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Via Federal Express

October 27, 2005

Atlantic Yards
c/o Planning & Environmental Review
Empire State Development Corporation
633 Third Avenue
New York, NY 10017

Re: Atlantic Yards Arena and Redevelopment Project - Comments on Draft Scope for the
Environmental Impact Statement

Dear Sirs and Madams:

We represent Develop Don't Destroy - Brooklyn (DDDB) a not-for-profit corporation consisting of individual members and representing a coalition of community based organizations that are opposed to the redevelopment of the Atlantic Yards in a manner inconsistent with community values and plans that rely upon the use of eminent domain. DDDB joins in and fully supports the comments of Dr. Tom Agnotti submitted on behalf of the Council of Brooklyn Neighborhoods. These comments are intended to expand upon some of Dr. Agnotti's comments and are in addition to the oral comments presented at the October 18, 2005 public hearing.

1. The Timing of the SEQRA Process

ESDC, as Lead Agency under SEQRA should be well aware that it is required to incorporate the consideration of environmental factors in its decision-making process at the earliest possible time. 6 NYCRR §617.1(c). Despite that clear requirement, the proposal by Forest City Ratner Companies (FCRC) seems to have been virtually approved before the SEQRA process began. Evidence of this can be found in the 2003 announcement of the project, subsequent closed door negotiations between FCRC, ESDC, MTA and various New York City agencies which resulted in at least two Memorandums of Understanding in February 2005

between FCRC, ESDC and NYCEDC. There is also the February 2005 letter agreement between FCRC and MTA. Moreover, MTA undertook a blatantly biased and skewed Request for Proposal process that resulted in MTA choosing to negotiate exclusively with FCRC. MTA then further compounded the problem by voting to sell its Vanderbilt Yards to FCRC and authorized its Executive Director to enter into a contract with FCRC wherein FCRC would pay a non-refundable \$10 million down-payment on property. All without any consideration of the action under SEQRA.

The fact that SEQRA is being addressed almost at the end of the process, rather than the beginning is further evidenced by the Draft Scope which presents a project description, purpose and need, and an alternatives section which considers only the FCRC proposal. There is no discussion or consideration of other means of redeveloping the admittedly underutilized Vanderbilt Yards. Instead it is presented as a given that there must be a sports arena on this site, that there must extensive residential and commercial space and that the project area must expand beyond the boundaries of the Vanderbilt Yards. That is not the proper framework for beginning the SEQRA process and for ESDC and the other involved agencies to satisfy their SEQRA obligations. As more fully described below, the most glaring error is the failure to identify the alternative proposal submitted to the MTA by Extell as an alternative that will be studied in the DEIS.

Only by truly opening up the scope of the environmental review to consider all reasonable alternatives can ESDC meet its SEQRA obligations.

2. Project Description, Purpose and Need

ESDC is acting as Lead Agency for this project and has designated it as a state project pursuant to the Urban Development Corporation Act, Chapter 174 of the Laws of 1968 (UDCA). As such, should it go forward, the project is not subject to New York City Zoning, approval by the City nor must it comply with the City's Uniform Land Use Procedures law. Furthermore, ESDC can and plans to use eminent domain to acquire the interests necessary to build the project. However, there are many questions associated with the project that have not been answered in terms of the project description and need. The Draft Scope must be amended to identify the following issues to be addressed in the DEIS:

- Specifically what type of project is this as provided under Secs 3 and 10 of the UDCA? What section of the UDCA authorizes sports arenas and how does this project comply with that section?
- ESDC must adopt a General Project Plan to govern the development of the project. A GPP is an action under SEQRA and therefore the DEIS must include and analyze a draft GPP.
- The DEIS must include a description and analysis of the area purportedly to be deemed substandard, unsanitary or blighted. The DEIS must include standards and methodologies for that determination including how the boundaries of that area are to be determined.

- If DEIS must include an analysis of the need for the elements of the project particularly the need for a sports arena, the market it will serve and its financial viability.
- In March 2005, ESDC, the City and FCRC announced the Memorandum of Understanding dated February 18, 2005 governing this project and entitled “Brooklyn Arena/Mixed Use Development Project”. There was another Memorandum of Understanding dated that same day entitled “ATURA Development Project” which was not announced. That second MOU appears to contemplate the transfer of development rights from the Atlantic Center to Site 5 and further development of the Atlantic Center. While the project description for this project does include some development of Site 5, it does not include the planned expansion of Atlantic Center. The DEIS must accurately describe what is contemplated in the second MOU and include the development contemplated therein as part of the project or at the least the cumulative impacts of the further development of Atlantic Center with the current proposal.

3. Alternatives

The DEIS must consider at least two alternative scenarios not identified in the Draft Scope: alternative locations for the arena and the Extell proposal.

If ESDC is prepared to determine that an sports arena is in the economic development interests of the State, then it must consider alternative locations for such a facility. While in most cases the consideration of alternative locations under SEQRA is limited to those sites under the control of the applicant, that is not the case in the current situation. If ESDC is the sponsor of the project and intends to use its eminent domain authority to facilitate its construction, then any number of sites are available and it is not limited to those favored by FCRC. It is incumbent on ESDC to identify an arena site that minimizes the adverse environmental impacts. Given the obvious concerns for traffic and security from terrorist attacks, to name a few, there are clearly alternative locations for the arena that may mitigate those impacts. Moreover, there is no indication that there is a critical connection between the residential and commercial aspects of the project and the arena that would require co-location. Therefore, the DEIS must consider alternative sites for the arena. DDDDB suggests a prime location would be Coney Island which as been and continues to be the focus of re-development efforts including the recent construction of a minor league baseball stadium for the Cyclones. That site offers multiple access to subway lines, and is located at the end of the various lines thus facilitating staging of trains to maximize transport of fans leaving a sports event. It also has superior access to the Belt Parkway and would alleviate traffic congestion in the downtown Brooklyn area.

The other alternative that must be considered is the Extell plan. As noted previously, Extell submitted its proposal in response to the RFP from the MTA for the Vanderbilt Yards. Extells proposal consists of 1,940 units of housing, including 573 low or moderate income apartments, 116,000 sq. ft. of retail space, 75,000 sq. ft. for school and/or community facilities, 1,000 parking spaces and over 167,000 sq. ft of parks and open spaces. The total area will comprise approximately 2.7 million sq. ft. To comply with the scale of the surrounding Brooklyn

area, the buildings will range in size from 4 to 28 floors. The proposal included proceeding through the ULURP process and was designed to comply with general principles of development created by numerous community groups, including DDDDB.

While MTA chose to proceed exclusively with the FCRC bid, such a determination can only be considered preliminary pending the outcome of SEQRA. Since a viable alternative has been presented that utilizes the Vanderbilt Yards, provides more money to MTA and meets the requirements for the relocation of the LIRR yards, this is an alternative that must be considered by ESDC in the DEIS. Obviously to do otherwise is to flaunt the SEQRA requirement that a hard look be taken at a reasonable range of alternatives to the project.

The fact that the Draft Scope ignores the Extell project is striking. Instead the Draft Scope contains vague language about a smaller scale alternative. The final scope must be more specific and must specifically identify the Extell proposal as the alternative for consideration. Furthermore, the Extell alternative must be considered in a commensurate level of detail as that afforded the FCRC proposal.

On October 24, 2005 there was a meeting of the Borough Board Atlantic Yards Committee. In attendance were various local elected officials, representatives of the affected Community Boards, ESDC, the attorney for FCRC, and various consultants. Councilmember Letitia James questioned the lack of inclusion of the Extell plan as an alternative to be considered. Her question was answered by David Paget, Esq. who stated that ESDC was not privy to Extell's plans. That was a very curious statement. It is important to note that Mr. Paget is FCRC's attorney, not ESDC's. It is not the proper place for the developers attorney to say what the range of alternatives is, since this is, as stated above, a state project and not simply an application from a private developer. Even more curious is the claim that ESDC is not aware of the Extell bid. Presumably ESDC is aware of MTA's RFP process and followed its developments. That much is clear because ESDC released the Draft Scope for comment only a few days after the MTA Board voted to sign a contract with FCRC. Moreover, Mayor Bloomberg's administration, which is an involved agency and an active supporter of this project was closely involved throughout the MTA consideration of competing bids for the Vanderbilt Yards. We know that MTA Chairman Kalikow met on August 16, 2005 with Mr. Bruce Ratner and Deputy Mayor Dan Doctoroff to discuss the Vanderbilt Yards proposal. Therefore, it is strikingly disingenuous for ESDC to claim that it is not privy to or sufficiently informed about the Extell proposal.

Nevertheless, given ESDC's apparent lack of interest in exploring alternative development scenarios for the underutilized Vanderbilt Yards, attached hereto are portions of the Extell proposal submitted to the MTA. DDDDB obtained these copies from MTA when it made the bid packages available to the public. Included are the July 6, 2005 cover letter from Extell President Gary Barnett, a narrative description of the project and a set of drawings. A full copy of the bid documents can be obtained from MTA and we are sure that additional information regarding the Extell proposal can be obtained by contacting Extell directly.

4. Hazardous Materials

Task 10 of the Draft Scope outlines the process for considering the presence of hazardous materials on the site and how they will be dealt with. This section is far too cursory and ignores the fact that there are known spills and discharges in the area and that further investigation and remediation will be required. The DEIS must include a full site assessment and detailed plans for the remediation that will be protective of public health safety and welfare. The DEIS should include the following:

- We know that spill reports and sampling data exists, therefore in the first instance the DEIS should include a map of the area that identifies the actual sampling data that exists. The data should be provided along with maps that note the location of existing monitoring wells or other data points so that the public can have a user friendly project site map indicating the nature and extent of known contamination. A project site map, with plotted contaminant data and groundwater contours, should be developed at this time so that a more comprehensive project-wide site investigation plan can be developed and conducted. In other words, there is no reason to pretend that there is only a potential for encountering contamination when it is known that there is actual contamination in areas of the project site.
- The Draft Scope also seems to indicate that ESDC cannot obtain access to some of the properties in order to conduct sampling. To the extent that existing data or the proposed Phase I indicate that there is history of releases or industrial activity at those locations, ESDC should commit now to obtain access, either by having NYSDEC obtain statutory access or by making "reasonable efforts", including the payment of a reasonable access fee, to obtain access. The approach of waiting for some unspecified time in the future to obtain data, and/or to simply indicate what precautions would be taken to avoid exposure pathways or exposure scenarios (without knowing the substances to which one might be exposed) is to risky and ignores the ability of ESDC to actually obtain access and conduct necessary testing.
- There will have to be a community air monitoring program in place before the work, particularly if there is no actual data base of contaminants. What will the scope of the contaminant sampling be in the event that they simply approach the problem by taking "precautions"; i.e. what would the air sampling program monitor? What is the scope of such a program – will it be based on all the contaminants that may be present at all the past and present spill sites and regulated properties?
- The parcel denoted as "Block 1127" seems to be the Mobil Service Station at which free product was noted in the subsurface. Reports identify "potential sensitive receptors" as underground utilities and residential dwellings with basements. Reports also identify the subway line as a potential receptor of contamination from the site. Spill # 01-07438. The DEIS must fully consider that site, the prospects of off-site migration and how the site will be remediated.
- There are also subsurface vapors associated with spill sites, including the Block 1127 spill. In fact, monitoring well locations needed to be relocated to the east side of Flatbush

Avenue because the NYCTA maps showed a subway under the sidewalk on the west side. Does this existing condition affect the relocation of the LIRR yard in any manner? Is there already a soil management plan in place to address the liquid phase hydrocarbon in the subsurface at that site? Is there already a health and safety plan established for construction in the subsurface in these areas? In other words, where contaminant conditions are already known, is the project sponsor or ESDC going to remediate those sites and will health and safety plans, and community monitoring, be developed now, rather than sometime in the future? What is ESDC proposing as the clean up standard for the known spill sites?

- What will ESDC do with regard to evaluating and abating sub-surface vapor plumes? Will there be an analysis consistent with the State's vapor intrusion guidance policies.
- The printing plant at 700 Pacific, owned by Plant Partners L.P. ceased operating in 1997. A hazardous waste closure plan was implemented. ESDC should confirm the closure of the facility, with NYSDEC approval, and confirm that there is no off-site migration of hazardous wastes from that facility. If there is contamination from this location, the project sponsor should commit to clean it up.

We appreciate ESDC's consideration of these comments. The proposed redevelopment of this area presents, as proposed by FCRC, the largest project proposed in Brooklyn and probably the largest mixed-use development contemplated by ESDC. Before the extraordinary powers available to ESDC are utilized, there must be a comprehensive environmental review consistent with these comments and those submitted by CBN and there must be a full a fair consideration of the available alternatives.

Very truly yours,

Jeffrey S. Baker

