
Atlantic Yards Arena and Redevelopment Project

Response to Draft Supplemental Environmental Impact Statement

BrooklynSpeaks

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1. Background

1.1 BrooklynSpeaks

BrooklynSpeaks is an initiative of civic associations, community-based organizations, and advocacy groups concerned about the future of development at the Atlantic Yards site. Since the approval of the Atlantic Yards plan by the State of New York in December of 2006, the BrooklynSpeaks sponsors have advocated for transparency by State and City government with respect to project governance, as well as for the involvement of the public in the decision-making process. We have also drawn attention to adverse environmental impacts of the plan that remain to be fully and properly addressed.

The sponsors continue to work to create a dialog among residents, Community Boards, elected officials and State and City agencies around responsible development at the Atlantic Yards site that meets Brooklyn's needs and addresses the concerns of surrounding neighborhoods, while maintaining accountability to the taxpayers of the City and the State.

BrooklynSpeaks is a collaborative initiative of the following sponsors:

- The Atlantic Avenue Local Development Corporation
- The Boerum Hill Association
- The Brooklyn Heights Association
- The Congress for New Urbanism (New York Chapter)
- The Fifth Avenue Committee
- The Park Slope Civic Council
- The Pratt Area Community Council
- The Prospect Heights Neighborhood Development Council
- Tri State Transportation Campaign

1.2 The 2009 MGPP and the SEIS

The Empire State Development Corporation's approval of Atlantic Yards' 2009 Modified General Project Plan (MGPP) had the effect of extending the project's build-out from ten years to twenty-five years, while adding no mechanism for effective project oversight. Faced with more than double the duration of construction impacts being borne by our communities, as well as deferral of the vast majority of public benefits for a generation, a group of BrooklynSpeaks sponsors filed suit against the ESDC and Forest City Ratner Companies (FCRC) in November of 2009.

The Sponsors' petition was filed on November 19, 2009, prior to FCRC's master closing with the ESDC and purchasers of the arena bonds, which took place on December 29, 2009. The Master Development Agreement (MDA) was not immediately released to the public. and it had still not been released by the date of oral arguments in the matter, January 19, 2010. At the hearing on that date, counsel for the ESDC implied that remedies in the MDA were sufficient to ensure Atlantic Yards would be completed on schedule—assumedly the ten-year project schedule initially studied in the environmental impact statement. Less than a week later, on January 25, 2010, the ESDC made the MDA available to the public. It showed that remedies for completion of the full Atlantic Yards project were minimal, and only applied after 25 years. The BrooklynSpeaks petitioners were not allowed to submit the MDA to the court. Consequently, on March 10, 2010, the court found for the ESDC and FCRC.

The BrooklynSpeaks petitioners filed a motion to renew their claim based on the evidence in the MDA. Had the court ruled against ESDC, FCRC's access to escrowed \$500 million in bond financing would have been in jeopardy. The escrow period expired in May 2010. The court heard the reargument in June 2010. On November 9, 2010, the court ruled that the master development agreement called in to question ESDC's "rational basis" in approving the 2009 MGPP, and ordered ESDC to submit findings justifying its use of

10-year build-out for its environmental analysis. On December 16, 2010, ESDC submitted findings to the court that, among other things, claimed the timelines negotiated in the master development agreement had no bearing on its expectation for the actual project schedule, but that, in any event, the surrounding communities would not suffer additional adverse impacts by more than doubling the construction duration to 25 years.

On January 18, 2011, almost one year after the first hearing in the suit, the petitioners filed a supplemental petition challenging the findings in the ESDC's response. Together with their supplemental petition and with its reply to ESDC's answer, the BrooklynSpeaks sponsors also submitted affidavits from experts in urban planning and sustainable development that countered ESDC's contention that the community would suffer no additional impacts from extended construction, and supported BrooklynSpeaks' call for a supplemental environmental impact statement (SEIS). On July 13, 2011, the court found that the ESDC's approval of the 2009 MGPP based upon the 2006 environmental impact statement lacked a rational basis, was arbitrary and capricious, and therefore illegal under New York State environmental law. Justice Marcy Friedman ordered the ESDC to prepare a SEIS, and to reconsider the MGPP in light of the findings in the SEIS.

On September 9, 2011, FCRC filed a notice of its intent to appeal the July 13 decision ordering a supplemental environmental impact statement. ESDC followed suit on September 12. The two notices stayed the order to conduct an SEIS pending appeal. The Appellate Division heard oral arguments in the appeal on February 14, 2012. On April 12, the Appellate Division issued a unanimous decision upholding the lower court's ruling that ordered ESDC to prepare a SEIS and revisit the 2009 MGPP.

On May 14, 2012, ESDC and FCRC filed notices with the New York State Court of Appeals requesting leave to appeal the Appellate Division decision. The motion by ESDC and FCRC was denied by the Court of Appeals on June 26, 2012. With no further appeals possible, the decision of the lower court ordering a SEIS and revisiting of the 2009 MGPP became final.

On December 19, 2012—nearly six months following the exhaustion of its appeals, seventeen months after the lower court ruling ordering an SEIS, and more than three years after it had illegally approved the 2009 MGPP without proper environmental review—the ESDC issued a “Draft Scope of Work for a Supplemental Environmental Impact Statement for the Atlantic Yards Arena and Redevelopment Project.” The agency set March 14, 2013 as the deadline for public comments. The comments submitted by the BrooklynSpeaks sponsors are available at http://brooklynspeaks.net/sites/default/files/scoping_response_1-00.pdf.

On February 7, 2014, nearly eleven months after it had received public comments on the Draft Scope, ESDC released “Final Scope of Work for a Supplemental Environmental Impact Statement for the Atlantic Yards Arena and Redevelopment Project.” At public meetings during the intervening months, ESDC staff members stated that the delay in producing the Final Scope was due to the complexity of the SEIS and the detail of comments received. However, the Final Scope was followed shortly by the release of the Draft Supplemental Environmental Impact Statement (DSEIS) itself on March 28, 2014, the length of which (more than 1,200 pages) indicated it had been under development for many months before the Final Scope was published. The quick succession of the release of the Final Scope and DSEIS may be in part explained by the pending sale by Forest City Ratner Companies of 70% of its interest in the remainder of the Atlantic Yards project to Shanghai-based Greenland Holdings, a developer owned by the government of China. ESDC set a deadline of May 12, 2014 for receipt of comments, giving the public and its elected representatives a significantly shorter interval to review and respond to the DSEIS than ESDC provided for the Draft Scope, or even for the project’s 2006 DEIS. The BrooklynSpeaks sponsors requested an extension of 60 days to respond to the 1,200-page DSEIS, but ESDC denied the request.

This document contains the response of the BrooklynSpeaks sponsors to the DSEIS. It is of necessity shorter than the response we would have preferred to submit had we been allowed sufficient time to review the DSEIS and its exhibits.

1.3 Contributing authors and editors

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2. Summary

It would be disingenuous to begin by saying we are pleased to have the opportunity to comment on the Atlantic Yards Draft Supplemental Environmental Impact Statement. We consider it an outrage that ESDC has produced this document nearly five years after it was required. If properly prepared at the time of the 2009 Modified Project Plan, it would have led to an informed discussion about the merits of the MGPP among policy makers, elected officials, community members and the board of the ESDC. ESDC waited eighteen months after the New York State Supreme Court ordered it to produce an SEIS before even releasing a draft scope of work for review. After submitting detailed comments on the draft scope a year ago, we were deeply disappointed to find in February of this year that ESDC dismissed our request that it reconcile the 15-year project delay to which it agreed in 2009 with the project's goals of eliminating blight and providing what the 2006 FEIS accurately described as "much needed affordable housing."¹ We were even more troubled to discover on March 28 that ESDC would allow only 45 days for public comments on the DSEIS—a period far shorter than it had allotted for comments on either the draft scope of work or the 2006 DEIS. Given the agency's extended delay in complying with a court order to do what it was otherwise required to do under New York State law, ESDC's refusal to grant our request for additional time to prepare a response demonstrates again the agency's contempt for public participation in the Atlantic Yards process, contempt it has consistently displayed since the time it declared itself lead agency in September of 2005.

While not as long as would have been appropriate for a report of this size, our review has nevertheless made clear that ESDC has not taken the opportunity to meaningfully consider strategies that would directly address the 15-year project delay that necessitated this SEIS. Instead, in an effort to cement both Forest City Ratner's position as sole developer and decision-maker at Atlantic Yards, as well as the firm's right to wait up to 2035 or longer to make good on its commitments to provide affordable housing, the DSEIS attempts to recast Atlantic Yards as something nearly unrecognizable from the project that was described in previous documents leading up to its prior approvals.

The Atlantic Yards of the 2006 FEIS was a project required to "transform a blighted area" with a population in need of affordable housing into a "vibrant mixed-use community."² In contrast, the DSEIS largely paints the area surrounding Atlantic Yards as one teeming with development and experiencing rapid gentrification, despite the fact that not one unit of housing has been delivered at Atlantic Yards. It informs us that income in the area is up 56% between 1999 and 2010, from \$45,231 to \$70,513. Rent is up 72%, from \$765 to \$1,316³. Not only that, but the DSEIS acknowledges these trends are not just the product of the completed Barclays Center arena, but were established long before it was even approved and are consistent with the pattern of gentrification throughout brownstone Brooklyn.⁴ The DSEIS describes in detail the building boom sweeping nearby neighborhoods⁵, and approvingly observes increasing retail rents as evidence of economic strength and increased investment.⁶ It tells us that since the 2006 FEIS, households near the project that were vulnerable to indirect displacement have since been pushed out.⁷ And the DSEIS notes that the community near Atlantic Yards has become significantly less diverse: African American population in the area ¼ mile around the project declined from 48% to 37% from 2000 to 2010, while the white population increased from 35% to 50%.⁸

These factors, all of which in 2006 should have argued against a finding of blight, now highlight the urgency for Atlantic Yards to deliver on its commitments for affordable housing in the shorter 10-year term originally promised. However, using the pretzel logic of a government bureaucracy serving the interests of an influential developer, the DSEIS instead argues that the strength of the Brooklyn real estate market and

¹ Atlantic Yards Final Environmental Impact Statement; New York State Empire State Development Corporation ("ESDC"), November 2006.

² *Ibid.*

³ Atlantic Yards Arena and Redevelopment Project Draft Supplemental Environmental Impact Statement ("DSEIS"); ESDC, March 2014, pp. 3C-13 – 3C-14.

⁴ *Ibid.* pp. 3C-17 – 3C-18 *et al.*

⁵ *Ibid.* p. 4A-32.

⁶ *Ibid.* p. 3C-2.

⁷ *Ibid.* p. 4A-30.

⁸ *Ibid.* p.4A-14.

its attendant gentrification of neighborhoods surrounding the Atlantic Yards site form a rationale for discounting the impact of the project's promised housing. Because the areas near the project footprint were already experiencing gentrification, the DSEIS implies that delaying the completion of Atlantic Yards won't make things any worse than they already are. At the same time, the DSEIS makes the inconsistent and presently false assertion that neighborhoods further from the project, like Bedford-Stuyvesant and Crown Heights, neighborhoods which are now on the front lines of gentrification, will continue to experience stable rents simply because they have been the subjects of rezonings with a voluntary inclusionary housing component⁹, with neither empirical data nor testimony from real estate professionals to back up this claim. Finally, the DSEIS brazenly suggests that its forecast of an excess of new housing units *built by other developers* over the forecast from the 2006 FEIS is a sort of a dividend that will mitigate the delay of the completion of Atlantic Yards' housing in reducing pressure on rents.¹⁰

We requested that the SEIS consider how the project site would have developed if Atlantic Yards had never been approved in order to better understand the impact of delayed development on a site the State formally committed to a single developer for at least 25 years. ESDC refused this request. In all of its analyses of future development without the project, the DSEIS instead takes the unsubstantiated position that nothing will be built within the project footprint, even though it acknowledges a crush of development activity is happening all around the site that began before the project was approved. Fixing on such an unlikely scenario disregards a pattern of rezoning throughout Brooklyn and New York City to increase available density that was well-established during the Bloomberg administration and appears set to continue under the City's new Mayor. (In fact, the first project—Domino—negotiated by the new administration includes affordable housing with lower income targets and larger apartment sizes than have thus far been proposed for Atlantic Yards.) The DSEIS of course does not acknowledge that many successful residential developments had already been completed within the footprint prior to Atlantic Yards' approval, nor does it assess what impact upon the neighborhood those developments would have had if they had not been demolished to assemble land for Atlantic Yards. The gap between where we are today versus what could have happened at Atlantic Yards if ESDC had not allowed Forest City to hold the site hostage is the measure of Atlantic Yards' drag on economic and neighborhood development in northwest Brooklyn, but we will never know its true weight. Not only has not one unit of housing been delivered in Phase 1 of the project (which was to have been completed by now), Atlantic Yards has caused displacement by razing homes and businesses which have not yet been replaced. The developer has continuously delayed building the promised affordable housing which was to make up most of the site. Nor do increased rents charged to new businesses after viable long-term businesses were pushed out represent increased economic activity. They represent increased rents. Longevity of any such businesses remain to be seen, and have not been analyzed in this DSEIS.

The DSEIS does offer a multitude of analyses to argue that the impacts on the local community will be either insignificant or limited to Atlantic Yards' immediate neighbors. But reassurances about Forest City's compliance with the project's environmental agreements are belied not just by the general nature of the statements made in the DSEIS, but also by inconsistencies within the statements themselves. We hear that "the majority" of trucks were required to use internal staging areas to avoid queuing on public streets¹¹, even though 49% of trucks could be out of compliance for the statement to be true. We hear that signage and driver education materials led to a "substantial" reduction in idling violations, but with no specifics about the before and after conditions.¹² (The number in each case was probably pretty small, because according to the DSEIS the violations were issued by the Onsite Environmental Monitor, a Forest City employee assigned many tasks other than watching for idling trucks.) We hear, without irony, that "a large quantity of stockpiled soil was *temporarily* stored in Block 1229, Lot 81 *for several months* without being covered or kept adequately damp (emphasis added)."¹³ The passage almost certainly refers to Block 1129, since the project footprint does not contain a Block 1229; the dirt pile in question was directly across Dean Street from residences whose tenants complained frequently to ESDC about exposure to fugitive dust

⁹ *Ibid.* p. 4A-44.

¹⁰ *Ibid.* p. 4A-43.

¹¹ *Ibid.* p. 3A-5.

¹² *Ibid.* p. 3A-5.

¹³ *Ibid.* p. 3A-6.

during construction¹⁴. And last we hear confirmation that Forest City, ESDC, and ESDC's environmental consultant waited *until Barclays Center was complete and the arena was open* to discuss how to improve compliance with agreed-upon air quality protocols¹⁵; too late, unfortunately, for the residents who had to live through the effects of its construction. Little in the DSEIS gives them reason to expect the future will be different from the past in any way other than the length of time they will be subjected to similar impacts from an extended build out at Atlantic Yards.

ESDC's true priorities are revealed in the DSEIS' evaluation of the opportunity to return the completion of Atlantic Yards to its originally-approved 10-year schedule through engaging multiple developers at the site. The DSEIS' four case studies of development projects intended to demonstrate that extended development will not harm a neighborhood show the opposite. The one example of a single-source development cited by the DSEIS has stalled, resulting in delayed retail demand on First Avenue due to development sites remaining vacant.¹⁶ Nevertheless, the DSEIS' discussion of a multi-developer approach at Atlantic Yards is utterly dismissive, instead placing a premium on Forest City's "extensive contractual and property rights in the Phase II site"¹⁷. *The rights in question, however, exist solely due to ESDC's illegal approval of the 2009 MGPP, upon which the various Atlantic Yards development agreements were predicated, and thus cannot be given controlling weight.* The DSEIS further explains that "FCRC affiliates also have spent hundreds of millions of dollars in performing their obligations under these contracts, and have used many of those agreements as security for financing the Project,"¹⁸ without noting that Forest City did so in years not only during which the legality of the 2009 MGPP was being challenged in court, but also during years in which the public awaited ESDC's production of the court-ordered DSEIS itself after the challenge proved successful. The DSEIS doesn't explain why contractual rights gained and expenses incurred based on ESDC's illegal approval of the 2009 MGPP should limit the public's right to the same scope of review that would have been possible prior to that approval.

Further, the arguments put forward in the DSEIS to justify its dismissal of a multi-developer alternative at Atlantic Yards are superficial and lack any of the depth of analysis that characterizes the rest of the document's content. Their elliptical nature is typified by the following statement: "Since the FCRC affiliates have given no indication that either they or their secured lenders would be willing to give up their existing rights, issues arising in connection with a switch by ESD and MTA to a multi-developer alternative would take years to resolve, prolonging the construction period."¹⁹ We are left to guess as to whether ESDC actually broached the subject with Forest City, or if its having "given no indication" allowed ESDC to assume no such negotiation was possible. We are told "a multi-developer alternative would take years to resolve, prolonging the construction period," but no attempt is made to quantify such prolonged construction, let alone compare it to *the minimum fifteen year delay to which ESDC agreed in 2009*. ESDC has extensive experience bidding development projects, but the DSEIS whines that managing such a process at Atlantic Yards would be "complex and time-consuming,"²⁰ again, no attempt is made to quantify the impact of such a process, even though ESDC must surely have dozens of case studies upon which to draw. The DSEIS continues with unsupported conjecture when it shrugs, "it is not clear that multiple developers would have an interest in the opportunity presented" at Atlantic Yards²¹. We wonder why it isn't clear to ESDC. The other sections of the DSEIS indicate that the agency surveyed real estate professionals and developers with knowledge of the study area about residential and retail demand and found both to be strong. But there is no mention of the agency having even an informal discussion about the potential for expanding the development teams active at Atlantic Yards, let alone circulating an RFI to gauge interest.

The DSEIS asks we accept without analysis that shared elements at Atlantic Yards, like the rail yard platform, parking facilities, and open space are inconsistent with a multi-developer approach. But such a proposition seems inconsistent with the experience at Battery Park City and Riverside South presented in

¹⁴ See <http://atlanticyardswatch.net/node/110>.

¹⁵ DSEIS, p. 3A-7

¹⁶ *Ibid.* 3A-61.

¹⁷ *Ibid.* 6-39.

¹⁸ *Ibid.* 6-40.

¹⁹ *Ibid.* 6-40.

²⁰ *Ibid.* 6-41.

²¹ *Ibid.* 6-41

the DSEIS' case studies, or the example of the Hudson Yards project in Manhattan, or for that matter, many other large projects, including those overseen by ESDC. The DSEIS makes no attempt to describe how multiple developers solve problems related to shared services at other successful projects, let alone explain why similar solutions wouldn't apply at Atlantic Yards.

Having brushed aside a multi-developer alternative with unsupported and questionable rhetoric, the DSEIS bends to embrace the proposed joint venture between Forest City Ratner and Greenland Holdings Group: "In the event that the joint venture transaction with the Greenland Group affiliate were to close, it is likely that it would inject substantial additional capital into Phase II, and thereby be more effective in accomplishing an accelerated development schedule than pursuit of a multiple developer alternative."²² The logical leaps here are many, and they start with the acknowledgement that the deal in question not only hasn't closed, but wasn't on the horizon when ESDC released its draft scope of work, let alone when the agency was ordered by the court to produce a DSEIS. Is it "likely" Greenland would bring "substantial" capital to the project? Perhaps, but it's equally likely the joint venture could be deadlocked by a capital crunch affecting either of the partners. No attempt is made to compare the resiliency of the proposed joint venture's ability to complete the project with an alternative involving multiple independent developers, so there is no basis for us to agree it is more likely to result in an "accelerated" development timeline.

The complete lack of analysis behind the DSEIS' determination that a multiple-developer approach won't work at Atlantic Yards therefore brings us no closer to understanding the opportunity to avoid the impacts of 25 years of construction by restoring the original completion schedule of 10 years. Forest City could easily make the question moot by simply agreeing to amend the project agreements to reflect the 10-year build out. It should go without saying that doing so would also make an SEIS unnecessary. Unfortunately, the fact remains that Forest City has instead chosen to spend millions of dollars on the SEIS in order to preserve its right, based upon ESDC's illegal approval of the 2009 MGPP, to wait until 2035 to complete Atlantic Yards.

One is thus reminded of the words of the 20th century economist and reformer Leland Olds, who once characterized government's function as "handling certain administrative details for an immensely powerful ruling class." Yes, after five years ESDC has finally produced the SEIS that should have accompanied the 2009 MGPP; whether its effort will be seen as complying with the court's order is yet to be determined. But to get to this point, ESDC has largely abandoned the blight characterization of the Atlantic Yards area that was so critical to the project's original approval with its massive public subsidies. It has tried to recast the project as just one in a string of developments gentrifying Brooklyn, and given up any sense of urgency about the need for its promised affordable housing, at a time when historic efforts are being made by the current administration to do just that. It has attempted to paper over its own failure to limit the impacts of construction on Atlantic Yards' neighbors. It has forgotten about how it has built other large projects in the past, with multiple developers and dedicated and representative project oversight.

Perhaps ESDC hopes the community has forgotten the past, too. But we haven't.

²² *Ibid.* 6-43

3. Analysis framework

In our comments on the draft scope of work for the DSEIS, we took issue with the proposal that a completed Phase I should be assessed as a background condition. There is no contractual requirement that Phase I be completed before Phase II, and in fact the project sponsors have recently announced their intention to begin construction on the Phase II site before the completion of Phase I. The DSEIS nevertheless assumes Phase I will be completed before Phase II, and as such fails to assess or analyze the effect of overlapping construction between the two phases.

No quantitative analysis of modular construction is provided in the DSEIS, even though at this point the sponsors presumably have enough experience with modular to predict its likely impacts to the nearby community.

The assumption that “none of the benefits related to Phase II would be achieved in the Future Without Phase II” is not supported. The benefits in question are for the most part affordable housing and open space. They are possible due to the opportunity for market rate development on a project site which has already been cleared and is in a desirable, gentrifying neighborhood of Brooklyn. It is unreasonable to assume that no development would occur if the current developer was unable to complete Phase II, or that development by another entity would not include affordable housing and open space. Rather, based upon the market analysis presented in the DSEIS, it appears more likely that there would be demand for the site if the current developer left the project. That likelihood is borne out by the fact that the site contained several recent market rate developments prior to project approval that were later acquired by Forest City Ratner and demolished to make way for Atlantic Yards. As stated on page 4A-42, “These trends indicate that demand is high, and will continue to increase in the future with development of Phase II under the Extended Build-Out Scenario or in the Future Without Phase II.” If demand is high and getting higher, the DSEIS should explain why it is reasonable to assume there will be no development on the Phase II site without this particular project. Conversely, with the understanding that the land comprising Phase II would be very likely to be developed in a future without Atlantic Yards, the delay of the Atlantic Yards project becomes more impactful. The DSEIS should, as we requested in our comments last year, study what would have been likely to be developed on the site based upon what we know now about the Brooklyn real estate market, and consider the land use and socioeconomic consequences of Forest City Ratner effectively warehousing the site.

The DSEIS states that the NYCL Prospect Heights Historic District was designated in 2006, but in fact it was designated in 2009.

4. Prolonged and increased blight

One of the primary purposes of the Atlantic Yards project, according to the EDPL Findings²³, was the removal of blight: “The principal public use, benefit, and purpose of the Project is to eliminate the blighted conditions on the Project Site and the blighting influence of the below grade Yard.”

According to Section 10(c) of the New York State Urban Development Corporation Act, “blight” is “a substandard or insanitary area” which “tends to impair or arrest the sound growth and development of the municipality.” Because ESDC’s primary justification for the project was the removal of this condition, the SEIS should have studied the impacts of delaying its achievement by 15 years or more. It should also have assessed a full range of alternatives that lessen the risk the project will take 15 years longer to build than originally anticipated. In fact, the impact of the project so far has been to *expand* the blighted area by destroying well-maintained, in some cases historic, buildings in the project’s footprint and by increasing the cost of development in some areas. Some sidewalks are in a worse state than before, there are fewer street trees, and the view of much of the project site is undeveloped lots and poorly maintained fencing.

When the ESDC approved the 2009 MGPP, it attempted to conceal the delay of the project’s completion, which was later memorialized in the Master Development Agreement (MDA). The State Supreme Court in July 2011, however, found that one effect of the 2009 MGPP was to delay significantly completion of the Atlantic Yards project, and ordered the ESDC to complete the SEIS. The Appellate Division unanimously affirmed that decision, agreeing that approval of the project based on a 10-year building plan “lacked a rational basis and is arbitrary and capricious” given that the plan has been extended to allow construction to be prolonged for an additional 15 years.

In light of the court’s order, the ESDC was required to consider all impacts of the project’s delay, including the impact of long-delayed and expanded blight, and the fact that its stated goals would not be achieved until at least 15 years after the original date specified.

One of the critical impacts of the delay of the project’s completion is that any blighted conditions that existed before would be substantially prolonged, and in fact expanded, as the project proceeds at a snail’s pace. The DSEIS completely fails to address this in any meaningful way.

In her decision of July 13, 2011, Justice Marcy Friedman explained that the ESDC’s Technical Analysis prepared by its environmental consultant failed to support its conclusory findings that prolonged development would not result in substantial additional environmental concern. She explained that “under established standards for environmental impact analysis, the duration of construction activities is a factor that is required to be taken into account in assessing the impacts on both environmental conditions such as traffic, noise, and air quality, which are amendable to quantitative analysis, and conditions such as neighborhood character, open space, and socioeconomic conditions, which are largely subject to qualitative analysis.”

Yet the new DSEIS makes the same sort of conclusory and unsupported findings as the old one, dismissing completely the obvious concern about extended and increased blight by making the faulty assumption that existing blight would have remained for 25 years without the project, despite the rapid and escalating pace of economic and real estate development in the area.

Moreover, because the project began by demolishing whole blocks of a thriving neighborhood which included well-preserved and in some cases recently remodeled residential and commercial buildings and thriving businesses, the impact of the project has been to add to the blighted conditions of the neighborhood rather than to remediate them. The SEIS therefore cannot possibly be considered complete until it has analyzed the impact of the additional blight created by the project, as well as the substantial delay in remediating the blighted conditions that were originally promised.

Another significant factor that should have been considered is the current economic condition of the surrounding neighborhoods, and the extremely fast pace of development in the area. Had the ESDC not approved this project – i.e., the Future Without Phase II – the result would not have been *no* development,

²³ “Determinations and Findings by the New York State Urban Development Corporation d/b/a Empire State Development Corporation Pursuant to EDPL Section 204 with Respect to the Atlantic Yards Land Use Improvement and Civic Project,” Empire State Development Corporation, December 2006.

as the DSEIS presumes, but likely far faster development, by multiple developers, of the surrounding area. The result of the ESDC's approval of the project has been to make the entire 22-acre site off limits to developers, thereby ensuring its continued – and expanded – blighted condition for more than a decade into the future. This does a great disservice both to residents and businesses already existing in the area, and has deprived other developers, new and expanding businesses, and thousands of potential residents of the opportunities and benefits that development by multiple different developers would have brought.

4.1 The rail yards

A main source of the blight alleged in the original project plan was the Vanderbilt rail yards. According to the 2006 Blight Study, the rail yard “has long been a blighting influence in the immediate area,” that creates a “physical and visual barrier that separates the neighborhoods of Boerum Hill, Fort Greene, Prospect Heights, and Park Slope.”

The Blight Study states: “One of the principal reasons why the project site has remained in a state of physical disrepair and relative economic inactivity while surrounding blocks have experienced significant revitalization is the presence of the open below-grade Vanderbilt Yard and the high cost of covering and building over the yard.” The study found: “The gap in the urban landscape that is created by the below-grade rail yard creates an environment that discourages street-level activity, and the inadequate street lighting surrounding the rail yard, in combination with vacant lots and deteriorating structures on the blocks south of the yard, creates a sense of isolation that spans across the project site.”

The Blight Study also found that the undeveloped rail yards could encourage crime in the neighborhood: “The lack of adequate lighting, presence of deteriorating built structures and vacant lots, and lack of street-level activity creates a sense of isolation that may encourage illegal activity,” and “The lack of pedestrian activity and relative isolation and desolate feeling on the project site, particularly on Pacific Street south of the rail yard, creates an environment that is conducive to activities such as automobile theft and drug sales.”

According to Atlantic Yards' Master Development Agreement (MDA), construction is not even required to *begin* to cover the rail yard until 2025.²⁴ At the time of this writing, FCRC can still forfeit its letter of credit and not proceed with the building of the permanent rail yard or the platform over the rail yard. If they choose to proceed, the railyard need not be covered until 2035. In the meantime, blight has increased in the area because ESDC used the threat of eminent domain to help FCRC purchase the buildings that existed along the west side of Vanderbilt Avenue between Atlantic and Pacific Streets. FCRC then razed those buildings and excavated the area to allow for relocation of the rail yards for purposes of its project. Now, that area as well as the rest of blocks 1121, 1120, and potentially a remaining part of block 1119 need an expensive platform before development can begin. This leaves open the possibility that this area, which was *not* blighted before, will now remain blighted and a negative impact on surrounding neighborhoods for decades to come.

The delay in FCRC taking control over the MTA property has also resulted in no one being in charge of many of the sidewalks lining that property, particularly on Atlantic Avenue and on Pacific Street. The result is the area is frequently strewn with trash and no one shovels the sidewalks.

Also, because FCRC has delayed construction of the permanent rail yard, the operations offices, construction staging, and employee parking for the rail yard have been moved to block 1129. These uses compete for space with potential project improvements, including promised temporary green space. In addition, extended construction of the rail yard itself has degraded pedestrian facilities by eliminating and/or reducing sidewalks for an unanticipated period, and cutting street trees, most especially on Pacific Street between 6th Avenue and Carlton Avenue.

The DSEIS ignores all of these aspects of the project, which expand and prolong the very blight that the project was allegedly designed to address.

²⁴ 2009 Master Development Agreement, section 8.5.

4.2 Likely alternative development

The project presumes that without this project, there would be no development of the area at all, and therefore a 15-year delay is still an improvement. This theory is not substantiated by any quantitative research, and in fact conflicts with the qualitative and quantitative research presented in chapter 3A of the DSEIS (among other chapters).

Current conditions in the Prospect Heights and Fort Greene neighborhoods immediately surrounding the rail yards, and the thriving cultural district around the Brooklyn Academy of Music (BAM), suggest that there would be a huge incentive for developers to find ways to cover the rail yard and develop this 9-acre parcel for both residential and business uses. As the DSEIS notes: “The Yard itself contains approximately 9 acres (including the land under the 6th and Carlton Avenue Bridges) of potential prime real estate in the borough of Brooklyn in close proximity to a major transportation hub and along a major arterial.” Indeed, the median price of real estate in Prospect Heights has risen more than 400% between 2000 and 2014.²⁵ Had other developers been given the opportunity to bid on the project and receive the support the state has provided to FCRC, there can be no doubt that development of this parcel would be well underway. For ESDC to assume that without Phase II of the project there would have been nothing in this location defies the reality of the thriving real estate market in this part of Brooklyn.

The SEIS should have specifically considered what would be the impact to the “immediate area” surrounding the rail yards should they remain “a blighting influence” for an additional 15 years. That analysis should have included the impacts on land use, socioeconomic conditions, open space, cultural resources, urban design, and neighborhood character. It also should have proposed appropriate mitigations to address the substantial delay in expected project benefits.

The SEIS also should have studied the effect of prolonging the blight conditions around the rail yards on crime rates in the area. The FEIS indicated that the neighborhoods of Boerum Hill, Fort Greene, Prospect Heights and Park Slope were all negatively affected by the “physical and visual barrier” of the rail yards. How does prolonging this condition for 15 years affect land use, socioeconomic conditions, open space, cultural resources, urban design, and neighborhood character in each of these neighborhoods? The SEIS should also have proposed appropriate mitigations to address the substantial delay in the expected project benefits.

4.3 Block 1129

The 2006 Blight Study did not find that all buildings on block 1129 exhibited blight, and that only three were vacant. The buildings demolished on block 1129 following approval of the Atlantic Yards project included residential buildings housing working families, light manufacturing buildings housing artists and related creative sector businesses, and the historic Ward Bakery building. Given the definition of “blight” used in the 2006 Blight Study, the SEIS should have analyzed the impact of the demolition of buildings on block 1129 and their replacement with a surface parking lot, which extended the blight that ESDC identified prior to the project’s approval in 2006. The SEIS also should have assessed the impacts over 15 additional years of construction in terms of land use, socioeconomic conditions, open space, cultural resources, urban design, and neighborhood character, and propose necessary mitigations in lieu of the expected project benefit of eliminating blight.

4.4 Open space

The Blight Study specifically says that the Atlantic Yards project would address blight by adding “at least 7 acres of publicly accessible open space” as mitigation for blight in the project area. The ESDC now ignores that the open space promised will be delayed for up to 15 years or more. This is an extremely important and significant impact on the environment and on the surrounding communities.

As Justice Friedman explained in her July 2011 decision, quoting the CEQR Technical Manual: “[a] construction impacts analysis for open space should be conducted . . . if access to the open space would be impeded for an extended period during construction activities.” She further noted that, according to the

²⁵ Trulia http://www.trulia.com/real_estate/Prospect_Heights-Brooklyn/5210/market-trends/

ESDC's Technical Analysis, "the provision of eight acres of publicly accessible open space is a 'key component of the Project'" as it will "connect the neighborhoods to the north and south of Atlantic Avenue, for the first time in a century. The court went on to criticize the Technical Analysis for making faulty assumptions about the negligible impact of the prolonged construction period, performing a "perfunctory analysis" of the impacts of extended delay, and for failing to examine the years of potential delays before commencement of the Phase II buildings, and thereby creation of the open space designed to accompany them.

Pursuant to the court's order, the SEIS should have specifically addressed the impact of the substantial delay on open space, taking into account the delays of commencement of the Phase II buildings. It should also have considered that multiple developer projects could have added open space to the area much more quickly.

4.5 Preexisting project permits and agreements

Demolition and site preparation at Atlantic Yards began shortly after the project's approval in December 2006. In some cases, City agencies issued permits to the project sponsors for related work. In 2008, for example, the New York City Department of Parks issued a permit for the removal of 86 street trees around the project perimeter. The permit was conditioned on monetary restitution, as well as a commitment by Forest City Ratner to replace the trees, presumably by the time the Atlantic Yards project is completed. The delayed construction of the project means that much or all of the site perimeter will be empty of trees for an additional 15 years. This only adds to the visual blight created by the Atlantic Yards project, and extends the very blight it was designed to remediate.

The SEIS should have identified this permit, and all other city permits, granted to the project sponsors prior to the 2009 MGPP, and analyzed whether and to what extent the 15-year delay in construction, coupled with these permits, would result in increasing blight in the project area. It also should have documented the impact of that extended blight.

4.6 Commercial retail property vacancies

As Justice Friedman noted in her July 2011 decision, citing the SEQ Technical Manual: "if the proposed project would entail construction of a long duration that could affect the access to and therefore viability of a number of businesses, and the failure of those businesses has the potential to affect neighborhood character, a preliminary assessment for construction impacts on socioeconomic conditions should be conducted."

As noted elsewhere in this document, the advent of the arena appears to have driven up commercial rents on Flatbush Avenue. This in turn has led to the displacement of businesses, and as noted in the DSEIS, to an increase in retail vacancies. The DSEIS assumes the vacancies will be cured as a function of time, but it's not clear as of this date that the arena on its own has the ability to promote economic development for large numbers of local merchants, particularly since Barclays Center has been designed to internalize and capture demand by patrons for food and drink.

The DSEIS should have considered more seriously and in more detail the impact the prolonged construction would have on surrounding businesses, and the impact of vacant storefronts on neighborhood character. Because removal of blight was such a central goal of the project, it should also have proposed mitigations to address the resulting blight.

4.7 Comparable extended development in urban areas

The SEIS should have studied comparable projects involving prolonged development by a single developer extended over the course of two decades, to identify impacts likely to be suffered by communities surrounding the Atlantic Yards site. The case studies used as comparisons by the DSEIS are not in fact comparable developments, and therefore fail to provide meaningful basis for assessing the likely impacts of this project.

For example, the DSEIS examines the Riverside South project in Manhattan as a case study. However, that project, which was carried forward by multiple developers, was completed within less than 20 years of its start date. Because multiple developers built on the site, there was a relatively consistent level of development, rather than the incremental development with starts and stops expected to occur at Atlantic Yards due to the entire site being granted exclusively to one developer.

Significantly, Riverside South is more than three and a half times the size of the Atlantic Yards project, yet it was completed within 20 years, while the Atlantic Yards project may take up to 25 years. Moreover, one long border of Riverside South is the Hudson River; unlike Atlantic Yards, the project was therefore not located in the middle of a residential neighborhood on all sides. The impact on residents of 20 years of construction was therefore likely much less than it will in the Atlantic Yards project.

Likewise, Battery Park City, at 92 acres, is much larger than Atlantic Yards, and like Riverside South, borders the Hudson River. There was very little residential use in the area prior to construction, so the impact of construction on existing neighborhoods and residents was obviously much less than in the situation of Atlantic Yards, where residential neighborhoods surround the project. Indeed, Battery Park City was built on landfill, so there really wasn't much of anything there at all before it began. And once again, multiple developers were engaged so that the project consistently moved forward.

The Metrotech project, developed by FCRC in combination with Polytechnic University, is also not comparable because its development took about 13 years, much less than is contemplated for Atlantic Yards. Also, unlike Atlantic Yards, there was little residential use of that site, which might legitimately be considered to have been blighted. That is not the case with the Atlantic Yards site, as explained previously.

First Avenue Properties, like Atlantic Yards, relied on a single developer. Unlike Atlantic Yards, however, the properties sold to the developer were former power generation plants and related facilities, not residential properties and retail businesses surrounded by residential neighborhoods.

The DSEIS acknowledges that this single developer ran into difficulty with the project and construction was suspended. Much of that site remains undeveloped and underutilized, and, based on the DSEIS description, appears to have caused significant blight in the area. Indeed, the DSEIS acknowledges a resulting negative impact on business in the surrounding area based upon an extended development schedule. The DSEIS specifically cites the "limited" retail landscape along First Avenue near the development sites and a "continued trend of low foot traffic" that "resulted in limited demand for retail and restaurants on First Avenue. As the sites have remained vacant, there continues to be limited retail and restaurants on this stretch of First Avenue." To the extent that this project is comparable, it highlights the possibility of a very bad outcome for the Atlantic Yards project and its surrounding communities. The DSEIS should have noted that, and considered the alternative of a multiple developer scenario that would have drastically reduced the risk of comparable problems.

4.8 Best case future without the project

In making the above assessments, the SEIS should also have considered for comparison, in each case, a reasonable best case scenario of development that likely would have occurred had the ESDC and the Atlantic Yards project not transferred control of the site to Forest City Ratner and instead allowed organic development that was already beginning at the site to continue.

5. Environmental controls and oversight

No matter on what schedule the project is developed going forward, the adjacent community will have been exposed to construction impacts for far longer than is anticipated in either the FEIS or the DSEIS. Some residential buildings in the vicinity of the project's second phase are described in the DSEIS as exposed to up to seventeen years of more construction impacts, and these same buildings have already been exposed to eight. The FEIS obviously anticipated no more than ten in any circumstance.

Extended adverse significant impacts are described in the DSEIS for the community near the site, but the DSEIS minimizes them by defining the area of impacts as narrow geographically, and the degree of impacts as mitigated through environmental commitments. The DSEIS acknowledges some construction-related activity has not complied with environmental commitments and that construction oversight has been flawed. It does not state non-compliance has been minimized to the extent that is possible.

Our comments on the draft scope of the SEIS asked ESDC to take into account the actual experience of construction as it assesses the future impact of an extended project build out. Some residents living near the project are in the ninth year of living with adverse impacts from construction, and have documented non-compliance not only with the MEC, but also with New York City and State laws throughout that period. This is nearly the length of time originally anticipated for project construction.

As part of our comments on the draft scope for the SEIS, BrooklynSpeaks included "Evaluation of Construction Air Quality and Noise Commitments and Mitigations, Atlantic Yards, Brooklyn, NY," prepared by Sandstone Environmental Associates for the Prospect Heights Neighborhood Development Council in June 2012. It was provided to the State and the developer at the time of its release. It contains examples of non-compliance drawn from the hundreds of examples on Atlantic Yards Watch, (a community-based initiative and website to protect the health and livability of neighborhoods impacted by Atlantic Yards and the Barclays Center), and recommends improvements it asks the State to put in place. 311 numbers accompany many of the complaints. It is safe to assume many more 311 complaints were filed that have not been posted on Atlantic Yards Watch.

The report prepared by Sandstone was based on quarterly reports provided by Empire State Development Corporation, some of which (it was discovered after the report's release) had been edited prior to being provided to Sandstone²⁶, incident reports submitted by nearly 100 separate community members to the website Atlantic Yards Watch, and a construction log kept by the Dean Street Block Association that predates the website. Nearly 1,000 construction-related incident reports were filed on Atlantic Yards Watch in the period between its founding in mid-2011 and the opening of Barclays Center in September 2012. Documentation of non-compliance with the MEC has continued since.

Our comments on the scope asked for the SEIS to include an impartial, transparent analysis of the root cause of so many violations of agreed-upon environmental commitments, and for it to present a credible plan to ensure full compliance during future phases of construction. We asked for the analysts to study the oversight mechanisms defined in various project agreements to find why they were not followed or sufficient. Perhaps in response, the DSEIS delineates the structure of oversight including the Onsite Environmental Monitor (OEM), the State's own Environmental Monitor (HDR), and the various plans that are required by the MEC and/or State and City regulations.

Either the DSEIS does not give a hard look at these oversight mechanisms, or it glosses over problems identified in its analysis by not disclosing them to the public. It is telling in this context that as the DSEIS describes, ESDC and the project sponsor sat down to improve compliance with the MEC only after the hard deadline of opening Barclays Center and the Carlton Avenue Bridge had passed, supporting the notion "higher ups" in the State tolerated non-compliance as a means of helping the developer meet its own deadline.

The DSEIS describes the oversight structure (including MEC components like the Construction Protection Plan and the Construction Air Quality Measures mitigation plan) as a means of describing how compliance

²⁶ "Atlantic Yards Construction Violations: Not Just Neglect, but Cover-Up of Documentation Falsified by the Contractor," Atlantic Yards Report, Wednesday, July 25, 2012.

<http://atlanticyardsreport.blogspot.com/2012/07/atlantic-yards-construction-violations.html>

is monitored and enforced. It also details “Program Improvements,” some of them apparently in response to recommendations made in the Sandstone report. However, the “Program Improvements” do not remove the dependence of the State on the project sponsor for information about conditions on the project site. The following problems with construction oversight should also be taken into consideration in the environmental analysis of the SEIS because they support the notion ESDC has at times chosen not to enforce FCRC’s compliance with the MEC:

There have been many gaps in staffing and plans. For extended periods key elements of the oversight detailed in the MEC, and ESDC’s 2007 oversight regime for Atlantic Yards, have not been in place. This includes the Ombudsman, FCRC’s Community Liaison, and the OEM. At the start of the project, the State does not appear to have had its own Environmental Monitor. ESDC does not have an office on site. The project cannot be monitored from 633 3rd Avenue.

Construction oversight is more complex than the FEIS anticipated. The MTA has retained control of a large portion of the site while construction has unfolded on it. City agencies do not have oversight over MTA/LIRR-owned property. As a State Public Authority, the MTA overrides local law and provides its own (negligible) oversight. City Agencies describe the MTA as slow to respond.

ESDC relies too heavily on FCRC to report on compliance with environmental commitments. ESDC’s Environmental Monitor HDR is reliant on the developer and contractors for information. HDR makes regular, apparently scheduled visits to review paperwork prepared by FCRC’s OEM, but does little monitoring on its own. Verification of the community’s claims is largely in the hands of the developer and contractors doing the work. ESDC’s Community Liaison has little direct contact with those doing construction work and have difficulty verifying community claims with the resources they have been provided. Apparently ESDC did not make arrangements to receive from 311 community complaints about arena construction when it began. ESDC later stated publicly it received no complaints. The “two-week look-aheads” prepared by FCRC and distributed by ESDC often omit significant construction activity. Those construction events that are described sometimes also appear to be the ones consultants are present to monitor. Although FCRC was required to hire an “Independent Compliance Monitor” within six months of signing the CBA, it still has not done so. The ICM would provide an independent account of the number of construction workers on site as well as compliance with environmental commitments. Without the ICM, FCRC’s claims remain unchallenged.

FCRC’s Community Liaison has not been responsive or effective. The DSEIS sugarcoats this problem. When told FCRC’s Community Liaison was only on site one day a week, an ESDC official stated FCRC was “in violation” of the MEC which requires a Community Liaison on site. FCRC said it would correct the situation, but didn’t. Instead, ESDC backed down and stated the developer was in compliance with the MEC. FCRC’s Community Liaison during construction has functionally been an answering machine and an email address for much of the project’s construction period and FCRC has been unable to establish trust with much of the community.

The DSEIS presents no explanation for *why* oversight mechanisms defined in various project agreements were not followed or sufficient. Even well intentioned contractors focused on compliance with environmental regulations make mistakes. At other times contractors are opportunistic. It is the community that bears the risk when the State creates an environment enabling non-compliance. Experience has shown it is not enough for the DSEIS to delineate mitigations and an “Improved Program” if ESDC continues to rely nearly exclusively on the project sponsor for verification and information.

The Program Improvements described in the DSEIS tweak existing oversight and monitoring mechanisms under the same oversight structure that failed to hold the developer accountable in the past. The DSEIS must acknowledge this failing, and compare environmental compliance with other projects that are overseen by dedicated subsidiaries whose boards include outside directors appointed in conjunction with local elected officials, ensuring that community concerns are represented in project policy and decision-making.

5.1 Air quality

The primary means of ascertaining compliance with the dust suppression measures is through daily spot inspections by FCRC’s On-site Environmental Monitor and the Site Superintendents.

Nearly 200 individual incident reports citing air quality impacts, many of them associated with construction, have been filed on Atlantic Yards Watch (<http://www.atlanticyardswatch.net>) since May 2011. Most incident reports are accompanied by video and/or photographic documentation the analysts preparing the DSEIS are asked to review. The community has documented problems related to air quality, and filed 311 complaints, extending back to early 2007 when asbestos abatement began in the Ward Bread Bakery properties.

On Atlantic Yards Watch, community members have cited irritated eyes, aggravated allergies and asthma as a result of poor air quality from construction.

While the DSEIS states HDR found the project sponsors were “generally in compliance with the air quality requirements set forth in the MEC,” they also found a wide range of areas in which there was non-compliance. HDR found room for improvement, or problems with nearly all categories for which the project’s OEM is responsible to monitor.

5.1.1 Compliance with CAQM

The MEC requires a Construction Air Quality Measures Compliance Plan, (CAQM), before “intensive” construction work at the site. However, the CAQM itself is dated April 2010, one year after the start of arena construction.

On page 3A-7, the DSEIS notes that in a review it was found the OEM and contractors did not always meet CAQM construction air quality requirements. “HDR noted that the CAQM Compliance Plan has provided the necessary strategies to meet the construction air quality requirements. However, HDR observed that a number of the provisions in the CAQM Compliance Plan were not adequately followed, including the submission of the project sponsors’ quarterly environmental monitoring reports in a timely manner, completion of the environmental monitor daily inspection form on a regular basis, and proper training related to the MEC air quality requirements to all contractors working on-site.” If during the course of construction HDR and the State were unable to make the OEM follow the CAQM Compliance Plan requirements, the SEIS should detail on what basis it is to be expected there will be improved supervision in the future.

The DSEIS also states on page 3A-7 that in October 2012, following the arena and Carlton Avenue Bridge openings, the Project Sponsors, ESD and HDR met “to identify strategies to better implement the requirements of the CAQM Compliance Plan.” Among the improvements were improved contractor training and “modification to some forms.” There were three follow up meetings to discuss these and other program improvements. In 2014 the CAQM Compliance Plan was updated “to reference the contractors and personnel working at the project site and to reflect current protocols and procedures.”²⁷ The DSEIS should disclose whether (and how) staffing related to air quality compliance changed in the 2014 updated CAQM compared to the plan that was in effect at the time of arena construction.

5.1.2 OEM

The Sandstone report²⁸ refers to the Onsite Environmental Monitor as “the next line of defense in maintaining the MEC because the OEM is supposed to be on site every day meeting with contractors and observing the site conditions.”

The DSEIS states the OEM office “was developed” in compliance with the MEC: “The OEM program was developed in compliance with the MEC and consists of an OEM and two environmental engineers (MEs) who monitor, enforce, and document project compliance with the construction-related requirements set forth in the MEC. The MEs are on site during regular workday hours and perform routine site walkthroughs to observe and document compliance. These MEs work in close coordination with the OEM, who conducts on-site weekly meetings and also periodically performs compliance inspections. The level of on-site staffing adjusts as work activities change; any changes are discussed with ESD before implementation.” The DSEIS should confirm that the OEM and the MEs are assigned full-time to ensuring

²⁷ DSEIS, 3A-11.

²⁸ “Evaluation of Construction Air Quality and Noise Commitments and Mitigations, Atlantic Yards, Brooklyn, NY,” Sandstone Environmental Associates, 2012. (Available at http://atlanticyardswatch.net/sites/default/files/atlantic_yards_air_noise.pdf)

compliance with the MEC, or if they are not, describe their other duties and the hours per week those other duties require.

5.1.3 Effectiveness of oversight coordination

Sandstone writes, “Given the size of the Atlantic Yards project, the weekly meetings (of HDR and the OEM) were not sufficient to identify all of the issues that developed, especially with regards to fugitive dust. This may have prevented knowledge of MEC violations as well as action to mitigate them, particularly in cases where the OEM was also unaware of incidents.”

The numerous incident reports filed by the community are not necessarily in conflict with the determination of HDR cited in the DSEIS that the project sponsor was “generally in compliance” with air quality related MEC commitments. “Generally in compliance” is not a quantitative term. We do believe the OEM and HDR were not aware of many of the construction-related problems at the site. This is a problem that DSEIS should analyze, not ignore.

5.1.4 Environmental commitments insufficiently analyzed in the DSEIS

5.1.4.1 Electrical grid

The DSEIS states that HDR reports the construction site was connected to the electrical grid as early “as practicable.” According to HDR’s own reports, the contractor Hunt did not contact Con Edison until the second quarter of 2010, more than a year after the ground breaking of the arena, and Con Ed could not install power until following the summer peak demand period. The power grid was finally made available in 2011. The use of the electric grid is a key component of the Memorandum of Environmental Commitments and that commitment was not met for a significant part of a period of very intense construction.

Because contractors argued use of the grid would be inhibiting and impractical in some cases, the Sandstone report asks for the DSEIS to model impacts over a 25-year construction period to show the difference in concentrations resulting from all-diesel equipment and reductions in diesel equipment due to an electric grid. The DSEIS should have done so. The Sandstone report asks the developer commit not to start a construction phase that can benefit from the grid until it is in place; the DSEIS should disclose whether the developer has made such a commitment in an amendment to the MEC. If not, the SEIS should explain the reason it expects this problem will not recur in the future.

5.1.4.2 Diesel reduction technologies

Sandstone reports that in 2010 FCRC’s OEM identified five pieces of arena contractor Hunt’s equipment that did not meet the DPR requirements. The equipment was retrofitted. The report does not detail how long the problem existed. However Sandstone’s report is based on Quarterly Reports from HDR provided by the State that appear to have been edited to make the contractors appear as though they responded when the problem was identified.

Following the release of Sandstone’s report, the blog Atlantic Yards Report released an unedited version of one of the weekly reports Sandstone had relied on (in its edited version) that identified five pieces of equipment were not compliant. In the unedited May 20, 2010 draft released by AYR, the report states the documentation of the equipment had been “falsified by the contractor.” The falsification was only identified after an employee of Turner Construction named Chuck Baldwin was hired to fill a void in oversight identified by HDR. Sandstone notes, “During the second quarter of 2010, HDR expressed concerns with lack of oversight. Chuck Baldwin of Turner Construction was hired to handle the position until mid-July and HDR noted an improvement in on-site compliance.” The DSEIS should explain why the state excised the information from the report, and cross-reference the original versions of the other HDR reports released by ESDC to see if they have been edited as well. The DSEIS should disclose any discrepancies, who executed the edits, and explain the reasons for the edits.

5.1.4.3 Trucks and idling

Until community members consistently documented problems, truck behavior at the site continued to be disruptive, and there was considerable idling. In September 2011, only hours before FCRC’s OEM publicly stated protocols for trucks had been “significantly improved” at the construction site, a community member documented a large number of violations of the protocols. This was one and a half years after the

arena groundbreaking, and part of a long pattern of non-compliance with commitments detailed in the MEC. The DSEIS notes the OEM improved its vigilance, suggesting there was room for improvement. This is part of a pattern in which obvious, and sometimes major, problems identified by the community are responded to slowly.

Although HDR cites an estimate by the OEM that 98% of trucks followed proper routes, throughout the period of intense construction activity from the arena ground-breaking to the arena and Carlton Avenue Bridge's opening, trucks traveled on illegal routes and often idled on streets near the site, and continue to do so. Because truck companies and the way they serve construction differ over time, during arena construction, ESDC was prone to identify the numerous violations of truck protocols as "isolated incidents" rather than as patterns. The DSEIS should recognize that for the experience of the community, especially those areas where truck violations repeat, the experience is a pattern. The DSEIS should then propose measures which would improve compliance with truck protocols across the scope of the project site.

Among the areas where construction has created repeated problems with residents near the project's second phase footprint that we have identified are in order of frequency: Pacific Street between 6th and Carlton, Dean Street between Flatbush and 6th, Carlton Avenue between Bergen and Pacific, Dean Street between 6th and Vanderbilt, and Bergen Street between Vanderbilt and Flatbush. During construction periods in which Pacific Street between Vanderbilt and Carlton is being used for truck protocols other areas where trucks illegally wait are Vanderbilt between Pacific and Dean, and Atlantic Avenue between Carlton and Vanderbilt.

Through the summer of 2012 as the deadline for the opening of Barclays Center approached, pressure on contractors increased and truck violation enforcement disappeared. Government appeared to be collaborating with the developer to meet its deadline at the expense of compliance with the MEC and NYC law.²⁹

Truck violations continue still in relation to the construction of B2, with the most recent documented idling being a concrete truck associated with B2 on April 5, 2014. The truck idled for approximately 45 minutes in a no standing zone 15 feet from residences.

A community member documented cement trucks in a no standing zone for a lengthy period on a day in May 2013 in which the two-week look-ahead had warned a major concrete pour was to occur at the site of building B2. The documentation was not posted to Atlantic Yards Watch and instead was forwarded by email a week or so following the event. When forwarded to the State and Developer, the State replied, "we did have consultants out there during the time you are talking about on the 17th of May. ... We were aware of what the trucks were doing; they did follow the proper protocol... the trucks were not idling. They were only there when they when they were transferring, when one truck was coming in to work and another truck was moving." Later, the Community Liaison for FCRC responded by email saying that they were aware of a problem on the 14th when there was a run through of the concrete pour, but that things had gone smoothly on the 17th. Because Atlantic Yards Watch has a webcam, it was able to verify that the problem was indeed on the 17th and that the trucks had stayed stationary for some time. This discrepancy was pointed out to the State and the developer. The developer responded by finally acknowledging the problem was on the 17th. The DSEIS should assess the opportunity to use remote cameras to monitor compliance with truck protocols in areas where construction is taking place.

5.1.4.4 *Fugitive dust emissions*

There are numerous documented incidents of fugitive dust events on Atlantic Yards Watch. As the Sandstone report notes, fugitive dust emissions were the result of multiple sources:

- Vehicles that exceed the 5 mph speed limit (especially on Pacific Street)
- Malfunctioning equipment for extended periods of time
- Lack of watering of unpaved surfaces
- Failure to cover or mist stockpiled materials

²⁹ <http://www.atlanticyardswatch.net/node/829>

- Insufficient or absent dust suppression during demolition and construction
- Failure to cover, mist, or otherwise contain stockpiled soil
- Absent or inadequate spraying during loading of dry materials
- Uneven wheel washing wheel-washing stations absent at some exits

The DSEIS states that HDR found that the construction contractors generally complied with the dust control measures regarding site watering, truck wheel washing, the application of gravel at construction egress points and vehicle speeds on-site, as outlined in the MEC. The DSEIS notes HDR “did observe a number of instances of non-compliance that required attention,” but nowhere spells out the protocols of HDR, or whether their visit to the site was designed in a way to facilitate witnessing transient violations. The analysts do not put even the example cited in the DSEIS of a large pile of uncovered soil eventually covered by dust suppression agent in context. The pile was sprayed with a dust suppression agent, but only days before the pile was removed altogether, and months after it was created. No notice of violation was issued in relation to this incident.

On page 3A-6, the DSEIS reports that HDR found the Project Sponsor generally compliant with truck wheel washing at the site. This is not compatible with community observations on Atlantic Yards Watch, which found that of 11 identified points of truck egress during the 2010 to 2012 construction period, only a few had wheel washing stations. Only the arena block entrance at Pacific Street and 6th Avenue consistently had wheel washing throughout the period. That is also the only entrance described as a point of egress for construction on the arena block in the 2006 FEIS, although that limitation was never respected by the contractors or enforced by the OEM, HDR or the ESDC.

The DSEIS refers to the number of truck violations as substantially reduced once items detailed in the MEC like speed limit signs were finally put in place, but makes no mention that reports from the community, not the OEM or HDR, identified problems with trucks. In practice, it was the monitoring of the community, not the provisions in the MEC, which increased compliance because the community was documenting problems the OEM and HDR had not corrected. While the DSEIS states the compliance of trucks with truck protocols is improved, it does not state how long it took for an improvement to take place

The DSEIS does state HDR observed a number of the provisions in the CAQM Compliance Plan were not adequately followed, including the submission of the project sponsors’ quarterly environmental monitoring reports in a timely manner, completion of the environmental monitor daily inspection form on a regular basis, and proper training related to the MEC air quality requirements to all contractors working on-site. It does not give a date for HDR’s observation, or the point corrective action was taken.

5.1.5 Air monitoring

5.1.5.1 Site coverage

The Sandstone report notes that HDR found deployment of air monitoring equipment provided insufficient coverage at times. The community recorded the placement and timing of air monitors for several weeks in 2012 during a period of intense construction. The monitors were not regularly placed on a daily basis, and no monitors were placed during extended hours work, some of which entailed earth moving. Atlantic Yards Watch has numerous incident reports about fugitive dust events in which no air monitors were visible. The DSEIS should describe any changes in compliance procedures with respect to air quality monitoring that would indicate the issues noted by HDR will not recur in the future.

5.1.5.2 Extended hours work

Despite the extraordinary amount of extended hours work during the phase of construction that included the arena, the temporary rail yard and the Carlton Avenue Bridge, apparently little or no air monitoring took place during extended hours work, because the OEM was not present during extended hours work.

Although the community has asked for the actual work that takes place during extended hours to be logged, we have been told no such log has been kept. The community observed numerous instances of work during extended hours that entailed earthmoving and other actions that were not captured by air monitors. A large

two and a half story pile was created by Posillico in January and February 2012, with much of the work to create it executed at night.³⁰ (

The DSEIS cites an uncovered pile that remained uncovered for months, only to be sprayed days before it was removed. Air monitors were rarely positioned near the pile to capture fugitive dust. Windy nights were not captured at all.³¹ The community has continued to report fugitive dust conditions as recently as last month during out-of-hours work where no monitors are present³², What solution does the DSEIS propose for capturing fugitive dust blown off the site when no OEM is present?

5.1.5.3 Recommendations made by Sandstone unstudied in DSEIS

The Sandstone report recommends the following improvements in relation to air monitoring not included in the Project Improvements:

- Deploy monitors during extended hours work.
- Use more than three to five monitors where the work area is large or where activities are ongoing at multiple locations.
- Use a state-of-the-art monitoring system with built-in data loggers that send information wirelessly to a computer program that can evaluate the locations and wind data and identify which monitors are “upwind” or “downwind.”
- Install at least one permanent PM_{2.5} monitor to ascertain 24-hour and annual concentrations of PM_{2.5} in the vicinity of the work sites.
- Set the audible alarm to also ring the cell phone of an employee who will respond to the monitor.

The DSEIS should explain why these recommendations were not adopted.

5.2 Construction noise

The DSEIS identifies a significant adverse impact from construction noise that project-wide may now last 2035 years instead of 2016. Individual residents may be exposed to many more years of adverse construction noise impacts than anticipated in the FEIS. Anecdotally, no matter whether it is for 3 or 23 years, no single adverse impact alters the quality of life of residents more than construction noise, particularly during extended hours work. More than 300 individual incident reports citing noise impacts, many of them associated with construction, have been filed on Atlantic Yards Watch. Some incident reports complain about sleepless nights and the need to take sleeping pills. The adverse effects of long-term exposure to noise include sleeplessness, hypertension, heart disease and impaired learning.

Simple disclosure of significant adverse impact in the FEIS and SEIS appears to excuse the project sponsor and State from any further responsibility to ameliorate the impact of construction noise. It is this lack of flexibility that has come to epitomize the sense the “higher-ups” who run the project are beyond accountability to the community their decisions affect. Many residents report they have the noise attenuation measures (double glazed windows and air conditioners) the MEC currently requires, and they are still kept up at night. Some homes have already been impacted by years of adverse construction noise impacts. Adverse noise impacts from construction are in the process of unfolding for a ninth year, without any project building except Barclays Center currently completed. To anticipate an additional 20 or more years of construction without improvements to noise mitigations is hard for some to fathom.

Even though the need for extended hours work was claimed by the FEIS to be infrequent, hard deadlines necessitated multiple shift and weekend work for much of the construction period extending from 2010 to 2012, some of it 24/7. The nature of the site—which includes an operating rail yard owned by a State Public Authority, an arena and two major thoroughfares—puts the community at high risk of extended hours

³⁰ <http://www.atlanticyardswatch.net/node/554>.

³¹ <http://www.atlanticyardswatch.net/node/610>.

³² <http://www.atlanticyardswatch.net/node/1619>, <http://www.atlanticyardswatch.net/node/1620>.

work. In order to facilitate modular construction for B2, the project sponsor has announced that up to four deliveries will occur each night of the workweek, a circumstance entirely unanalyzed in the FEIS.

SEQRA requires ESDC to “certify that, consistent with social, economic, and other essential considerations, and considering the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures identified as practicable.”

According to CEQR, the triggers for assessing a construction project in terms of its significant impacts are related in part to the character of the work itself, including the length of time it unfolds and the type of construction that is unfolding. A community exposed to a generation of construction noise or more, should be provided the most effective mitigations available, as well as a means to have their concerns addressed.

5.2.1 Cumulative extended significant adverse construction noise impacts

The DSEIS details ranges of exposure to construction noise from an additional three to seventeen years. 516-518 Carlton Avenue was near one of the first buildings demolished in early 2006 and was exposed to construction of one type or another (including construction staging) from 2006 to 2012. Taking into account the roughly six and a half years of construction noise already absorbed by residents in the building, and adding the additional seventeen years one second phase construction sequence entails, the residents of 516-518 Carlton will be exposed to construction noise for twenty-three and a half years. While there will be periods without impacts, the nature of the construction site has exposed the residents to construction noise impacts on a far more regular and enduring basis than the FEIS assumed.

5.2.2 Residential windows

Many residents have complained that they have double-glazed windows and still experience high interior noise levels. This is because a typical double-glazed window is not intended to mitigate extremely loud noise levels. Double-glazed windows are sold with a variety of OITC ratings, and the ones already in place or installed may not be sufficient to mitigate noise levels with L_{10} levels of 75 dBA or more.

The DSEIS should disclose the standard of window the project sponsor plans to install in its residential buildings at the site, which will presumably also be impacted by construction noise. For example, some residents of B3 may be exposed to from 6 to 8 years of construction. What is the OITC rating of the windows the developer is providing B3? The double-glazed windows proposed to mitigate exposure to construction noise experienced by the project’s neighbors should be rated not less than the OITC rating of B3. In circumstances in which it is more practicable than replacing windows, window manufacturers should be surveyed to determine if temporary inserts can be installed in affected windows.

When double glazed windows are opened to fit in an air conditioner the effectiveness of their noise attenuation is reduced. Air conditioners break down every few years. The SEIS does not spell out the responsibility of the project sponsor to repair and replace air conditioners, nor how new residents moving into impacted buildings will become aware of the required adverse noise mitigation. The SEIS should require distribution of a multilingual flyer to all impacted homes on a yearly basis describing the mitigations available and hold community meetings to inform residents of the mitigation measures for the construction period.

The current program for providing air conditioners entails the resident going to PC Richard to pick up the air conditioner on their own. This does not align with the MEC’s requirement that the project sponsor provide installation. The apparent intent of the provision in the MEC is to avoid inconveniencing those adversely impacted by the project. The new amended MEC should specify that the project sponsor will deliver the air conditioner to the home and install it.

Community members have noted that the air conditioner mitigation requires them to pay for the electricity to run a piece of machinery instead of opening the window as they could before project construction started. Instead of this burden lasting for several years, in some cases it may last a generation.

Buildings on the west side of 6th Avenue have rear windows that face the incomplete construction area called the “pad” and have a direct sightline to B3 (and in some cases B2) construction. Those rear windows should be available for the project sponsor’s window treatments. They were inadvertently

overlooked in the FEIS. Some rear windows of some buildings on Flatbush are exposed to arena block construction as well.

5.2.3 Extended hours work

According to the Sandstone report, “The 10-year construction schedule discussed in Chapter 17 of the FEIS implies that construction may last into the early evening up to three days per week approximately every other week. The frequency of evening and night work was not specified, leading the reader to believe it would not occur frequently or for extended periods of time. Chapter 17 did not identify periods when consecutive days of late night work would occur for weeks or months at a time. HDR’s quarterly reports from 2009 through June of 2011 did not address construction hours except to state that all material and equipment deliveries appeared to be conducted during allowable workday hours.”

The absence of detail in HDR’s quarterly reports about extended hours work may be because the OEM appears rarely if ever to have been on site for more than the morning to mid-afternoon shift. That was the case even though extended hours construction was the rule, not the exception for much of the period of the arena, temporary rail yard and Carlton Avenue Bridge construction. The adverse effects of the work that took place at night were not captured by the oversight of the OEM or HDR. The State must not have understood the work that was taking place caused impacts, for it not to have assured oversight was on site during extended hours work on a regular basis. With the advent of modular construction, the construction plans to the public entail up to 4 deliveries a night 5 nights a week.

The DSEIS details that the number of OEM staff will now be adjusted according to the level of construction activity, including any after-hour and/or weekend construction work, to ensure a proper level of monitoring coverage is maintained³³. The degree of staffing, the employer, and the amount of time required to be on site is not explained. The Sandstone report recommends as a project improvement that the State’s Environmental Monitor and the OEM should visit the site during extended hours work one or more times per week using an unpredictable schedule. A log of extended hour work, including the time, type of work, etc., should be included in quarterly reports. The justification for the need for extended hours work should be documented, and the rationale should be part of the construction notices to the community. The DSEIS should detail specifically how much oversight is to be provided and who is providing it. The onsite environmental monitor should not be employed by and report only to the project sponsor or contractors.

The lack of oversight during nighttime work has shifted the onus of monitoring to the community who must follow up on their own. And for the community, getting concerns acted upon can be difficult, especially if the decision to respond lies with the project sponsor or the contractor. The following is one of numerous incident reports filed on Atlantic Yards Watch by a community resident repeatedly woken up at night by a carting company removing garbage from the construction site.

“This is an ongoing problem, 4 or 5 nights a week between 3:30 and 5:00 a.m. generally a company called Action Environmental comes by to empty the dumpster with loud beeping, engines running, dumpsters clanking etc. Nearly every week night (if not all of them).

“I’ve reported this incident to 311 on three separate occasions and have the confirmation numbers at home which I can enter another time, as I don’t have them with me now.

“This morning I took pictures of the license plate on the truck and was confronted by the drivers in a semi-hostile fashion. While I don’t actually blame the drivers, I blame the company and the Atlantic Yards Dev. Corp, and the system that is allowing this to occur.

“Repeated lack of sleep for me and my 6 month old is a health risk especially as its an ongoing occurrence with no foreseeable end in sight.”³⁴

The filer took multiple steps to solve the problem, from filing 311, to speaking directly to the carting company. Still, this apparently easy to resolve problem festered on and off for well over a year. At the time this resident was having these problems, the Community Liaison’s Office for the project was located directly across the street from his home, but rarely staffed.

³³ DSEIS, 3A-11.

³⁴ <http://www.atlanticyardswatch.net/node/172>.

The State should ensure there is a way for community concerns to be validated punctually. The new amended MEC should specify that within 24 hours of a community member's nighttime noise complaint to either the ESDC or the project sponsor, the appropriate office will take the necessary steps to validate the community concern, and if valid take the maximum necessary steps practicable to mitigate the problem.

5.2.4 Utility Work

The study of the locations impacted by construction noise related to the project in the DSEIS only focuses on building construction. Work related to project infrastructure (roadways, water, electric, cable, sewage) has proven particularly impactful, and very often occurs at night. The utility work is associated with the project. The DSEIS' analysis of construction noise should include this work. Further, much of the infrastructure work is not complete. The maps should be updated to take the infrastructure work into account so that noise mitigations are available to the residents impacted by it.

5.2.5 Modular Construction

The State allowed FCRC to begin the use of the modular construction method without publishing any environmental analysis of the new method. When he initially presented the plan to the public, FCRC VP Bob Sanna in 2011 stated there would be one early morning module delivery so that construction work could begin promptly, with the remaining deliveries occurring during regular work hours. Several weeks before the first module delivery, FCRC presented new plans to the public for deliveries that included up to four deliveries at night and four deliveries during the day.

FCRC has just announced that the construction schedule of B2 has again been delayed, and will now take an additional year to complete. Because of the length of time B2 is taking to construct, and the unanticipated use of nighttime deliveries as an integral and regular part of the construction plan, the maximum necessary steps to mitigate noise from module deliveries should be taken so that problems of residents affected by the noise are addressed.

5.2.6 Incomplete and changed arena block construction

BrooklynSpeaks' comments on the scope of the SEIS detailed ways the arena block has been changed that increase the risk of adverse impacts to the community. They include a reduction in the below-grade capacity of the arena, the introduction of elevators for the loading dock, a "pad" adjacent to the arena, changes to the arena structure that have resulted in concert noise leaking from the arena, and the delinking of the construction of the arena from non-arena buildings on the block.

Some of these changes have produced adverse noise impacts for the community. Concert noise has leaked from the arena since its opening one and a half years ago, inconveniencing residents. The project sponsor has announced a plan to reduce noise by adding a green roof to the arena. The addition of the roof may help those residents on higher level floors impacted by the noise. The SEIS should identify a construction timeframe for this repair, and detail the construction plans which may be impactful.

The reduction of the capacity of the arena below grade, and the addition of loading dock elevators in 2009 have resulted in parking anticipated to be below grade in 2006, now being brought to grade on the arena block. Not only buses, but production trucks, campers, arena patrons, NBA staff, horses and generators have been located on the "pad" adjacent to the arena. The "pad" was created without any public notice even though parking at grade on the arena block was never disclosed in any environmental analysis. The sometimes noxious noise effects of the pad spill over to residents, including the back windows of residents on 6th Avenue. Its existence is an unanticipated construction-related impact and should be mitigated to the maximum extent practicable.

5.3 Vibrations

The DSEIS states, "there has been no *recorded* incident of a threshold exceedance caused by construction activity to date (emphasis added)." The DSEIS states there have been a number of exceedances, but those have been attributed to local sources, for example one incident in which vibration monitors showed an exceedance, but it was concluded the problem was associated with a nearby boiler. The placement of the monitors, maintenance and information provided by the monitors is all under the control of the project sponsor.

The experience of many property owners and tenants conflicts with the interpretation in the DSEIS. Property owners, and some tenants, have expressed concern about vibrations. The Sandstone report submitted with our comments on the scope of work for the SEIS refers to a number of them. For example, two residents in buildings near each other on Carlton Avenue with the NYCL historic district reported property damage within several weeks of each other at a time in which work generating vibrations was occurring nearby. The Department of Buildings was unable to place responsibility on any factor. The two incident reports associated with these incidences can be found on Atlantic Yards Watch at <http://www.atlanticyardswatch.net/node/691> and <http://www.atlanticyardswatch.net/node/708>

In the case of these incidents, no exceedance was identified by the vibration monitors in place. DOB inspectors expressed dissatisfaction to a local resident with the amount of information provided to them by the project sponsor. The consequence is that assignment of responsibility for the cause of the problem largely rests with the project sponsor who, if culpable, would be required to pay for repairs. It is our understanding that the project sponsor has paid for the cost of some repairs, but it is apparently not willing to acknowledge responsibility. This apparently enables the project sponsor to control the assessment of the extent of the damage and the cost of the repair. The vibration monitors are placed by a contractor of the project sponsor, maintained by that contractor, and the results are provided only to the project sponsor. Based on information provided by NYC DOB at the time of these incidents, no reports of vibration monitoring had been received by NYC DOB for some time, and any reports provided were summaries. The DSEIS should recommend the MEC be amended so that

- the project sponsor is required to provide actual (rather than summary) vibration monitoring reports to NYC DOB, ESDC and HDR;
- documentation is provided property owners if they request it;
- a prompt response to a resident's complaint of damage is provided and the damage is documented and correlated to the construction activities at that time;
- construction activities that may cause severe vibrations in nearby residences are identified and mitigation measures are implemented proactively to prevent damage; and
- night time activities that may cause vibration are banned as vibration are more disruptive when residents and their families are trying to sleep.

5.3.1 Gaps in oversight due to slow implementation

The DSEIS states vibration monitors were deployed in 2008, two years after demolition took place within 90 feet from some buildings in the historic district. The DSEIS should explain the reason for the delay in the installation of the monitors, together with its plan for avoiding such delays in the future.

5.3.2 Gaps in oversight due to delay in updating plans

The DSEIS states the 2006 Construction Protection Plan was updated to address the creation of the NYCL Prospect Heights Historic District that occurred in 2009. According to the DSEIS, the update was made through a letter dated May 5, 2013 from the NYS Office of Parks, Recreation and Historic Preservation. The DSEIS should confirm that for the four years between the change in the historic district and the update to the plans, the State and the project sponsor were implementing the project while the historic buildings not in the 2006 plans were un-monitored, and explain what steps will be taken to avoid future omissions.

The date of the letter from NYS OPRHP is consistent with the timing of other reviews of compliance with the MEC that apparently occurred starting after the arena and Carlton Avenue Bridge opening. It was the community that notified the State of the failure to update the plans through the Sandstone report, if not before. The State received the Sandstone report in July 2012. It is not the job of the community to inform the State of changes to the environment around the project site, but it is the job of the State to ensure the MEC commitments are implemented when they are needed. The new amended MEC should require the State review and update all plans as necessary during the course of development and certify that it has done so at least once a year.

If an SEIS had been conducted as required following ESDC's adoption of the 2009 MGPP, the State would have identified the change in the historic district at that time. The delay in executing the SEIS by the State

and project sponsor extended the period of time they were putting the historic buildings not designated at the time of the 2006 plans at risk.

5.3.3 Area being monitored too small

The Sandstone report refers to a resident of Vanderbilt Avenue inside the historic district awakened by a crash that sounded like a bomb explosion. It shook the building and knocked down artwork from the walls. According to the State at the time, they received other complaints and told FCRC to stop using nighttime use of the hoe ram, which was causing the loud bang.

According to the DSEIS, the hoe ram produces a “perceptible vibration impact” for 135 feet, more than the 90-foot range used as the determining factor for range in the DSEIS. The hoe ram continues to be used on the site. Given its use, and a reasonable association between a complaint and the type of construction work taking place, the CPP should be expanded to a 135-foot boundary around the project site.

In addition, the 90-foot boundary appears to have been drawn illogically using the footprint boundary as the outside parameter of work, rather than the location of actual work associated with the project. Utility work associated with the project often has occurred in streets and sidewalks. For example, Verizon dug up and placed cable under the sidewalk on the east side of Vanderbilt Avenue, (some of it possibly blue stone) inside the historic district, on behalf of Barclays Center in September 2012 (see <http://www.atlanticyardswatch.net/node/870>). The same contractor dug up and placed cable under the sidewalk of the historic district on south side of Dean Street west of Carlton Avenue (see <http://www.atlanticyardswatch.net/node/869>). In addition, Vanderbilt Avenue itself has been trenched adjacent to the historic district in order to receive updated sewer and water lines for the project, as well as to turn off water before demolitions. The CPP should be updated so that the boundaries are drawn from the outside parameter of the work taking place in association (and/or for) the project. There is no rationale whatsoever for continuing to exclude the east side of Vanderbilt Avenue from the CPP.

5.3.4 Non-historic property protection

As a condition of an amended MEC, the project sponsor should take responsibility for monitoring all properties at risk of damage from construction. So far, the State has been unable to make contractors comply with the MEC in terms of the use of equipment. For this reason, additional resources should be committed to monitoring vibrations, with an impartial and motivated on-site monitor having unedited and unencumbered access to the results.

5.4 Additional comments

The Construction Overview chapter notes that ESDC and FCRC have implemented “many” of the mitigations in the MEC. The DSEIS should list which measures described in the MEC have not been implemented, explain why they have not, and describe any negative consequences resulting from the omission.

Page 3A-3 states, “The level of on-site staffing adjusts as work activities change; any changes are discussed with ESD before implementation.” The DSEIS should make clear under what circumstances ESDC’s approval is required before changes are implemented and how often such approval was granted.

Page 3A-5 states, “The *majority* of Project-related trucks coming to the site were required to enter this queue area first and were released in controlled intervals to prevent on-street queuing at the various construction site entrances. HDR found that the queuing of trucks in this dedicated area on Pacific Street worked well (emphasis added).” On-street queuing was a major complaint from residents during construction. Given “majority” means only 51%, the DSEIS should explain how compliance with truck staging protocols was monitored and how frequently trucks were actually in compliance.

The DSEIS notes that measures taken to encourage compliance with “no idling” protocols, including the installation of “No Idling” signs, the distribution of laminated truck protocol documents, and the provision of a comfort station for the drivers, led to a reduction in “violations.” The DSEIS should clarify who issued these “violations,” and what their frequency was before and after the educational effort.

Page 3A-6 states, “For example, during the summer of 2011, a large quantity of stockpiled soil was temporarily stored in Block 1229, Lot 81 for several months without being covered or kept adequately

damp. This issue was eventually resolved through the application of a dust suppression agent by the construction contractor.” This passage almost certainly refers to block 1129. Records from Atlantic Yards Watch indicate ESDC received a significant number of complaints from local residents about this pile while it was uncovered. The DSEIS should explain why it took “several months” for the situation to be addressed.

Page 3A-7 states, “A meeting was subsequently held in October 2012 among the project sponsors, ESD, and HDR to identify strategies to better implement the requirements of the CAQM Compliance Plan.” This meeting would have taken place after arena construction was complete. The DSEIS should explain the reason ESDC delayed calling this meeting until after construction was complete given its knowledge of compliance problems with the CAQM.

The DSEIS should include (or ESDC should release separately) the updated CAQM mentioned in the DSEIS.

Page 3A-26 states, “Infrequently, the CLO was not physically staffed as a result of office movements and activities on site. However, the public was able to access the CLO via email or phone during those times.” The DSEIS should disclose whether either FCRC or ESDC monitors service levels from the CLO in responding to public inquiries by email or voicemail, and if so, what the trend of service was during arena construction.

6. Socioeconomic impact

With only a few exceptions, the opening of Barclays Center did not result in much of a bounce to local business. Although there were great expectations for the hospitality sector around the arena, most of the demand from arena patrons is being internalized by concessions inside Barclays Center itself. Commercial landlords holding out for higher rents on streets like Flatbush Avenue and Vanderbilt Avenue have caused a higher vacancy rate than existed before the arena opened. There is no discussion in the DSEIS of how long the Flatbush Avenue storefronts mentioned have been vacant, other than to speculate that “vacancy has been temporary and primarily related to the renovation of storefronts.”³⁵ The DSEIS should analyze both vacancy and turnover of businesses on Flatbush Avenue and assess whether the shortfall in expected business from the arena would be made up for by an increase in residents expected with Atlantic Yards’ housing.

Page 3C-18 states, “When construction began on the Arena site, and the residential market in the surrounding Brooklyn neighborhoods started recovering from the recession, residential rents and sales prices increased rapidly. While these improvements in the residential market in the area immediately surrounding the project site could be partially attributable to the development of the Arena, the trend is consistent with market trends in the surrounding Brooklyn neighborhoods, where demand is high and inventory is low. Since the Arena has been completed, prices have further increased in the neighborhoods surrounding the Arena site.” The DSEIS contains many references to the expanding retail and residential economy in the study area. It should explain how its current assessment reconciles with the 2006 finding of blight, and whether the project’s goals could now be realized without a UDC project being necessary.

Chapter 3C of the DSEIS contains four case studies intended to demonstrate that long-term construction is not detrimental to the economy of neighborhoods surrounding a development. However, the examples cited each vary significantly from the Atlantic Yards project in ways that make comparison invalid.

- Although the length of their construction is comparable to the Extended Build Out Scenario, the Riverside South and Battery Park City examples are each many times larger than the Atlantic Yards site. Large areas of Riverside South and Battery Park City comparable in size to Atlantic Yards were completed much more quickly than the 25 years contemplated in the Extended Build Out Scenario. Further, each of these projects had a long border along the Hudson River, placing them at the edge of a neighborhood, while Atlantic Yards is enveloped by the neighborhoods of Prospect Heights, Fort Greene, Boerum Hill and Clinton Hill.
- The First Avenue Properties case study may not be comparable to Atlantic Yards, however, because the existing density at the time of project approval was much higher than near the Atlantic Yards footprint, meaning the vacant land would have less of an impact on the surrounding community. Nevertheless: “According to a commercial real estate broker, although the commercial office market in the area around the development sites has been strong, the retail landscape along First Avenue near the development sites has continued to be limited. He stated that when the Con Edison facility was located at the development sites, there was low foot traffic along First Avenue in the ¼-Mile Study Area. This continued trend of low foot traffic resulted in limited demand for retail and restaurants on First Avenue. As the sites have remained vacant, there continues to be limited retail and restaurants on this stretch of First Avenue.” The DSEIS also reports population decreased in the study area.
- The Metrotech case study may not be comparable to Atlantic Yards as there was not much residential use prior to development: “Because the ¼-Mile Study Area was primarily a commercial district prior to the 2004 Downtown Brooklyn rezoning and during the construction of MetroTech, the prolonged construction on the development site had little effect, if any, on residential trends in the area.”³⁶ Metrotech was also announced in the middle of a recession, whereas Atlantic Yards was announced following an economic boom. “Based on discussions with brokers and former area business improvement district (BID) employees, the initial vacancy on the MetroTech site, combined with the historic lack of interest in the adjacent area, led to some uncertainty and

³⁵ DSEIS, 3C-11.

³⁶ *Ibid.* 3C-76.

hesitation on the part of investors in regards to adjacent properties.”³⁷ This was a very different environment from the Atlantic Yards footprint, where luxury condominiums and lofts had already been successfully marketed prior to the project’s announcement.

Page 4A-56 states, “Businesses most vulnerable to indirect displacement due to increased rent are typically those businesses whose uses are less compatible with the economic trend that is creating upward rent pressures in the study area, i.e. those businesses that are not able to capture sales from increased foot traffic generated by the proposed project but that would nonetheless experience upward rent pressure as a result of the proposed project.” Rents have risen due to the arena, but foot traffic from arena patrons for most retail businesses has not materialized, causing increased indirect displacement pressure. The DSEIS should analyze the current level of patronage of Flatbush Avenue businesses among arena customers, and project whether it is sufficient given current rents to sustain existing businesses while they wait for the additional residential customers to appear as the project’s housing is delivered over the Extended Build Out Scenario. The DSEIS instead skips this analysis when it states, “As the development of Phase II under the Extended Build-Out Scenario would not change the overall population or amount of retail introduced by the Project, the analysis presented in the 2006 FEIS regarding the potential for project population to generate enough sales power to support the retail introduced by the Project as well as a substantial amount of retail activity at other stores located within the study area, thereby increasing sales at some existing businesses, would remain valid, albeit later than projected in the 2006 FEIS.”³⁸

On page 4A-62 the DSEIS states, “As described above, since the 2006 FEIS, convenience goods stores have declined in this area, and retail vacancy has increased from 16 to 25 vacant storefronts. . . . Based on discussions with brokers, some of these vacancies may be the result of tenants who have left due to increases in rents. Demand for retail space along Flatbush has increased with the completion of the Arena, and vacant spaces are being renovated for higher-paying tenants.” The DSEIS should analyze how delay in Phase II will change the profile of businesses that open on Flatbush Avenue as new businesses will have to depend on non-resident customers to be viable.

³⁷ *Ibid.* 3C-74.

³⁸ *Ibid.* 4A-59

7. Delay of affordable housing

7.1 Disparate impact on African American population

The DSEIS specifically indicates that the impact of the delay as a result of the 25 year Extended Build Out Scenario that FCRC proposed and ESDC approved will not be studied. As everyone knows, over 1,900 of the 2,250 units of affordable housing – by far the biggest promised public benefit in the eyes of many – is in Phase II of the project.

While ESDC and FCRC have made public statements that the housing will be accelerated, they have not indicated that they will commit to a specific timeline to actually build that housing and the agreement which dictates how much time they have to build the housing, including the affordable housing, continues to maintain that they have until 2035 or later to complete Phase II of the project. ESDC's allowing that much needed affordable housing to be delayed more than 20 years has a dramatic impact on local residents—in particular African American residents—who otherwise would be eligible for the affordable housing lotteries if the affordable housing were provided on the originally approved timetable of 2014.

Gentrification and displacement pressures in Community Boards 2, 3, 6 and 8 have increased to alarming levels recently partly due to the Atlantic Yards project being approved and the arena being built. The DSEIS acknowledges the increases in rents and sales prices being higher in the area immediately surrounding the project—the DSEIS says “notably some of the most dramatic increases in income, home values and rental rates have occurred in areas within the 3/4 –mile study area that were identified in the 2006 FEIS as having low and moderate income population potentially at-risk of indirect displacement. Yet ESDC refuses to study how the combination of the increases in rents and the delay of providing the affordable housing impacts specific racial and socio-economic groups. This refusal combined with ESDC's long-standing inability to hold the project publicly accountable demonstrates a total disregard for the public's interest.

The affordable housing at Atlantic Yards will be subject to affordable housing lotteries and residents of Community Boards 2, 3, 6 and 8 will receive preference in the lotteries. The racial make-up of CB 2, 3, 6 and 8 is changing dramatically. African Americans have been the majority in at least two of those community boards yet as time goes by and gentrification and displacement pressures reach epic proportion, they are projected to be a minority of the population. Therefore a delay in the provision of affordable housing at Atlantic Yards has a disproportionately negative impact on African Americans and the DSEIS has indicated that that disproportionate impact will not be studied. The impact of the delays to date has already been experienced by residents in the community and only gets worse with every passing month as displacement pressures mount.

It is not enough for ESDC and FCRC to, once again ‘promise’ that the affordable housing will be built ‘faster’. The impact of the delay has already been felt and empty promises without commitments the public can hold ESDC and the developer – regardless of who that ultimately is – accountable to is unacceptable.

The public has directly invested over \$200 million in city and state tax payer subsidies, our government has waived zoning and height restrictions, allowed the use of eminent domain to seize private property, allowed federal tax exempt bond financing to be used to build the arena, sold the MTA rail yards for below appraised value and for that payment to be extended over decades and appears to be poised to give millions more in subsidy for this project and yet the public benefits have been delayed. People facing eviction and displacement can't depend on false promises. They need legally binding commitments and real public oversight that they can count on.

7.2 Additional comments

Page 4A-4 states, “Trends indicate that intervening established neighborhood and commercial corridors cited in the 2006 FEIS have become even more established and would continue to limit the potential for the proposed residential development in Phase II of the Project to affect rental rates in tracts containing potentially vulnerable populations. The SEIS analysis indicates that many of the remaining at-risk households are still more than ½ mile from the project site and separated by more established residential neighborhoods and commercial trends. In addition, Inclusionary Housing Program Areas that have been

added to the study area since the 2006 FEIS—including to portions of the study area that were identified in the 2006 FEIS as containing low- and moderate-income populations—would protect affordable housing added or preserved under this program from market-driven rent pressures.” The rezonings cited include only a voluntary inclusionary component, which has not been shown to be an effective incentive for the creation of affordable housing in New York City. Further, the neighborhoods of Crown Heights and Bedford-Stuyvesant to which the statement refers are experiencing rapid gentrification at this point. The DSEIS should reassess the potential for vulnerable populations of these neighborhoods to be displaced in the future, particularly since their residents would be eligible for preference in lotteries for distribution of affordable housing units at Atlantic Yards.

Table 4A-2 on page 4A-14 has a breakdown of trends by race and neighborhood; African American population in the area $\frac{3}{4}$ mile around the project went from 48% to 37% from 2000 to 2010, while the white population went from 35% to 50%. These trends are reflected in the demographics of the broader combined areas of community districts 2, 3, 6 and 8 which are expected to benefit from preference in Atlantic Yards’ affordable housing lotteries. The DSEIS should assess the potential for a delay in affordable housing at Atlantic Yards to have a disparate impact on the eligibility of African Americans based on projected future demographic changes.

Page 4A-32 states, “Data collected from real estate sources indicate that trends in property values and rents may be even more dramatic than described by census and ACS data. Many of the subareas in the $\frac{3}{4}$ -mile study area are dominated by brownstone architecture, which is of limited supply. As demand recovered from the 2008 recession, prices for these units have increased. In addition, new development has continued in areas like Downtown Brooklyn and Prospect Heights, where units have been renting and selling on the high end of the market, compared with the rest of Brooklyn. Based on conversations with brokers, the study area is expected to continue to experience an influx of new households that are demographically similar to households currently living in Manhattan.” This is further reason for the DSEIS to assess the potential for a delay in affordable housing at Atlantic Yards to have a disparate impact on the eligibility of African Americans based on projected future demographic changes.

On page 4a-43, the DSEIS states, “Excluding the Project’s Phase I units, these 7,707 residential units [now expected to be built by 2035] represent over 1.5 times the 4,871 expected to be built by the 2016 build year for the Project used in the 2006 FEIS. This additional No Build housing supply would reduce any adverse effects of the delay in completion of the project’s new housing units, and the residential units added by the development of Phase II under the Extended Build-Out Scenario could still serve to relieve upward rent pressure in the study area.” The additional apartments cited are presumably 80% market rate under the DSEIS’ assumptions, which would mean that of the additional 2,836 units (7,707-4,871), 567 would be affordable. The DSEIS should explain how these 567 apartments could compensate for the 1,950 affordable apartments expected to be delivered in Phase II.

Page 4A-42 states, “While the income bands that correspond to these AMI categories may change in the future, this would be driven by a general increase in family incomes within the metropolitan area, and would not be directly related to any trends specific to the study area.” Table 4A-13 shows an increase in the population of households earning more than \$100,000 under both Extended Build Out and Future Without Phase II scenarios. But the statement above does not consider that Federal AMI is rising faster than local median income, meaning that the indexing of affordable housing rents to AMI will make all “affordable” units in the study area less affordable with time to local residents. The DSEIS should consider the increasing gap between Federal AMI and median income among community districts 2, 3, 6 and 8 and project how it will affect real affordability to local residents over time. For the purposes of this study, the DSEIS should use the affordability levels of Atlantic Yards’ first residential building by AMI in its projection.

The DSEIS hypothesizes (probably correctly) that at-risk households near the project have largely been displaced since 2006. At-risk households in census tracts east of the project are in rapidly gentrifying neighborhoods (e.g., Bed-Stuy, Crown Heights). The DSEIS characterizes these areas as having stable rents, likely to remain so until 2035, due to recent rezonings with voluntary inclusionary bonuses, but no further backup is provided to prove the assumption is reasonable. The DSEIS should explain why it believes developers will take advantage of the voluntary bonus, how many units will be added through use of the bonus, and what their affordability will be.

8. Open space

When first approved in 2006, the project promised eight acres of publicly accessible open space to be constructed incrementally in the Phase II site over the course of ten years. In addition to providing necessary active and passive recreation for residents and workers of the project, the open space was identified as a significant public benefit as well as a measure to address neighborhood blight.

While the DSEIS acknowledges the impact of an extension of a temporary significant adverse impact on open space, it offers inadequate mitigation to address this shortfall. In addition, the DSEIS methodology produces only a selective picture that results in minimizing the impacts of the 15-year delay on the quantity and quality of open space. Other areas that merit study in the analysis of open space—such as the replacement of trees and construction impacts on Phase II open space—have simply been omitted.

8.1 Assumptions of open space analysis

The DSEIS open space analysis describes population changes and open space changes that occur as each building of Phase II is completed. These changes are presented in Table 3E-1 and are the basis for the open space analysis for each of the three phasing plans. Unfortunately, the DSEIS does not offer an explanation as to how it arrived at those numbers. Specifically, the DSEIS does not describe whether the square footage attributed to each building is the maximum allowable for that building according to the Design Guidelines or other project agreements. We now understand that the Design Guidelines offer flexibility in the buildings envelope to permit redistribution of gross square footage within the project. The DSEIS analysis of a proposed shift of up to approximately 208,000 gross square feet (gsf) of floor area from Phase I to Phase II of the Project illustrates this flexibility.

Given the number of changes to the project that have been announced in the last several months—including, but not limited to, the shift of gsf from Phase I to Phase II, the change in phasing to begin construction on Block 1129 prior to the completion of Phase I, and the potential partnership with Greenland Holdings—previous assumptions from the 2006 FEIS with regard to building size and the amount of open space may no longer hold true. Therefore, the FSEIS analysis of open space ratios should assume each building to be built out to the maximum square footage allowable according to project agreements. This approach will reduce the rate at which the open space impact from Phase I is eliminated. It will also result in some buildings having a different gsf, population and open space ratios under one phasing scenario than they would under another.

Additionally, the DSEIS should justify the assumption of the amount of interim open space generated by the construction of each building. Perhaps the amount of open space was calculated based on the project parcels at full build out. However, the DSEIS does not acknowledge any space given to construction staging, construction barriers or other temporary measures that might reduce the amount of interim open space. Most importantly, the DSEIS should show documentation within the project agreements that require the delivery of open space on the schedule described for each construction plan. If there is no requirement for delivery until the project's completion or no remedy for non-performance, open space could be put repurposed for another use and could result in less than what was analyzed in the DSEIS.

8.2 Noise levels in open space

The DSEIS acknowledges that construction of the project would result in significant noise level increases that exceed CEQR guidelines and would impact the quality of the open space. How bad would the impact be? According to the DSEIS, at times construction-generated noise levels in project open spaces would surpass 80 dBA, which would exceed the 55dBA L₁₀ recommended by CEQR for passive open spaces³⁹.

The DSEIS goes on to say on page 3E-12: “While these noise levels are not desirable, there is no effective practical mitigation that could be implemented to avoid these levels during construction.”

Given the significant noise impacts, it is unreasonable to think that residents and workers from Phase I and II of the project will use this incremental open space; instead it is more likely that noise from construction will push the project population to use other open space resources nearby. It also unreasonable to conclude

³⁹ DSEIS, p. 3J-36.

that the population from Phase I will opt to use Phase II incremental open space, with levels exceeding 80 dBA, over continued use of nearby Dean Playground and other nearby spaces. Although significant adverse noise levels may be intermittent depending on construction tasks over the extended build out, it is unreasonable to conclude that residents from the Project will easily alter their usage based on construction tasks of the day.

The DSEIS should not dismiss construction noise impacts on open space by simply claiming that: “Noise levels in many of the city’s parks and open space areas that are located near heavily trafficked roadways and/or near construction sites experience comparable and sometimes higher noise levels.”⁴⁰ The DSEIS does not cite any examples where this is the case, but even if it did, roadway traffic and most NYC construction projects are not actions subject to SEQRA. This project is.

Therefore, the DSEIS should do what it is required to do under SEQRA and take a look at the Reasonable Worst Case Scenario, which is that incremental open space subject to significant construction noise impacts will not be used by the public. If it is the case that no practicable mitigations can be developed to effectively address noise impacts, the incremental open space should not be considered usable during the construction period and should be not be included in the DSEIS analysis. Excluding the incremental open space will result in far greater deficits than were disclosed in the SEIS and would require appropriate mitigation.

8.3 Blighting influence of tree removal

ESDC has argued that the 15-year project delay merely retains the blight that existed before the start of the project’s construction, In many respects, however, the project’s delayed build out only worsens blighted conditions, whose remedy the 2006 GPP identified as the primary purpose of the project. This is clearly the case in the removal of 86 street trees from the project perimeter by Forest City Ratner in 2008.

The DSEIS failed to study any aspect of the extension of the blight that was created by the Project’s sponsors. We repeat our request that the SEIS include analysis of the impact of tree removal, specifically:

- Whether the delay in planting trees would increase blight in the project area;
- Areas where planting of new or replacement street trees has been delayed;
- Impact of the delay of tree planting on open space, urban design and neighborhood character;
- Impact of the delay in terms of air quality with respect to pollution removal, carbon storage and sequestration as measured in both tons and dollar savings;
- Impact of the delay of replacement trees where trees were removed to allow for curb cuts to the interim satellite uplink lot and block 1129; and
- The cost value to the public of the delay in replacement of trees (based on DPR guidelines with the conversation assumption that tree replacement will occur upon project completion).

We call upon the project sponsors to re-evaluate construction plans to allow for the planting of trees at intervals around the perimeter at an earlier stage than what was originally planned for this project. Consistent with Department of Parks policy, the project sponsors should provide additional monetary restitution and seek an extension of the original permit.

8.4 Noise impacts on proposed school open space

The MDA commits the project sponsors to provide space for the construction of a 100,000 gsf public school in the base of one of the Phase II residential buildings. The DSEIS assumes that the school will be constructed in either building 6 or 15. The DSEIS should identify the impact of extended consecution on the school’s open space resources. It should analyze the impact of construction noise on the school playground. Should noise impacts on that location exceed acceptable levels under CEQR, the DSEIS should further analyze the impact of the school population’s use on nearby open space resources.

⁴⁰ *Ibid.*, p. 3E-12.

8.5 Mitigations

The SEIS offers three options for mitigation of the extended construction period impact - the Lowry Triangle, Times Plaza and Culyer Gore Park. Two of those mitigations, Lowry Triangle and Times Plaza, are adjacent to highly trafficked roadways. Times Plaza is at the nexus of three of Brooklyn's busiest streets, making it both noisy and not easily accessible. Culyer Gore Park, while perhaps a quieter location, requires project workers and residents to traverse busy Atlantic Avenue. Any location offered as a mitigation for passive open space should be analyzed for noise impacts to determine whether the proposed space exceeds the CEQR guidelines for noise for passive open space.

Taking into account the factors described above—from the significant noise impacts on interim open space—the potential for shifts in the delivery of building gsf, and the extended loss of trees, the mitigations should be far more robust than what has been offered. First, to remedy the adverse impact of Phase I, the DSEIS should propose mitigations not dependent on Phase II tasks. Further, it should provide off-site open space to Phase II residents as a mitigation for what its own analysis acknowledges: no effective practicable mitigations can be developed to effectively address construction noise impacts on Phase II open space. Any mitigation for open space should be easily accessible to workers and residents from the project site, should be a distance from busy roadways, and removed from construction noise. In addition, mitigations should be developed in consultation with community stakeholders, including local residents adjacent to the project who have already experienced construction impacts and the demands that have been placed on local open space during Phase I construction.

The DSEIS should consider the following in particular:

- The potential to expand Dean Playground by incorporating part of the neighboring HPD parking lot as additional passive open space; and
- Adding an attendant for Dean Playground's comfort station for the duration of the construction of the project.

9. Transportation and parking

9.1 Construction traffic

The DSEIS states on page 3H-11 the same construction worker modal split assumption (55% car with an average of 1.9 persons per vehicle; 45% transit) as was made in the 2006 EIS. The DSEIS should reflect how the arena construction workers actually traveled to the site, rather than repeat a simplifying assumption that now is eight years old.

Although the DSEIS provides extensive analysis of intersections expected to be impacted by additional construction traffic, it fails to adequately assess the resulting hazards and issues created by heavy and large construction vehicles. The Phase II construction site is flanked on the north and east by major roads – Atlantic Avenue and Vanderbilt Avenue – and the now FCRC-owned Pacific Street bisects one-half of the Phase II construction site. Mitigations of forecast traffic at neighborhood intersections should include requirements that construction vehicles may not access the Phase II construction site using either Dean Street between 6th Avenue and Vanderbilt Avenue or Carlton Avenue south of Pacific Street.

The suggested mitigation measures for impacted intersections include imposing “no standing” zones near the intersections to allow additional vehicle queuing and traffic flow. Examples of the proposed additional parking restrictions for one of the peak construction periods are:

- **no standing zones from 6 to 7 AM:** 100 feet of the south curb of Dean Street west of Carlton Avenue (3H-17), 250 feet of the south curb of Atlantic Avenue west of Smith Street (3H-20), 250 feet of the south curb of Atlantic Avenue west of Vanderbilt Avenue (3H-22), and 250 feet of the north curb of Bergen Street west of 5th Avenue;
- **no standing zones from 3 PM to 4 PM Monday to Friday:** 250 feet of the north and south curbs of Saint (*sic*) Marks Avenue west of Vanderbilt Avenue and 100 feet of the west and east curbs of Washington Avenue south and north of Eastern Parkway (3H-25);
- **no standing zones from 7 AM to 7 PM (except Sunday):** 100 feet of the north curb of Bergen Street east of 4th Avenue (3H-24); and
- **24/7 no standing zones:** 100 feet of the north curb of Atlantic Avenue east of Smith Street (3H-20), the west curb of the entire block of Vanderbilt Avenue between Dean Street and Bergen Street (3H-24), and 100 feet of the north curb of Prospect Place east of Vanderbilt Avenue (3H-25).

Page 5-30 states, “Depending on the peak hour, it is estimated that the net number of on-street parking spaces within ½-mile of the Arena that would be displaced by the recommended traffic mitigation measures would represent from 0.4 percent to 1.1 percent of the existing 9,395 on-street parking spaces in this area.” That means 95 parking spaces will be eliminated in an area where there is already intense competition for on-street parking. The DSEIS should assess the effect on parking availability.

9.2 Construction parking

The DSEIS does not recognize or propose mitigations for the negative impact on the community created by construction workers’ parking on residential streets. The DSEIS concludes that a total 392 vehicles of peak parking demand by construction workers can be accommodated in on-site and off-site facilities, including recognizing that some workers will search for “nearby on-street” parking (i.e., on nearly neighborhood streets)⁴¹. During construction of the arena, there were numerous reports of negative neighborhood impacts from parking and environmental violations by construction workers.

Just as did the 2006 EIS, the DSEIS continues to disregard the documented negative environmental, traffic and parking impacts of black cars and limos during arena events. The DSEIS recognizes that pedestrian access on the south side of Atlantic Avenue from 6th Avenue to Vanderbilt Avenue will be restricted during construction of nearby buildings (3H-32). This is also the current designated “holding area” during arena

⁴¹ DSEIS, pp. 3H-34 – 3H-35.

events for black cars and limos. But the DSEIS includes no recognition of the additional congestion and parking issues that will be created from black cars and limos no longer having temporary parking space on the south side of Atlantic Avenue.

9.3 Operations transit

The DSEIS forecasts that a total of 2,311 new “outbound” transit trips due to residential Phase II development would occur between 8 and 9 AM each weekday (4D-31). But, the DSEIS does not analyze the likely worse, and dangerous, overcrowding on the 7th Avenue station platforms, since the DSEIS simply assumes that less than 200 additional trips will use the 7th Avenue station, which falls below the CEQR analysis threshold.

The DSEIS, like the 2006 FEIS, continues to disregard the projected impact of the additional 4,508-4,932 dwelling units in Phase II on the 7th Avenue subway station. The reason the 7th Avenue subway station was not analyzed in 2006 was asserted, without evidence, in the 2006 FEIS (July 2006 Draft Report page 13-54; November 2006 Final Report pages 13-50 and 13-54): “Trips using B or Q trains enroute to Manhattan from the project’s residential components in the AM would enter the subway system at the Atlantic Avenue BMT subway station, and would not pass through the maximum load point on these routes which is located north of the 7th Avenue BMT subway station.” The DSEIS does not repeat this unsubstantiated, and patently unsupportable, assertion.

Instead, the DSEIS summarizes on page 4D-3 that:

- Subway line haul conditions “...*through Downtown Brooklyn* (emphasis added) are expected to operate below their practical capacity in the peak direction in each peak hour”; and
- The full build-out of the project “...would not generate more than an average of 3.7 new subway riders per car in any peak hour,” which is below the 5.0 CEQR analysis threshold.

Once again, the DSEIS assumes that few residents living in Phase II will utilize the already-overcrowded 7th Avenue Manhattan-bound platform in the AM peak. This demonstrates the fallacy of using average figures and misperceiving how subway users value the trade-off between walking the additional distance to the Atlantic Avenue BMT station entrance versus attempting to be the “last rider” who can board a train at the nearer 7th Avenue subway station. A substantial number of the Phase II buildings are to be sited on block 1129, whose southwest corner at Carlton Avenue and Den Street is only four short Brooklyn blocks from the 7th Avenue station entrance at Carlton Avenue and Park Place, rather than two and one-half long Brooklyn blocks from the new Atlantic Avenue station entrance located on the west side of the arena.

9.4 Operations parking

The DSEIS still allocates only 24 parking spaces to the 78th precinct, despite increased density and prolonged impacts on the completion of Phase II. Does the NYPD agree that the police force at the 78th precinct will not need to increase, placing further pressure on available parking spaces?

On-street parking is projected to remain available even in the Reduced Parking Alternative (ES-88). The DSEIS fails to analyze the impact of this conclusion.

10. Phase I and project-wide impacts

10.1 Analysis Framework

In its comments on the Draft Scope for the SEIS, BrooklynSpeaks requested that the baseline analysis of begin at the time the SEIS was conducted, not at the time of the completion of Phase I. The basis for that request was that there is no justification for moving the baseline to a point the project agreements don't guarantee will happen, especially given that changes to the project affect the first phase of construction in ways not anticipated or analyzed in the FEIS. Even if Phase I of the project is completed in full, the project agreements enable the construction of Phase I to overlap with Phase II in multiple scenarios. The DSEIS ignored this request and the result is a failure to analyze construction plans or impacts for the most likely construction sequences, including the one most recently announced by the developer.

10.2 Study of phasing does not reflect announced phasing

The developer has announced that construction on B2, B3, B14, B13, the arena and the permanent rail yard will occur this year. This construction sequence and timing in essence renders irrelevant the phasing assumed in the FEIS and the DSEIS. In theory, every building in the project may now be actively under construction at the same time and most surfaces in the footprint like the rail yard engaged as well. This may render assumptions of peak construction in both the FEIS and the SEIS moot.

The DSEIS assumes Building 1 and Site 5 may be constructed in an overlapping fashion with the project's second phase in relation to daytime construction worker traffic and pedestrian impacts, but looks at little else. The FEIS assumed the project's entire first phase would be complete roughly one to one and a half years following the arena opening, with the arena block buildings constructed in tandem with each other and at the same time as the permanent rail yard. The project's Phase II (east of 6th Avenue) was to be started following the completion of Phase I.

The new plans differ in total. At this time, no project buildings, with the exception of the arena, are complete, and the operating arena (with a temporary certificate of occupancy) generates enormous demand on pedestrian, traffic and parking facilities. Now FCRC has announced that the other buildings on the arena block may be constructed in a way that overlaps with what has long been assessed as the project's second phase. If the analysis in the DSEIS is not corrected, the project sponsor will have the flexibility to construct all of the buildings in the project's first phase overlapping with the project's second phase, without an assessment of environmental impacts.

The DSEIS does not explain how the arena will be operated while B1 is constructed. It also does not study the potential implications on pedestrians, bicycles and traffic as a result of travel lanes, sidewalks and arena egress being reduced for construction.

10.3 Study should include post-event surge

BrooklynSpeaks' comments on the draft scope note that since Barclays Center's opening, it has been demonstrated the point of greatest demand for capacity by pedestrians is post-event when patrons surge from the arena and head home. The FEIS assumption that peak sidewalk LOS would occur during rush hour commuting may be incorrect. Some sidewalks near the arena are crowded beyond capacity post-event, forcing spillover into streets and creating a difficult situation for pedestrian flow, requiring increased police presence to ensure safety. CEQR states, "A proposed sports arena or concert hall may also require a pre- and post-event analysis for a weeknight event, a Friday night or Saturday night event, and a weekend afternoon event."⁴² An updated pedestrian analysis in the DSEIS should therefore study post-event conditions throughout the project site, but most especially on and adjacent to the Phase I site.

⁴² 2012 CEQR, pp. 16-18.

10.4 Construction staging

By extending construction of the rail yard and delaying most Phase I construction, the project sponsor has increased the demand for construction staging moving forward. The use of modular may also increase the demand for construction staging. At the same time, the ability of the project developer to identify areas inside the project footprint for construction staging has been reduced. By accelerating construction on block 1129, potential staging locations are further constrained. The likely result is the use of sidewalks and travel lanes for construction staging, including around the arena block where there is heavy demand for both.

Some potential construction sequences delineated in the DSEIS may not have construction staging. For example Construction Phasing Plan 1 (Figure 3A-6) does not have construction phasing on site. The DSEIS should detail which construction phasing plans have shortfalls in on-site construction staging. The DSEIS should assess how the shortage of construction staging impacts neighborhood character and continues to constrain connections between neighborhoods through extended sidewalk and lane closures.

11. Modular construction

11.1 Assumptions

When the FEIS was completed in 2006, the use of modular construction at Atlantic Yards had not yet been announced. It would seem reasonable to expect that a discussion of the impact of modular construction would take up a significant portion of the 2014 DSEIS. Surprisingly this is not the case. Modular construction is instead treated cursorily, when treated at all. Modular construction is conflated with conventional construction methods. Finally, the impacts of modular construction are frequently omitted altogether.

The extent of modular construction in Phase II is unknown at this time. Assuming that it is used—both the DSEIS itself and public statements by the developer indicate that it will be—the report says nothing about how many buildings will be constructed this way or what their locations will be. So, while the developer appears to be reserving the right to use modular construction as much or as little as it likes, the DSEIS doesn't contain any detailed information about the extent or specifics of modular use, hence it cannot properly analyze the impacts created by its use. No effort has been made to project different scenarios, e.g. impacts under a 20% modular construction assumption, or 30%, or 50%, etc. Essentially, Atlantic Yards will proceed without a full and thorough analysis of the impacts of modular construction.

Indeed, setting the tone is this highly ambiguous statement from the Introduction of the Executive Summary of the DSEIS: “It is possible that some or all of the buildings planned for Phase II would be constructed using prefabricated, or modular, construction techniques; however, the SEIS assumes that each building would be constructed using the conventional construction method. Where relevant, differences in potential impacts related to conventional and modular construction are discussed qualitatively.” But in fact, the DSEIS offers no meaningful analysis of these differences as they pertain to socioeconomic conditions, transportation, air quality, and noise.

11.2 Reduction of economic and fiscal benefits

The DSEIS states, “The construction of the Phase II development using modular techniques would generate substantial economic and fiscal benefits for the city and the state, though *these benefits would be expected to be lower from modular construction than those from conventional construction* (emphasis added).”

While this is clearly a positive for the developer, the negatives for the local community and the city as a whole include reduced spending with local suppliers and reduced tax revenues generated. Since public subsidies for Atlantic Yards make up such a significant part of the project's funding, it's reasonable for the public to expect that the subsidies would result in money returning to the local economy.

Per an analysis of the DSEIS by Atlantic Yards Report⁴³, the losses involved are significant. If modular construction is used for all the 11 towers planned for Phase 2, the cost implications are as follows:

- 22% cut in wages
- 10.2% cut in work years
- 24% cut in revenues

Further, per Atlantic Yards Report, “It would also mean a 24% reduction in revenues for New York City, the MTA, and New York State (in 2013 dollars), from personal income taxes, corporate and business taxes, sales tax on indirect activities, and related taxes on direct and generated economic activity.”

It has been widely acknowledged that the construction workers engaged in building the modular units are earning lower wages than their counterparts engaged in conventional construction. The DSEIS contains no discussion of who has been hired for the Navy Yard “factory,” their training or wage levels (other than acknowledgement in the most general sense that FCR will save on wages).

⁴³ <http://atlanticyardsreport.blogspot.com/2014/03/revealed-atlantic-yards-modular.html>

11.3 Noise

How much noise is to be expected from the delivery of the modular units during Phase II and how will noise complaints be handled? The experience of local residents during the construction of B2 are not encouraging in this respect. Residents on Dean Street have described the impact of night-time deliveries: serious noise causing loss of sleep for parents and children, as well as construction workers smoking in front of their home. Requests for secondary windows have been refused by Forest City Ratner in cases where homes already have double-glazed windows, though those windows have proved to be ineffective. The DSEIS states that, "Measures to control noise, vibration, and dust on construction sites, including the erection of construction fencing, would reduce views of construction sites and buffer noise emitted from construction activities, and *sound barriers would be used to reduce noise from particularly noisy activities where practicable* (emphasis added)." If FCRC could refuse help to residents of one the homes closest to active construction within the project site, it doesn't bode well for residents living near the Phase II site.

11.4 Delivery schedule

The DSEIS does not offer a detailed analysis of the volume and frequency of modular deliveries to the site. Originally described as one delivery per night, at a meeting at Brooklyn Borough Hall in December 2013, FCRC announced it would be increased to four (.between 10PM and 5:30AM).

According to the FEIS, "a certain amount of extended hours, nighttime work, and weekend construction would likely be required," but nighttime work is defined as ending at 11PM. It appears that deliveries are not being defined as actual construction work, although with respect to construction impacts experienced by neighboring residents, there is no meaningful difference.

Wide-load deliveries are indeed supposed to take place at night, per New York City building regulations and the NYC Department of Transportation's stated preference. Meanwhile DOT has given their approval for 4 deliveries per day between 10 AM and 2 PM, although this information is not included in the DSEIS. The DSEIS also does not specify whether there will be weekend deliveries or not.

How can the impact of these night and daytime modular deliveries be evaluated? Since there are no statistics provided in the DSEIS about the number of deliveries that would occur for conventional construction, there is no benchmark against which to measure the impact of modular deliveries. The DSEIS claims that, "On-site building activities using modular techniques is expected to have shorter construction durations and fewer daily on-site workers and truck trips as compared with the use of conventional construction techniques, and would therefore be less disruptive overall." The DSEIS should present hard data to back this up.

Meanwhile, some 17 months after the ground breaking for B2, only 122 of 930 modules have been installed to date. So the noise impact for those living near B2 is likely to continue for an extended period of time. If the pace of modular construction doesn't pick up when this method is used for buildings in Phase II, the impact of these nighttime deliveries will be very significant for nearby residents.

Nowhere does the DSEIS analyze the difference between noise impacts created by daytime and nighttime deliveries. Four (4) hours of daytime delivery activity (between 10 AM and 2 PM, as suggested by DOT) is not the equivalent of four hours of nighttime activity.

The DSEIS states, "While night-time delivery of modules would occur, these deliveries would not be expected to result in a perceptible increase in noise levels (as measured by Leq(1h)). Operation of the trucks used for night-time module deliveries in close proximity to noise receptors would result in increases in noise level for short periods of time. Such increases in noise level would occur only when the trucks would operate adjacent to the noise receptor and *would be comparable in magnitude and duration to that which would result from operation of any heavy truck on the roadway adjacent to the receptor* (emphasis added). Consequently, these short-term increases in noise level during night-time module deliveries would not constitute a significant adverse noise impact. Overall, it is not expected that the use of modular construction for the Phase II buildings would result in significant adverse noise impacts beyond those identified for conventional construction in Chapter 3J, "Construction Noise." Implicit in this is that, in the absence of night-time module deliveries, local residents would normally be experiencing noise impacts

from heavy trucks on their streets. But that's not correct. Heavy truck traffic is not the norm on streets in the local area.

11.5 Lighting

Will the nighttime delivery of modular units to the Phase II require any special lighting of the site? It seems reasonable to expect that it will. If it does, what will the impact be on local residents? Neither the possibility of nighttime lightning nor its likely impacts are addressed in the DSEIS.

11.6 Traffic

Will either the nighttime or daytime deliveries cause traffic problems on local streets? Although the DSEIS claims there will be fewer trucks traveling to and from the building sites in a modular scenario, the wide-load deliveries of the mods are challenging and unpredictable.

Currently the construction of B2 involves the closure of pedestrian paths along Dean St. These are meant to re-open by 8:30 AM each morning—long after the morning rush hour has begun, thus creating a significant inconvenience to local residents. The DSEIS contains nothing about potential closures of pedestrian access routes in the Phase II site to accommodate modular construction, but presumably they should be expected.

12. Multiple developer alternative

According to page 6-39, “FCRC affiliates have extensive contractual and property rights in the Phase II site that must be taken into account in considering an alternative involving the engagement by ESD and the Metropolitan Transportation Authority (MTA) of other developers for construction of the Phase II area.” The agreements with ESDC were executed based upon its approval of the 2009 MGPP, which courts have ruled ESDC made illegally. Further, the DSEIS itself is a product of a court order stemming from ESDC’s illegal approval of the 2009 MGPP. The DSEIS should acknowledge this, and explain why compromising a court-ordered environmental review is justified by ESDC’s prior illegal act.

Page 6-40 says, “FCRC affiliates also have spent hundreds of millions of dollars in performing their obligations under these contracts, and have used many of those agreements as security for financing the Project.” These actions by FCRC took place during years in which either the validity of the 2009 MGPP was the subject of a legal challenge which was ultimately successful, or in which ESDC and FCRC delayed complying with a court order to produce an SEIS. The DSEIS should acknowledge this, and explain why compromising a court-ordered environmental review is justified by FCRC’s business decisions which were based upon ESDC’s prior illegal act.

Page 6-40 states, “Since the FCRC affiliates have given no indication that either they or their secured lenders would be willing to give up their existing rights, issues arising in connection with a switch by ESD and MTA to a multi-developer alternative would take years to resolve, prolonging the construction period.” No attempt is made to quantify the assumed delay. The DSEIS should assess the potential for delay based on case study, and compare it to the delay of 15 years agreed to by ESDC and FCRC.

On pages 6-40 and 6-41 it is written, “In addition, in the event that issues arising from cancellation of the existing contracts were resolved in a way that would allow a multiple developer alternative to proceed, the agencies (ESD and MTA) would then, either individually or together, begin a formal procurement process to engage other developers. It is speculative to estimate how long that process would take, but it is clear that even with the consent and cooperation of the FCRC affiliates, it would be complex and time consuming.” Again, no attempt is made to quantify this duration, even though ESDC has lots of experience in such procurements, as evidenced by the discussion of the steps required in the remainder of this paragraph. “Speculative” or not, the DSEIS’ purpose is to evaluate time-based impact, and it should quantify the expected duration of a managed acquisition process based on its experience, citing case studies, and compare it to the 15-year delay being analyzed in this EIS.

Page 6-41 states, “A new round of litigation, arising from the approval process, may then have to be resolved.” No discussion of the basis for such potential litigation is mentioned, let alone whether its resolution would have the potential to delay the project. The DSEIS should explain whether litigation initiated since the 2009 MGPP was approved has delayed the construction of any buildings at Atlantic Yards, and if not, why future litigation would be expected to do so, comparing the potential for such a delay to the 15-year delay agreed between FCRC and ESDC.

The page goes on to state, “Given the complexity of addressing Project obligations among multiple developers, it is not clear that multiple developers would have an interest in the opportunity presented by an RFP. It is also uncertain whether the necessary transactional arrangements could be put into place, because negotiations would be exceedingly complicated.” However, the DSEIS elsewhere documents the demand for housing in the study area, and states that construction of other projects in the study has exceeded the projections of the 2006 FEIS. Under the circumstances, the DSEIS must explain why other developers would not be interested in the opportunity to build at the project site. There is no suggestion that any developers were even approached informally, let alone through a more structured process like an RFI. Again, ESDC has extensive experience in these sorts of transactions, and so the DSEIS’ should have explained the nature of the uncertainty as to the “transactional arrangements.”

Further, page 6-41 states, “These large capital investments are for an LIRR facility that will not generate any revenue for the project sponsors. Therefore, they have been and will be made by the project sponsors only to allow them to proceed with the development of the buildings over the rail yard.” It is clearly possible that the sale of development rights over the rail yard to other developers would generate revenue for the MTA that it could use to compensate FCRC for development of the permanent rail yard. The DSEIS should consider this opportunity.

Page 6-41 also states, “Other inter-related elements of the Phase II portion of the Project are the parking facilities. Most or all of the parking in the Phase II area is to be located on Blocks 1128 and 1129, and it is anticipated that parking facilities on those blocks will also serve the buildings on Blocks 1120 and 1121, as well as certain Phase I buildings.” FCRC proposes to reduce or eliminate parking on blocks 1120 and 1121. However, it is clearly possible that parking can still be provided to buildings on blocks 1120 and 1121. The DSEIS should explain why this would not be feasible.

Again on page 6-41: “Similarly, the new platform and open space to be developed on Block 1121 will not just benefit the three buildings on that block. They would also be of material benefit to the four residential buildings on Block 1129, because they would replace the depressed open rail yard contiguous to that parcel with at-grade open space.” The DSEIS must explain the basis of its contention that shared open space can not be achieved with multiple developers. The Riverside South and Battery Park City projects cited as case studies in the Construction Socioeconomic chapter were built by multiple developers, and have shared open space. So does ESDC’s Queens West project. And on 6-42: “Moreover, it is unknown what the effect on financing would be if an individual developer’s project were to be dependent on the actions (and solvency) of other developers in a multiple developer arrangement, adding an additional complication to an effort to have multiple developers share common costs such as the rail yard, platform, open space and parking facilities.” Again, the DSEIS must back up these assertions with specifics or case studies from other projects, like Hudson Yards, where multiple developers are able to work through these issues.

Page 6-42 states, “Therefore, assuming that the effort to modify the existing agreements and bring on additional developers could succeed at all, it would take many years to bring the Project back to where it is today, and the accelerated completion of Phase II, which would be the objective of the multiple developer alternative, would not be achieved.” The DSEIS must provide basis for its implied claim that, even given some interval of time required for contracting multiple developers, doing so could not provide an improvement over a 15-year delay.

Page 6-42 also states, “Contractor coordination issues would be particularly acute with respect to platform construction and the placement of building foundations within the rail yard. Any plan to break up that work into packages with unrelated contractors would require that MTA deal with multiple entities in the review and approval of design documents and project schedules, and in arranging for track outages.” This is exactly what is happening at Hudson Yards, so the DSEIS should have analyzed that project and explained why its experience is not applicable to Atlantic Yards.

Page 6-43 states, “In the event that the joint venture transaction with the Greenland Group affiliate were to close, it is likely that it would inject substantial additional capital into Phase II, and thereby be more effective in accomplishing an accelerated development schedule than pursuit of a multiple developer alternative.” (6-43) This statement has no internal logic: any alternative involving multiple developers would inject capital beyond what is available to FCRC, and there is no explanation of why Greenland’s money is better than anyone else’s. To support a claim that the Greenland transaction would be more “effective in accomplishing an accelerated development schedule,” the DSEIS should disclose the schedule agreed among the prospective joint venture partners and explain how it will be enforced.

Finally, the DSEIS ignores the potential for the project’s increased resiliency with multiple developers beyond what is available under the proposed joint venture. The case studies in the Construction Socioeconomic chapter suggest that projects with multiple developers are more resilient. The DSEIS should justify its claim that the Greenland transaction would be more “effective in accomplishing an accelerated development schedule” in terms of how exposure to the type of single supplier risk that has thus far been a source of delay at Atlantic Yards will be managed in a scenario involving the proposed joint venture.