this project has not been canceled.

## **Neighborhood Character**

**Comment 48: The neighborhood has changed with increased residential development, landmarking, and new independent retail directed towards residents. The new project plans must take this into account. Have any of the new Downtown Brooklyn and Fort Greene developments been considered in impact studies for the Project?**

**Response:** The FEIS included development projects anticipated to be complete by 2016. The Technical Memorandum provides updated information on background conditions, including rezoning and historic district designations that have been implemented or proposed for consideration since the FEIS. The updated background condition includes residential and retail projects that were planned prior to the current economic slowdown through 2019. Although some of these projects are now on

hold, they are assumed to still be moving forward in the future when market conditions improve. Background conditions projected at this time include a higher number of residential units compared to the FEIS. Since the FEIS analyses had made conservative assumptions related to background conditions, the Technical Memorandum concluded that the changes in background conditions since 2006 and future conditions anticipated through 2019 would not substantially alter the baseline conditions presented in the FEIS. The Project program has not changed since the FEIS, and their associated environmental impacts would not result in new or greater impacts than that described in the FEIS.

**Comment 49: There were no renderings showing the gigantic sign (150 by 75 feet) that was in the original proposal. This signage would have a significant impact on the surrounding neighborhood. Will new renderings show a street-level perspective of the signage?**

**Response:** As the Arena block is further designed, the proposed signage design will conform to the Design Guidelines. The MGPP does not propose any changes to the Design Guidelines.

**Comment 50: The 2009 MGPP describes two or more stages of property condemnations. The Technical Memorandum describes two stages. The 2009 MGPP is a worse case scenario in relation to neighborhood character than the Technical Memorandum analyzes. Because condemnations will be spread over either two or possibly three phases, owners of properties slated to be condemned in later phases will not have the incentive to improve their properties, encouraging blight. Tenants will not renew leases, leading to hardship for property owners. These impacts are not considered in the Technical Memorandum.**

**Response:** The latter stages of the property acquisition would only involve Site 5, two buildings fronting Atlantic Avenue on Block 1120, and the western portion of Block 1128. Site 5 is occupied by two active retail businesses, which will continue to operate and maintain their premises. The two active commercial buildings on Block 1120 are warehouse and storage buildings and are expected to continue to operate as they have in the past. There are three small residential buildings and one commercial building on a portion of Block 1128 within the Project Site footprint. It is likely that building owners would continue to keep up their properties in order to maintain their appearance and value.

**Comment 51: The City currently has a Million Tree program to green city streets. Trees are not planted at potential development sites or on the streets lining them. An uncertain construction schedule will mean no street trees will be planted**

**in all of the areas lining the Project footprint. The interim space replacing the Urban Room will have potted trees, not planted trees.**

**Response:** The Design Guidelines, which have not been changed in the MGPP, include requirements for landscaping including trees.

**Comment 52: With a delay, an uncovered operating railyard will be in place for a longer period. A smaller railyard with less capacity than the existing railyard will need to compensate by operating for longer hours, creating more noise and impacts on surrounding neighborhoods. The former location was near commercial districts and larger streets with more street noise, however, the new rail yard location is adjacent to low density residential uses on the south side and to the Atlantic Terminal Housing on the north. The Technical Memorandum does not address this change.**

**Response:** The change in the design of the rail yard does not affect the hours of operation for the yard. The location of the yard has not changed from what was described in the FEIS.

## **Traffic and Parking**

**Comment 53: The Technical Memorandum dispenses with *CEQR Technical Manual* guidelines for measuring traffic and parking, namely that they will increase by 0.5 percent a year, and instead applies new baselines taken during the current economic downturn. It projects this reduction in traffic and parking demand forward into the future. The traffic analysis should be revised to account for new growth in downtown Brooklyn, including large projects such as the Brooklyn Bridge waterfront development, the expansion of the Red Hook Cruise Ship Terminal, IKEA in Red Hook, the new Fairway and the Whole Foods supermarket in Gowanus, 9 Metrotech, the new Federal Courthouse, and the Marriott Hotel Expansion.**

**Response:** The traffic and parking analyses in the FEIS assumed a 0.5 percent per year background growth rate for the 2006 through 2016 period, consistent with *CEQR Technical Manual* criteria. Overall, the FEIS analysis assumed a one percent increase in existing traffic levels due to background growth from 2006 to 2008 and an approximately five percent total increase from 2006 through 2016. However, as discussed in detail in the Technical Memorandum, recent automatic traffic recorder (ATR) count data indicate that weekday and Saturday traffic volumes on the primary arteries serving the Project Site have actually declined by approximately 7 to 12 percent since 2005 (when much of the data for the FEIS traffic analysis was collected). As such, it appears that the FEIS traffic analysis overestimates background growth by substantially more than the potential 1.5

percent increase (0.5 percent per year) associated with the proposed change in the Build year from 2016 to 2019. The total traffic volumes analyzed in the FEIS for the 2016 Build year therefore already include sufficient traffic volume to account for additional background growth for the 2016 to 2019 period.

The Technical Memorandum also presents a detailed comparison of the No Build site travel demand forecast to occur by 2016 in the FEIS with the No Build site travel demand that would be generated by development now expected to occur by 2019. As discussed in the Technical Memorandum, changes in anticipated No Build development now expected to occur by 2019 would not be expected to result in total traffic volumes greater than what was analyzed in the FEIS for the 2016 Build year. The No Build sites mentioned in the comment are either reflected in the analysis or pre-date the traffic data collection effort, with the exception of the Whole Foods supermarket noted in the comment. The status of development at this site is currently speculative and its timing is unknown; therefore, it is not included in the background condition, consistent with CEQR methodology.

**Comment 54: The Project’s plan has been changed in a number of ways which will shift the entry for the Arena and the traffic associated with it toward the south and east sides of the Project. These changes have neither been analyzed singly nor together for the way they would affect traffic and pedestrians at the intersection of Dean Street and Flatbush Avenue; Dean Street at 6th Avenue, Carlton Avenue and Vanderbilt Avenue; or the 6th Avenue intersections at Flatbush Avenue, Bergen Street, Pacific Street and Atlantic Avenue.**

**Additionally, the creation of interim open space will diffuse Arena pedestrians in the Arena block, increasing the probability of delays as pedestrians and traffic interact. A delayed or not completed Urban Room will increase this scenario because the direct route from the subway to the Arena will no longer be in place.**

**Response:** As discussed in the Technical Memorandum, current plans for the Arena block would reduce the number of lay-by spaces along Flatbush Avenue by a total of approximately 6 spaces, all located south of 5th Avenue. This is not expected to result in a substantial increase in the number of vehicles turning east on Dean Street from northbound Flatbush Avenue as a total of 8 lay-by lane spaces would still be provided north of 5th Avenue adjacent to the Urban Room, which would serve as both the primary Arena entrance and an entrance to the Atlantic Avenue/Pacific Street subway station complex. By contrast, it is anticipated that only 7 lay-by lane spaces would be provided along the Arena block’s Dean Street frontage, which is the location of a secondary Arena entrance. The Technical Memorandum does include a screening analysis to identify the potential for the absence of a lay-by lane south of 5th Avenue to result in new significant adverse

traffic impacts at the Flatbush Avenue/5th Avenue intersection. As shown in Table 9 in the Technical Memorandum, no new significant adverse traffic impacts are anticipated to northbound Flatbush Avenue at 5th Avenue due to the absence of a lay-by lane between 5th Avenue and Dean Street, even if vehicles were to illegally stop in the curbside lane.

For the purposes of the FEIS transportation analyses it was assumed that all three Arena pedestrian entrances (Urban Room, Dean Street and Atlantic Avenue) could be utilized by any Arena patron, and that pedestrians entering or exiting the Arena would utilize the Arena entrance most proximate to their direction of travel. Pedestrians en route between the Arena and parking on Block 1129 were assumed to use the Dean Street entrance, as were pedestrians en route to and from the Bergen Street subway station to the south of the Project Site. As trips by VIP's were not treated as a distinct travel demand category for the purposes of the FEIS transportation analyses, the proposed relocation of the designated VIP entrance from Dean Street to Atlantic Avenue would not appreciably alter the traffic or pedestrian trip assignment patterns from what was analyzed in the FEIS. The traffic and pedestrian analyses in the FEIS therefore reflect conditions with the Arena's Dean Street entrance in use for general patrons; traffic and pedestrian conditions with the relocation of 100 parking spaces from the Arena block to Block 1129 are analyzed in detail the Technical Memorandum.

Before and after a major event at the Arena, pedestrians are expected to travel the most direct paths between the Arena block and area parking and transit facilities. Any interim open space on the Arena block is not expected to appreciably alter pedestrian flow patterns at the locations where pedestrians and vehicular traffic would interact—the crosswalks connecting the Arena block to surrounding blocks. The new on-site entrance and internal circulation improvements to the Atlantic Avenue/Pacific Street subway station complex would be provided even with a delay in the construction of Building 1 and the Urban Room. (An urban plaza in the same location and providing the same uses as the Urban Room would serve as the interim access point to mass transit.) Therefore, the pattern of pedestrian flow between the subway and the Project Site is expected to remain unchanged from what was analyzed in the FEIS.

**Comment 55: It is likely that the NYPD will impose vehicle inspections at the interim parking facilities as a security measure, which could halt movement on Dean Street.**

**Response:** It is not anticipated that the NYPD will impose vehicle inspections or other security measures at the interim parking facilities that could affect traffic flow on Dean Street. NYPD does not impose such restrictions at parking lots serving other major sports venues in New York City.

**Comment 56: Under the MGPP there will be substantially more interim parking for Arena patrons than was analyzed in the FEIS, and it is unclear whether the HOV restriction for on-site Arena parking will apply under interim conditions.**

**Response:** The parking analysis in the FEIS assumed that at the completion of Phase I of the Project there would be a total of approximately 2,346 parking spaces on the Project Site. These would include approximately 750 parking spaces in two on-site parking garages: 400 spaces in a garage beneath the proposed development on Site 5, and 350 spaces in a garage on the Arena block beneath Buildings 2 and 3. A further 1,596 parking spaces would be provided in three temporary parking lots: an approximately 182-space parking lot at the southwest quadrant of Block 1120, an approximately 470-space at-grade parking lot midblock on the north side of Block 1120, and an approximately 944-space at-grade parking lot on Block 1129 that would be used primarily for Arena demand. A total of approximately 1,100 parking spaces would be available on-site to accommodate a portion of the demand from the proposed Arena. (Arena parking demand not accommodated on-site would be accommodated at existing off-site public parking facilities.) The remaining 1,246 parking spaces located on-site at the end of Phase I would be used to accommodate the demand from the residential and commercial uses developed in Phase I. (It is anticipated that many residential parkers would have reserved monthly spaces that would remain available for their use during Arena events.)

As discussed in the Technical Memorandum, under the MGPP, up to 100 of the 350 parking spaces planned for the Arena block would instead be accommodated on Block 1129. This would bring the number of parking spaces on Block 1129 to approximately 1,044 at the end of Phase I. The total number of on-site parking spaces at the end of Phase I would remain unchanged at approximately 2,346, of which approximately 1,100 would be available to accommodate Arena parking demand and 1,246 spaces would be used to accommodate the demand from the residential and commercial uses developed on the Project Site in Phase I. The total number of on-site parking spaces and the anticipated uses for these spaces at the end of Phase I under the MGPP are therefore consistent with the FEIS parking analysis.

At the completion of Phase II, which is anticipated by 2019, the temporary parking lots would be displaced by new buildings, and on-site parking capacity would total approximately 3,670 parking spaces in six parking garages. Approximately 1,100 of the on-site parking spaces would continue to be available for use by Arena patrons, and remaining Arena parking demand would be accommodated on-street or in existing off-site public parking facilities. This parking plan for the full build-out condition is analyzed in detail in the FEIS, and is essentially unchanged under the MGPP, with the exception of the relocation

(not addition) of approximately 100 parking spaces to Block 1129 from the Arena block.

The MGPP does not change the HOV parking requirements described in the FEIS.

Under the delayed build-out scenario assessed in the Technical Memorandum, in the event of prolonged adverse economic conditions, construction of Building 2 and the Arena would advance; however the construction of some of the remaining buildings on the Arena block as well as the Phase II sites would be delayed beyond 2019. It is anticipated that under this scenario, sufficient interim on-site parking capacity would be provided to accommodate demand from Building 2, along with 1,100 parking spaces (most located on Block 1129) to accommodate a portion of the Arena parking demand. Accordingly, a delay in the construction of project buildings would not result in providing more than 1,100 parking spaces for Arena patrons in the interim condition. Upon the completion of Phase I (the Arena, Site 5 and Buildings 1 through 4), a total of 2,346 on-site parking spaces would be provided under this scenario, of which approximately 1,100 would be available to accommodate a portion of the demand from the proposed Arena, consistent with the numbers assumed in the analysis of conditions at the end of Phase I in the FEIS.

Characterizing the Project as a transit-oriented development is appropriate as it would be accessible by a dozen subway routes, 11 local bus routes and the Long Island Rail Road, and would include a major new on-site entrance and internal circulation improvements at the Atlantic Avenue/Pacific Street subway station complex, and transit price incentives for Arena patrons to encourage transit use and reduce auto trips.

**Comment 57: With the interim parking facilities under the MGPP, there is no guarantee that the developer would provide the promised free shuttle service or keep the parking expensive to cut down on the number of cars circling for street parking. This should be accounted for in the traffic analysis.**

**Response:** The MGPP does not change any of the demand management requirements identified in the FEIS in connection with the Arena operation.

**Comment 58: Private operators could increase the capacity of the interim surface parking lots above what was analyzed in the FEIS to accommodate park-and-ride or construction worker demand. In addition, the change in proposed parking facilities to interim parking will result in an increase in the pedestrian traffic using sidewalks and crossing in the area, which was not accounted for in the FEIS.**

**Response:** The MGPP does not change the manner in which the on-site parking spaces will be used, with the exception of the relocation of 100 parking spaces from the Arena block to Block 1129. The MGPP does not change the number of on-site parking spaces upon completion of the Arena or in the final build condition. The FEIS identified a 944-space parking lot in the interim condition after the construction of Phase 1. The MGPP relocates 100 parking spaces from the Arena block to Block 1129, increasing the size of the parking lot on Block 1129 to 1,044 spaces. As the Technical Memorandum concluded, this change to the size of the parking lot on Block 1129 is not expected to result in significant adverse impacts that were not previously identified in the FEIS. There is no park-and-ride programmed under the MGPP for any of the parking lots on the Project Site.

**Comment 59: Long-term surface parking for the Project could seriously impair access to the 78th Precinct and Dean Street firehouse.**

**Response:** The addition of 100 spaces to the parking facility on Block 1129, as contemplated in the MGPP, would have no effect on access to the 78th Precinct or the Dean Street firehouse. In addition, the Technical Memorandum analyzed the potential effects of a delay in the completion of the Project, which could extend the duration of the surface parking lot on Block 1129. Nevertheless, locating parking in a surface parking lot rather than below grade would have no effect on access to the 78th Precinct or the Dean Street firehouse. As noted above, the MGPP does not change the overall number of parking spaces or the manner in which those spaces will be used.

**Comment 60: Since the 2006 FEIS, Vanderbilt Avenue was redesigned to produce substantial reductions in vehicle capacity. The impact of interim parking on Vanderbilt Avenue as redesigned should be examined in a supplemental EIS. The MGPP did not take into account such changes in street geometry on this key route that borders the site.**

**Response:** As discussed in Chapter 12 of the FEIS, the analysis of traffic conditions with development of Phase I of the Project reflected both the operation of temporary surface parking lots on the Project Site and NYCDOT's planned changes to the configuration of Vanderbilt Avenue.

**Comment 61: Since the 2006 FEIS, bicycle use has increased sharply in New York City, Brooklyn and in the project study area. The impact of interim parking on bicycle safety requires examination in a supplemental EIS.**

**Response:** The MGPP is not expected to change the effect of the Project on bicycle safety because the size and site plan of the Project remain substantially the same. An assessment of bicycle conditions with implementation of Phase I of the Project (when the temporary surface parking lots would be in operation) is included in

Chapter 12 of the FEIS. Potential future increases in bicycle demand are discussed, as are planned improvements to bicycle facilities in the study area and the Project's potential effects on both existing and planned bicycle facilities.

**Comment 62: How can the community comment on the plan when the road changes have not been determined?**

**Response:** With the exception of the elimination of a lay-by lane along Flatbush Avenue between Dean Street and 5th Avenue, the MGPP does not propose any modifications to roadway configurations. The potential effects to traffic flow from the elimination of lay-by spaces along Flatbush Avenue are assessed in the Technical Memorandum.

**Comment 63: Public costs for mitigating potential traffic impacts from the Project have not been factored into the fiscal analysis for the Project.**

**Response:** It is expected that FCRC will be responsible for a substantial portion of the traffic mitigation cost although a portion of the infrastructure cost subsidies provided by the City and State may be used for certain roadway improvements.

**Comment 64: Traffic and air quality were studied but not with the number of parking spaces now envisioned. Therefore a new EIS should be undertaken.**

**Response:** No change has been proposed to the number of parking spaces provided by the Project.

**Comment 65: Under the MGPP, the construction of the Vanderbilt Yards will be delayed, resulting in all "interim" parking and construction staging and parking to the southern side of the site, which will result in changes in study area traffic patterns for indeterminate periods compared to what was previously analyzed. The effects of additional traffic and air pollution on Dean Street, Pacific Street and Flatbush Avenue should be analyzed.**

**Response:** Delay in the construction of the rail yard is not expected. However, even if the rail yard construction were delayed, it would not affect the interim parking and construction staging uses described in the FEIS and Technical Memorandum upon completion of Phase I.

**Comment 66: According to statements at the informational meeting with the ESDC and FCRC on July 22nd, the loading dock has been reduced from eight to seven berths. This is not disclosed in the Technical Memorandum or MGPP. There are also concerns the loading dock may have been changed to be at grade or closer to grade. The placement of the loading dock below grade was a land use mitigation for locating the Arena within 200 feet of a residential area.**

**The Technical Memorandum should have disclosed the changes that have been made to the security screening and loading dock areas and their operation in full, and assessed the impact of those changes on neighboring residential uses.**

**Response:** The Arena's loading dock has been redesigned to stay within the Arena block footprint. The proposed grade location and the functionality of the loading dock have not changed; the loading dock will remain below grade. While the number of loading berths has decreased, the amount of space for the loading area is somewhat larger and can accommodate the same number of trucks. The functionality of the loading operations would remain the same. There would continue to be no on-street queuing of trucks.

### **Transit and Pedestrians**

**Comment 67: The crosswalks on Dean Street have been widened in recognition of a new significant impact for pedestrians on Dean Street. The Technical Memorandum fails to acknowledge this.**

**Response:** As stated in the Technical Memorandum, the design changes include the widening of the north crosswalk on Carlton Avenue at Dean Street and the north crosswalk on 6th Avenue at Dean Street in order to accommodate the additional pedestrian demand that would be generated by the relocation of up to 100 spaces of parking capacity from the Arena block to Block 1129. As also stated in the Technical Memorandum, with the widening of these crosswalks as part of the design development, there would be no new significant adverse pedestrian impacts as a result of the additional pedestrian demand.

**Comment 68: The planned closure of Pacific Street between Carlton and Vanderbilt Avenues will reduce connections between neighborhoods until new open space is completed. If the Project is delayed, surface parking will remain and the planned open space and associated bicycle and pedestrian connections will also be delayed.**

**Response:** As discussed in Chapter 12 of the FEIS and in the Technical Memorandum, roadway and pedestrian circulation changes associated with the Project would include the permanent closure of 5th Avenue from Flatbush Avenue/Pacific Street to Atlantic Avenue, and Pacific Street from Flatbush/5th Avenue to 6th Avenue to accommodate development on the Arena block; and the permanent closure of Pacific Street between Carlton and Vanderbilt Avenues to accommodate construction staging and interim parking during Phase I and construction on blocks 1121 and 1129 in Phase II. As discussed in the Technical Memorandum, the effects on traffic and pedestrian flow from these closures and other elements

of the Project under the schedule change to 2019 would be similar to what was analyzed in the FEIS for a 2016 Build year.

Pedestrian and bicycle access between Carlton and Vanderbilt Avenues would be restored upon completion of the proposed open space on blocks 1121 and 1129 under Phase II. As discussed in the Technical Memorandum, although the date of the full build-out of the Project (Phase II) has been extended to 2019, the duration of construction of most project elements would not change as a result of their modified start date within the overall project schedule (see Table 2). It is therefore anticipated that the duration during which pedestrian and bicycle access along the former right-of-way of Pacific Street adjacent to Block 1129 would be restricted would be similar to what was analyzed in the FEIS. Under a scenario in which full build-out of the Project would be delayed, pedestrians could continue to utilize sidewalks along parallel streets (i.e., Atlantic Avenue one block to the north and Dean Street one block to the south). Cyclists could continue to use the existing bike lanes along Dean Street (eastbound) and Bergen Street (westbound), and NYCDOT's planned bike lane along Carlton Avenue.

**Comment 69: The delay in the construction of the Urban Room subway entrance, the direct underground connection between public transit and the Urban Room, and the reduction in escalator capacity would change pedestrian flow patterns and increase crossings of Atlantic and Flatbush Avenues. Without the Urban Room's direct physical connection into the Arena, the widened escalator will simply disgorge more people than ever anticipated on the sidewalks and the "interim" Urban Plaza. The delay in the Urban Room will eliminate a central component of crowd control for the Arena. Not only will the crowd enter and exit the area of the Arena differently without the central channel and focus of the Urban Room, they will also enter and exit the Arena using more varied entrances and exits. Interim space surrounding the Arena will diffuse crowds further. The security plans for the Arena will be more difficult with crowds less centralized.**

**Response:** As discussed in Appendix A of the Technical Memorandum, the new on-site entrance and internal circulation improvements to the Atlantic Avenue/Pacific Street subway station complex would be provided prior to the opening of the Arena even if the Urban Room and Building 1 are constructed at a later date. (An urban plaza in the same location and providing similar amenities as the Urban Room would serve as the interim access point between the Project Site and mass transit.) In addition, as discussed in the Technical Memorandum, escalator capacity between the Urban Room and the new subway control area would remain unchanged from what was analyzed in the FEIS (two 48-inch escalators), while stair capacity would be increased. Therefore, the pattern of pedestrian flow between the subway and the Project Site is expected to remain unchanged from

what was analyzed in the 2006 FEIS, and increased pedestrian crossings at the intersection of Atlantic and Flatbush Avenues are not anticipated.

## **Air Quality**

**Comment 70: The plan described in the FEIS included open space, which will now be occupied by parking lots for an unspecified number of years. How will this affect air quality? There is concern that air quality will only be monitored during demolition, since the plan is to make the site into a parking lot.**

**Response:** The Project is expected to be built out, and all temporary parking facilities relocated below grade, by 2019. The air quality analysis presented in the FEIS did not take credit for any air quality benefits associated with the presence of open space on the Project Site. Therefore, any delay in the construction of the open space would not affect the air quality analysis set forth in the FEIS. The MGPP does not change the number of on-site parking spaces and, accordingly, there would be no new significant air quality impacts as a result of the interim surface parking/construction staging areas. The relocation of the 100 parking spaces to Block 1129 would not result in significant adverse air quality impacts.

**Comment 71: When the EIS for the Project was conducted, the entire project was supposed to be completed over a few years. Now we are told that the Project will not be completed until 2025. This means many more years of truck exhaust, dust, traffic, etc. A new study should be conducted to see what the ramifications will be.**

**Response:** The Project is anticipated to be fully built by the end of 2019. The Technical Memorandum analyzed construction impacts including air quality and found that the construction schedule contemplated in the MGPP would not have the potential for new significant adverse impacts that were not previously disclosed in the FEIS. The Technical Memorandum also analyzed the potential for a further delay in construction of the Project and concluded that such a delay would not have the potential for new significant adverse impacts that were not previously disclosed in the FEIS.

## **Construction**

**Comment 72: While the construction analysis recognizes localized significant adverse impacts from construction, it does not acknowledge that the extended durations of exposure increase impacts, which will affect the health of the community near the Project. The noise mitigations provided by the developer do not mitigate construction noise for sidewalks, streets and outdoor play**

**areas. Dean Playground is within noise impact range of the construction of the Arena block, and has already been impacted by infrastructure work lasting over a year.**

**Response:** The change in the anticipated date for Project completion from 2016 to 2019 does not prolong the duration of the construction period. As indicated in the Technical Memorandum, if the construction schedule were to be delayed past 2019, certain construction activities would be prolonged, but the intensity of these activities would not increase and not additional SAI's would be anticipated.

**Comment 73: The Technical Memorandum should consider a surge construction scenario. The developer and the ESDC have acknowledged a likely delay in the construction schedule of the Arena and the remainder of the Arena block, but have affirmed the feasibility of a 10-year construction schedule for the Project as a whole. In the unlikely event that market conditions, public subsidies and construction costs enable a 10-year build-out of the Project, a short term delay could be followed by a surge in construction, significantly exceeding the amount of construction identified as peak in the Technical Memorandum or the FEIS. This construction would be taking place at the same time the Arena is in operation, which has not been considered. In addition, Dean Street Playground will now experience increased construction impacts related to noise and traffic due to the lengthier construction period.**

**Response:** The change in the anticipated date for Project completion from 2016 to 2019 does not prolong the duration of the construction period. As indicated in the Technical Memorandum, if the construction schedule were to be delayed past 2019, certain construction activities would be prolonged, but the intensity of these activities would not increase.

**Comment 74: The FEIS did not anticipate any residents or businesses in the footprint at the time of the initial building demolitions. Shelter residents have been exposed to dust, rodents and hazardous materials due to their close proximity to the work; it is understood by the community that air quality measurements have shown unhealthy air for shelter residents. If the residents of the shelter are to remain in the footprint during construction, the Technical Memorandum should address the need for a construction plan to be developed with local elected officials that addresses the shelter's location in the footprint.**

**Response:** The Pacific Dean Residences, a transitory homeless shelter, is located on Block 1129. It is anticipated that Block 1129 will be included in the first phase condemnation as described in the MGPP. Accordingly, it is anticipated that prolonged construction activities on Block 1129 would not occur while the shelter is in operation.

**Comment 75: The 2006 FEIS included diagrams showing the locations of construction staging sites dispersed in a number of locations throughout the Project footprint. Because of the phasing of property condemnations and the staggering of the railyard purchase, the amount of area in the Project footprint available for Project construction staging has been significantly reduced; construction staging will be concentrated on Block 1129 and on several small lots on Block 1128. The Technical Memorandum describes Arena construction staging now taking place on the Arena block, but does not disclose where. The reduced options for staging, combined with a delay in the Project, will increase the impacts in the immediate vicinity of the staging areas for an anticipated period of time. Where will the railyard construction staging take place? The FEIS claimed that staging construction at below-grade locations would significantly reduce construction impact; if loss of flexibility for the developer results in additional construction staging for the railyard being located at grade, then construction impacts may be increased. Below grade options contain noise and dust. The Technical Memorandum should describe additional mitigations if below-grade staging areas were not available, but it does not.**

**Response:** The first phase condemnation described in the MGPP includes all properties required for construction of the rail yard. Accordingly, the phased taking described in the MGPP is not expected to result in any change to the construction staging for the rail yard or whether the construction staging will be below-grade or at-grade. The MGPP is not expected to affect the use of the below-grade rail yard for construction activities.

## **Wind Conditions**

**Comment 76: The large open areas consisting of the “interim” surface parking facilities and construction staging areas will affect local wind conditions.**

**Response:** The projected completion date of 2019 described in the MGPP does not change the length of time that the interim surface parking facilities will be in place. As disclosed in the Technical Memorandum, an unanticipated delay in project completion may prolong the use of the interim parking facilities, but the presence of these facilities is not expected to result in significant wind impacts.

## *Comments on Property Disposition and Lease Terms*

**Comment 77: It recently came to light that the land valuation for the PILOTs at Yankee Stadium was misleading, and perhaps illegal. How is land valuation being handled here? The devaluation of the value of the land to keep FCRC able to go ahead with the Project is outrageous.**

**Response:** The market value for the Project Site properties for purposes of computing the Payment in Lieu of Taxes (PILOTs) will be determined by the New York City Department of Finance.

**Comment 78: There is no information on the structure and make-up of the Local Development Corporation (LDC) that will be issuing the bonds for the Arena.**

**Response:** The Job Development Authority, an ESDC affiliate, authorized the creation of the Brooklyn Arena LDC on April 8, 2008. The LDC was formed on November 16, 2008. The LDC Board has not yet met although it will meet prior to the issuance of the LDC bonds. The Board members will manage the non-profit LDC in accordance with Article 14 of the Not-for-Profit Corporation Law. \*