

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

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In the Matter of the Application of	:	Index No. 116323/09
	:	IAS Part 57
PROSPECT HEIGHTS NEIGHBORHOOD	:	
DEVELOPMENT COUNCIL, INC., et al.,	:	
	:	<b>VERIFIED ANSWER</b>
Petitioners,	:	<b>OF RESPONDENT</b>
	:	<b>EMPIRE STATE</b>
For a Judgment Pursuant to Article 78 of the	:	<b>DEVELOPMENT</b>
Civil Practice Law and Rules	:	<b>CORPORATION TO THE</b>
	:	<b>SUPPLEMENTAL PETITION</b>
- against -	:	
	:	
EMPIRE STATE DEVELOPMENT	:	
CORPORATION, et ano.,	:	
	:	
Respondents.	:	

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Respondent New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”) in answer to the Supplemental Petition, sets forth its Affirmative Statement of Facts pursuant to CPLR § 7804(d) and, thereafter, its Answer to the Supplemental Petition as follows:

**AFFIRMATIVE STATEMENT OF FACTS PURSUANT TO CPLR § 7804(d)**

1. The factual statement presented below is based principally on the Administrative Record (“AR”) of 13 volumes (pages numbered 1-7630) previously filed

with the Court<sup>1</sup> and the Supplemental Administrative Record (“SAR”) of 3 volumes (pages numbered 7631-9211) filed with this Answer.

**A. The Urban Development Corporation Act Authorizes Esdc To Plan And Implement Projects.**

2. The Urban Development Corporation Act (“UDCA”) authorizes ESDC to plan various types of “projects.” The two categories relevant to the Atlantic Yards Project (“Atlantic Yards” or the “Project”) are a “land use improvement project” and “civic project.” UDCA § 10(c)-(d), Unconsol. L. § 6260(c)-(d). AR 3664-71, 4717-24.

3. ESDC projects are outlined in a “General Project Plan” (or “GPP”) as specified in UDCA § 16, Unconsol. L. § 6266. To proceed with a project, the UDCA requires that ESDC: (i) create and adopt the GPP (*see* UDCA § 16(2), Unconsol. L. § 6266(2)); (ii) hold a public hearing on the adopted GPP (*see id.*); (iii) affirm the GPP as adopted or, alternatively, affirm a modified GPP (or “MGPP”) (*see id.*); and (iv) thereafter implement the GPP (or MGPP) through business agreements with one or more developers or other participants (*see* UDCA §§ 6, 9, Unconsol. L. §§ 6256, 6259).

**B. In 2006, ESDC And MTA Approved the Atlantic Yards Project, Establishing Its Basic Parameters.**

4. More than four years ago, on December 8, 2006, ESDC approved the Atlantic Yards Project after conducting a coordinated public review process pursuant to the State Environmental Quality Review Act (“SEQRA”), the UDCA and the Eminent

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<sup>1</sup> In Develop Don’t Destroy (Brooklyn), Inc. v. ESDC (Index No. 114631/09), the documents constituting the thirteenth volume were filed on November 24, 2009 as an exhibit to an affirmation of Philip E. Karmel.

Domain Procedure Law (“EDPL”). ESDC concluded these administrative processes by (i) adopting a Findings Statement under SEQRA (AR 3538-631); (ii) affirming a Modified General Project Plan under the UDCA (the “2006 MGPP”) (AR 3632-4170); and (iii) issuing the Determination and Findings required by the EDPL.

5. In the 2006 MGPP, ESDC made the findings required for a “land use improvement project.” *See* UDCA § 10(c), Unconsol. L. § 6260(c). ESDC found, *inter alia*, that the Atlantic Yards Project site was characterized by substandard and insanitary conditions and that the Project will eliminate these conditions by redeveloping the site. *See* AR 3664-66 (2006 MGPP at 33-35). The substandard and insanitary conditions of the Project site were documented extensively in the Blight Study dated July 2006. AR 3790-4170.

6. In the 2006 MGPP, ESDC also made the findings required for a “civic project.” *See* UDCA § 10(d), Unconsol. L. § 6260(d). ESDC found, *inter alia*, that the Arena will provide a needed venue for the relocation of the New Jersey Nets to Brooklyn, for the athletic teams of local colleges and academic institutions, and for cultural and community events; that the eight acres of publicly accessible open space will be a significant public amenity; that the new subway entrance at the southeast corner of Atlantic and Flatbush Avenues will improve access to the subway and public safety; and that the new rail yard will improve the operations of the Long Island Rail Road (“LIRR”). *See* AR 3667-68 (2006 MGPP at 36-37).

7. The 2006 MGPP established the basic parameters of the Project. As outlined in the 2006 MGPP, its 17 buildings and open space will occupy an

approximately 22-acre area encompassing all or portions of eight blocks, as well as some adjoining street segments. The Project's features have not changed materially since that time.

8. An approximately nine-acre LIRR rail yard – in a below-grade open cut – has for many decades occupied Lot 7 of Block 1119, Lot 1 of Block 1120 and Lot 1 of Block 1121 on the Project site. One element of the Project is to rebuild the rail yard so that it is even further below grade – allowing the rail yard and the LIRR trains to be covered with an at-grade platform, buildings and open space.

9. Paragraphs 10-12 describe the Project as set forth in both the 2006 MGPP and 2009 MGPP.

10. Construction of the 17-building development has been divided into two phases. In Phase I, the Arena and four other buildings will be constructed on Blocks 1118, 1119 and 1127 and the adjoining segments of Fifth Avenue and Pacific Street (collectively, the “Arena Block”). Phase I also includes construction of: a fifth building on a portion of Block 927 (“Site 5”), a new subway station entrance on the Arena Block, a new LIRR rail yard on Blocks 1120 and 1121 and the eastern portion of Block 1119, permanent below-grade parking facilities on the Arena Block and Site 5, and interim surface parking lots on portions of Block 1120 and Block 1129. AR 3639-46 (2006 MGPP at 8-15); AR 4692-98 (2009 MGPP at 9-15).

11. Phase I requires clearing all buildings on the Arena Block, Block 1129, the eastern end of Block 1121 and Site 5. These areas of the Project site encompass most of the lots documented in the 2006 Blight Study for the Project as

exhibiting blight characteristics. AR 3831-36, 3852-964, 3983-4059, 4077-156 (Blight Study at C-14–C-19, C-35–C-147, C-166–C-242, App. A). Therefore, virtually all of the buildings contributing to the substandard and insanitary conditions at the site will be demolished in Phase I.

12. Phase II consists of development of the remainder of the Project, including 11 buildings with residential, local retail and community facility uses, and eight acres of publicly accessible open space. Six of the Phase II buildings (Buildings 5, 6, 7, 8, 9 and 10) and the open space adjacent to those buildings will be built on a platform constructed over the LIRR rail yard, in the air space acquired from MTA. AR 3646-49 (2006 MGPP at 15-18); AR 4698-702 (2009 MGPP at 15-19).

13. On December 13, 2006, the Board of the Metropolitan Transportation Authority (“MTA”) approved MTA’s participation in the Project, authorizing the sale of real property on Block 1119, Lot 7, the sale of the air rights over the LIRR rail yard, the reconstruction of the rail yard and the construction of the new subway entrance on the Arena Block.

**C. The Litigation Challenges To The 2006 Project Approvals.**

14. After ESDC’s approval of the Project on December 8, 2006 and MTA’s approval of the Project on December 13, 2006, several litigations were brought to challenge these and other related approvals of the Project. The lawsuits were all rejected on the merits in final decisions that are beyond further appeal or review. *See Develop Don’t Destroy (Brooklyn) v. Urb. Dev. Corp.*, 59 A.D.3d 312 (1st Dep’t), *lv. to appeal denied*, 13 N.Y.3d 713 (2009) (“DDDB I”), *Anderson v. N.Y.S. Urb. Dev. Corp.*, 45

A.D.3d 583 (2d Dep't 2007), *lv. to appeal denied*, 10 N.Y.3d 710 (2008); Goldstein v. N.Y.S. Urb. Dev. Corp., 13 N.Y.3d 511 (2009); Goldstein v. Pataki, 516 F.3d 50 (2d Cir.), *cert. denied*, 128 S. Ct. 2964 (2008); Anderson v. N.Y.S. Urb. Dev. Corp., Index No. 106056/08 (Sup. Ct. N.Y. Co. 2008). Nevertheless, the litigation challenges delayed acquisition of the Project site by eminent domain.

**D. Substantial Construction Work Took Place After the Project Approvals in December 2006.**

15. Despite the delays in acquisition of the site, ESDC and the private developer – Forest City Ratner Companies and its affiliates (collectively, “FCRC”) – went forward with the Project’s implementation after its approval in 2006.

16. Between 2006 and 2009, FCRC – which had acquired most of the parcels on the site through market purchases – removed numerous buildings on the Arena Block and Block 1129 to clear the site for construction.

17. FCRC also performed extensive utility work to re-route or replace sewers, water lines, electric lines and other in-street facilities to prepare the Arena Block for excavation.

18. Finally, pursuant to a license agreement with MTA, FCRC built a temporary rail yard adjacent to the original rail facility. (This temporary facility is needed to accommodate the LIRR trains while the original rail yard is removed, the grade of that land is lowered, and the new, permanent rail yard is built.)

**E. In 2009, ESDC and MTA Modified Their 2006 Project Approvals to Phase Acquisition of Property for the Project.**

19. In the summer of 2009, ESDC and MTA modified their earlier December 2006 Project approvals to allow the Project to move forward in the face of the serious downturn in the real estate market. The principal change to the plans was that instead of requiring FCRC to pay for the acquisition of the entire 22-acre Project site up front – in some cases years before the acreage was needed for the Project – ESDC and MTA agreed to allow property to be acquired for the Project in phases. When a similar change had been made to ESDC’s 42nd Street Land Use Improvement Project at Times Square, which was also delayed due to a downturn in the real estate market, the First Department rejected challenges to that modification, holding that modifying the GPP to allow for phased property acquisition did not trigger the need for an SEIS. *See Wilder v. N.Y.S. Urb. Dev. Corp.*, 154 A.D.2d 261, 262-63 (1st Dep’t 1989).

**1. On June 23, 2009, The ESDC Directors Adopted The 2009 MGPP For Public Comment.**

20. On June 23, 2009, the ESDC Directors adopted a new Modified General Project Plan for the Project (the “2009 MGPP”) for public comment.

21. The 2009 MGPP and 2006 MGPP are virtually identical, as they both involve:

- the same Project site, AR 3633, 3677 (2006 MGPP at 2, Exh. A-2); AR 4685, 4732 (2009 MGPP at 2, Exh. A-2);
- the same 17 buildings at the same locations, AR 3676 (2006 MGPP at Exh. A-1); AR 7072 (Updated Project Site Plan);

- the same uses in these 17 buildings, AR 3634-47, 3676 (2006 MGPP at 3-16, Exh. A-1); AR 4686-700 (2009 MGPP at 3-17); AR 7072 (Updated Project Site Plan);
- the same eight acres of publicly accessible open space, AR 3647-48 (2006 MGPP at 16-17); 4700-01 (2009 MGPP at 17-18);
- compliance with the same set of comprehensive Design Guidelines for the 17 Project buildings and eight acres of open space, AR 3637, 3638, 3678-786 (2006 MGPP at 6, 7, Exh. B); AR 4689, 4690, 4733 (2009 MGPP at 6, 7, Exh. B);
- a new LIRR yard with a new, direct portal to the Atlantic Terminal, AR 3643-45 (2006 MGPP at 12-14); AR 4696-97 (2009 MGPP at 13-14);
- a new subway entrance at the southeast corner of Atlantic and Flatbush Avenues, on the Arena Block, AR 3641-42, 3666-68 (2006 MGPP at 10-11, 35-37); AR 4693-95, 4713, 4720-21 (2009 MGPP at 10-12, 30, 37-38); and
- the same private developer, AR 3632 (2006 MGPP at 1); AR 4684 (2009 MGPP at 1).

22. Thus, the Project itself did not change materially as a result of the 2009 MGPP. The construction work taking place at the site today and which is planned in the future was contemplated and analyzed in the FEIS for the Project. *See* AR 115-17, 123-24, 126-27, 134, 161, 1094-99 (FEIS at 1-18–1-25, 2-6, 17-7–17-10).

**2. On June 24, 2009, MTA And FCRC Agreed To New Terms For The Acquisition Of MTA's Air Rights.**

23. On June 24, 2009, the MTA Board approved an outline of MTA's new business terms with FCRC (the "MTA Business Agreement"), which allow FCRC to acquire for the Arena the MTA property on the Arena Block first and then acquire the air rights on Blocks 1120 and 1121 for the Project over time. Under the MTA Business Agreement as described in the MTA staff summary dated June 22, 2009, the outside date



for FCRC's last purchase of air rights could occur as late as 2030. AR 4671 (Staff Summary, Att. at 2). The MTA Business Agreement also allows FCRC to acquire the air rights on a more expeditious schedule.

**3. ESDC Prepared A Technical Memorandum To Determine Whether The Approval Of The 2009 MGPP Warranted An SEIS.**

24. Prior to the Directors' adoption of the 2009 MGPP, ESDC prepared a Technical Memorandum dated June 2009 (the "2009 Technical Memorandum") under SEQRA. AR 4744-827. The 2009 Technical Memorandum examined the potential environmental impacts of the 2009 MGPP modifications and other changes in circumstances since preparation of the Final Environmental Impact Statement ("FEIS") in 2006 to determine whether, individually or collectively, they warranted preparation of an SEIS.

25. The 2009 Technical Memorandum examined the following changes to the Project that occurred after the FEIS in 2006:

(a) The acquisition of property by condemnation will occur in at least two phases, rather than all at once. The first phase includes the Arena Block, Block 1129, the adjoining segment of Pacific Street, Lots 42 and 47 of Block 1121 and Lot 35 of Block 1120 (collectively, the "First-Phase Properties"), which are the properties needed for the Arena, Arena parking, the new LIRR rail yard and the construction of these improvements. The remainder of the Project site will be acquired in a second phase or subsequent phases. AR 4677-78 (Staff Memo at 3-4); AR 4705 (2009 MGPP at 22); AR 4749 (Technical Memorandum at 4).

(b) At the initial stage of Project development, ESDC will acquire from MTA only the property rights and air rights on the Arena Block. The MTA air rights on Blocks 1120 and 1121 will be transferred to ESDC in one or more conveyances after FCRC constructs the new LIRR rail yard and as FCRC pays the allocated purchase price of each parcel to be conveyed. *See* AR 4678 (Staff Memo at 4); AR 4671 (Staff Summary, Att. at 2).

(c) The 10-year construction period identified in the 2006 MGPP was modified by shifting it forward three years, so that it would run from 2010 until 2019, *see* AR 4687, 4701 (2009 MGPP at 4, 18), but ESDC also acknowledged that the economic downturn could lead to further delays in the Project's completion. *See id.*; AR 4680 (Staff Memo at 6); AR 4808-16 (Technical Memorandum at 55-63).

(d) The design of certain Project elements has changed, within the parameters of the Design Guidelines (AR 3678-786), which were incorporated as an exhibit to the 2006 MGPP (and 2009 MGPP) and which have not changed. The Technical Memorandum identified and analyzed these design changes. AR 4680 (Staff Memo at 6); AR 4749, 4752 (Technical Memorandum at 4-5).

26. The 2009 Technical Memorandum analyzed whether the modifications to the 2006 MGPP, the three-year schedule shift outlined above – and potential further delays – along with the design changes would result in any significant adverse environmental impacts that were not disclosed in the FEIS prepared in 2006. AR 4748-49, 4752, 4755 (2009 Technical Memorandum at 3-6). It also assessed changes in background conditions and analysis methodologies. AR 4755-59 (2009 Technical

Memorandum at 6-9, Figure 6). It concluded that the proposed modifications to the 2006 MGPP, the potential for schedule delays and other changes would not result in significant adverse impacts that had not been previously disclosed in the FEIS. AR 4808, 4827 (2009 Technical Memorandum at 55, SC-1).

27. Of particular relevance to the claims petitioners pleaded in their initial Petition (and which they seek to re-litigate in their Supplemental Petition and supporting papers) are the 2009 Technical Memorandum's assumptions as to the "Build Year" for the Project. The 2006 FEIS assumed a 10-year construction schedule and utilized a 2016 Build Year for purposes of its environmental analysis. AR 1094-99 (FEIS at 17-7-17-10). The courts upheld the 10-year construction schedule assumption as reasonable for purposes of preparing the FEIS. *See* DDDB I, 59 A.D.3d at 318.

28. Because the 2009 MGPP did not make any significant changes to the design of the Project and FCRC advised ESDC that its 10-year construction schedule remained in place (with some minor modifications as to the construction sequence), the 2009 Technical Memorandum also used a 10-year timetable, as described above. AR 4687, 4701 (2009 MGPP at 4, 18); AR 4752, 4755 (2009 Technical Memorandum at 5-6).

29. Just as it had done in preparing the FEIS, ESDC retained a construction consulting firm (in this case, Earth Tech/AECOM) to scrutinize FCRC's revised 10-year construction schedule to determine its feasibility from a constructability perspective. AR 4658-65. Earth Tech/AECOM reviewed the new activity-specific construction schedule prepared by FCRC's construction consultant (Turner Construction

Company), which set forth in detail how the Project would be completed by 2019, and found it to be reasonable from a construction standpoint. AR 4660 (Earth Tech/AECOM Report at 3).

30. Nevertheless, because ESDC recognized that the 10-year construction schedule could be delayed by the poor economy, the 2009 Technical Memorandum included an analysis of whether a further delay in the Project would result in significant new environmental impacts that would warrant an SEIS (the “2009 Delayed Schedule Analysis”). AR 4808-16 (2009 Technical Memorandum at 55-63).

31. With respect to environmental issues that the FEIS Construction Chapter had assessed using *quantitative* methods (construction noise, vibrations, air emissions, traffic and parking), the 2009 Technical Memorandum noted that these quantitative analyses were based on the *peak periods* of construction, when multiple buildings are being built simultaneously under a 10-year schedule, resulting in peak levels of noise, vibrations, diesel emissions and construction traffic. *See, e.g.*, AR 1094-99, 1130, 1155, 1164, 1191 (FEIS at 17-7–17-10, 17-39, 17-56, 17-64, 17-80); AR 4799-807 (2009 Technical Memorandum at 49-54). The 2009 Delayed Schedule Analysis reasoned that if the construction schedule were to be stretched out so that, for example, only one building at a time were to be erected on the Project site, then the intensity of the construction activity would be *reduced*, compared to the concurrent construction *peak period* analysis presented in the FEIS for the aforementioned environmental issues. With an elongated construction schedule, there would be lower levels of construction noise, vibrations, diesel emissions and construction traffic during construction activity, as

compared to the concurrent construction scenario analyzed in the FEIS. The 2009 Delayed Schedule Analysis concluded that the delay scenario *reduces* the intensity of these construction impacts and does not warrant an SEIS. *See* AR 4816 (2009 Technical Memorandum at 63); *see also* AR 7063 (Response to Comments at 34).

32. The 2009 Delayed Schedule Analysis also addressed environmental issues (such as the impact of the construction work on neighborhood character) that the FEIS Construction Chapter had assessed using *qualitative* methods. The FEIS had determined that construction activity over a 10-year period would create significant levels of noise, construction traffic and other disruptions to the neighborhood over a lengthy period of time, and therefore would have a localized significant adverse impact on neighborhood character in the immediate vicinity of the Project site. *See* AR 1120-21 (FEIS at 17-29–17-30). The FEIS further noted that no portion of the Project site, or the immediately adjacent area, would be subject to the full effects of construction for the entire construction period, since the location of construction activities would move across the site as construction progresses. *Id.* The 2009 Delayed Schedule Analysis noted that a slower pace of construction would result in a Project that would be built more gradually and occupied as it was developed. In comparison to the compressed 10-year construction schedule analyzed in the FEIS, construction of the 17-building Project over the longer schedule would involve episodic construction of individual buildings in specific areas of the Project site, rather than uninterrupted, widespread construction-related activity across the site. *See* AR 4808-09 (2009 Technical Memorandum at 55-56). In the event of construction delays, major construction equipment would not be left on site in interim

periods between the construction of individual buildings (AR 4816 (2009 Technical Memorandum at 63)); temporary open space on unused parcels would be provided where feasible (AR 4693, 4701 (2009 MGPP at 10, 18); AR 4808-09, 4811, 4818-21 (2009 Technical Memorandum at 55-56, 58, A-2–A-3); AR 7043-44, 7048-49 (Response to Comments at 14-15, 19-20); and permanent open space adjacent to Project buildings would be provided as each building is constructed (AR 3775-85 (Design Guidelines at 98-108); AR 7031, 7044 (Response to Comments at 2, 15)). The 2009 Delayed Schedule Analysis found that an elongated construction schedule would extend the construction activities at the Project site but would not result in new significant impacts during the construction period. *See* AR 4815-16 (2009 Technical Memorandum at 62-63).

33. Finally, other environmental analyses undertaken in the FEIS and the 2009 Technical Memorandum relate to the impacts of the Project upon completion, rather than during the construction period. For these analyses, the 2009 Delayed Schedule Analysis used a delay Build Year of 2024, as illustrative of an extended delay in the anticipated 10-year construction schedule. ESDC determined that such a delay would not result in any significant adverse environmental impacts that were not addressed in the FEIS. AR 4816 (2009 Technical Memorandum at 63).

**4. ESDC Published a Legal Notice Describing ESDC’s Proposed Lease, Development and Sale Terms.**

34. At the June 23, 2009 meeting, the ESDC Directors authorized the publication of a notice of public hearing (the “Legal Notice”), pursuant to sections 6 and 16 of the UDCA, Unconsol. L. §§ 6256, 6266, for consideration of: (a) the 2009 MGPP

that had been adopted for public comment; and (b) ESDC's proposed lease, development and sale terms with FCRC. AR 4982-87. The Legal Notice further stated that ESDC had posted the 2009 MGPP and 2009 Technical Memorandum on its web site, and that ESDC would hold a public hearing on July 29 and 30, 2009. AR 4982-83. ESDC published the Legal Notice in the *Daily News* and *New York Post* on June 29, 2009. AR 4988-91.

35. The Legal Notice summarized the proposed terms to be negotiated in the future between ESDC and FCRC pertaining to the lease, development and sale of the Project site as follows:

(a) After acquiring title to the Project site (or areas thereof) by eminent domain, ESDC will enter into interim leases (the "Interim Leases") with FCRC for discrete subareas of the site. The Interim Lease for a particular subarea of the site would remain in effect until such time as construction of the building on that area begins. *See* AR 4983 (Legal Notice at 2).

(b) At the point that FCRC begins construction of one of the Project buildings on an area subject to an Interim Lease, the Interim Lease will be replaced by a new "Development Lease." Putting the Arena aside (which is subject to different contractual arrangements), ESDC will enter into 16 Development Leases – one for each of the 16 non-Arena buildings. *See* AR 4983-85 (Legal Notice at 2-4).

(c) Upon construction of a Project building, the Development Lease for that Project building will expire, and title to the building will be conveyed to FCRC. *See* AR 4986 (Legal Notice at 5).

(d) As to Phase I (*i.e.*, the buildings west of 6th Avenue), each Interim Lease will expire after 12 years (or earlier, as noted above, in the event of construction of a Project building on the area subject to the Interim Lease); the 12-year outside date is measured from a start date that occurred on May 12, 2010. *See* AR 4983 (Legal Notice at 2).<sup>2</sup>

(e) As to Phase II (*i.e.*, the buildings east of 6th Avenue), each Interim Lease will expire after 25 years (or earlier, as noted above, in the event of construction of a Project building on the area subject to the Interim Lease); the 25-year outside date is measured from the same start date of May 12, 2010. *See* AR 4983 (Legal Notice at 3).

(f) Similarly, each Development Lease for non-Arena buildings will expire in 25 years (or earlier, as noted above, in the event of the completion of construction of a Project building on the parcel subject to the Development Lease); the 25-year outside date is measured from the same start date of May 12, 2010. *See* AR 4985 (Legal Notice at 4).

(g) The Legal Notice thus provided public notice that under the business agreements ESDC proposed to negotiate with FCRC, the outside date for construction of the Project buildings would be in 25 years. It advised the public of ESDC's intention to enter into "Development Leases" that commence at the point FCRC begins construction of an individual Project building, expire when the construction of that building is completed and expire "in any event" no later than a 25-year outside date. AR 4985.

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<sup>2</sup> The Project Effective Date is May 12, 2010. *See* ¶ 45(ix), *infra*.



**5. ESDC Reviewed And Considered Public Comment On The 2009 MGPP And ESDC's Proposed Lease, Development And Sale Terms.**

36. ESDC received numerous written comments, and many members of the public made oral comments at the public hearing held on July 29 and 30, 2009.

Comments were submitted on a wide range of issues, including on the timetable for the Project's construction.

37. ESDC responded to these comments in a "Response to Comments" document, included in the Directors' materials for their September 17, 2009 meeting. *See* AR 7029-65. As to the Project schedule, ESDC's explanation for its schedule assumptions was as follows:

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

- **Population Growth:** According to the U.S. Census Bureau, the 2008 population of Brooklyn is approximately 2.56 million, representing a 3 percent increase over the 2000 population of the Borough. According to the most recent DCP projections, the population of the Borough is expected to grow to 2.63 million by 2020. Accommodating this substantial population increase will require the construction of tens of thousands of additional housing units.
- **Housing Crises:** According to the Furman Center Report "Key Findings on the Affordability of Rental Housing from New York City's Housing and Vacancy Survey 2008" dated June 2009 (the "Furman Report"), Brooklyn currently has the lowest housing vacancy of the five Boroughs at 2.3 percent. This vacancy rate is far below the national vacancy rate of 8.0 percent. A residential vacancy rate of 5% or less is considered a housing emergency under New York State's rent stabilization law. The severe shortage of housing in New York City – and Brooklyn in

