Gowanus Neighborhood Rezoning and Related Actions
Technical Memorandum – 001
September 21, 2021

On September 10, 2021, the New York City Department of City Planning, on behalf of the City Planning Commission as lead agency, issued a Notice of Completion for a Final Environmental Impact Statement (FEIS) for the Gowanus Neighborhood Rezoning proposal. Due to a clerical error in compiling written comments on the Draft Environmental Impact Statement (DEIS), a comment letter received from Voice of Gowanus (VoG) was erroneously omitted from Appendix K, Written Comments Received on the DEIS. Appendix K has been updated to include this letter. As the responses below indicate, Chapter 27, Response to Written Comments Received on the DEIS and the FEIS itself, which were published on September 10, 2021, substantively address the comments and topics raised in the VoG letter that are within the scope of the State Environmental Quality Review Act (SEQRA) and City Environmental Quality Review (CEQR). To assist the public, this Technical Memorandum responds to these comments and identifies the relevant Responses to Comments published in Chapter 27 of the FEIS and the relevant Chapters of the FEIS that are responsive to VoG's letter.

Comment 1: VoG considers the DEIS to be deficient in several key areas. Therefore the document fails to analyze sufficient accurate and meaningful data and information necessary to take the "hard look" required by environmental analysis law. The Gowanus Canal and its surrounding land area are subject to multiple substantive legal mandates under law and Administrative Order with which New York City has yet to fully comply (or fully demonstrate compliance) regarding remediation and restoration of soil, air, and water assets. The DEIS cannot leave out critical data and information needed for the "hard look" because it may create a need for further compliance action.

Response: See response to Comment 1-141. As stated in the response to Comment 1-141, the DEIS was prepared in accordance with SEQRA and CEQR and meets all City and State environmental review requirements. The regulatory actions referenced are outside the scope of the present environmental review and are being overseen directly by US Environmental Protection Agency (EPA).

Comment 2: Forcing citizens to spend time and funds to induce government agencies to fulfill their legal obligations to clean and restore the Gowanus Environment before adding further pollution loading to the system is its own form of injustice that compounds the continued exposure to a toxic legacy of polluted water, air and land.

Response: See responses to Comments 11-1 through 11-39 that address comments on Chapter 11, "Water and Sewer Infrastructure", responses to Comments 15-1 through 15-3 that address comments related to air quality, and responses to Comments 18-1 through 18-4 that address public health. As noted throughout the FEIS, including Chapter 27, "response to Comments," the Gowanus Plan compliments and supplements the in-Canal cleanup with requirements for remediation of upland brownfields. In addition, as indicated in the response to Comment 1-137, not planning for the remediation of upland sites through redevelopment would leave those sites unremediated and jeopardize the community's efforts for a comprehensive cleanup of the neighborhood.

Comment 3: No comprehensive or large-scale Rezoning of the Gowanus Neighborhood should occur until the Retention Tanks necessary to control ongoing pollution from Combined Sewer Outfalls discharging to the Gowanus Canal are built and operating as required under the legal mandates of the Superfund Record of Decision.

Response: See responses to Comments 1-110 and 1-137.

Comment 4: No comprehensive or large-scale Rezoning of the Gowanus Neighborhood should occur until the USEPA independently verifies New York City compliance with the Long Term Control Plan implemented to control Combined Sewer Overflows into the Gowanus Canal and Water Quality Standards Compliance in accordance with its 2001 Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Review. This includes monitoring and data collection sufficient to determine compliance with fecal coliform and other Water Quality Standards consistent with current designation requirements.

Response: See responses to Comments 1 above and 5 below. See also the responses to Comments 1-7 and 1-21.

Comment 5: No Rezoning should occur until EPA conducts a post-compliance review and reconsiders whether the Gowanus Canal should be subject to a Total Maximum Daily Load (TMDL) limit for discharges consistent with the Canal's continued status as an Impaired Water under Clean Water Action §303.

Response: See response to Comment 1 above. As also stated in response to Comment 1-21, 1-30, as well as Chapter 11 of the FEIS, the City is continuing discussions with EPA concerning any potential actions that EPA believes might be necessary to implement the Superfund remedy.

Comment 6: No Rezoning should occur until the US Department of the Interior, NY State Department of Environmental Conservation, and the National Oceanic and Atmospheric Administration complete the Natural Resources Damage

Assessment required under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Oil Pollution Control Act of 1990, and the Clean Water Act that resolves the "strong probability that a claim for damages" exists, assesses the damages, and determines liability.

Response: See response to Comment 1 above. See also the response to Comment 1-21. As described throughout the FEIS, including Chapter 27, "Response to Comments," the Gowanus Plan seeks to support the ongoing remediation and cleanup work by providing a roadmap for a shared vison of a more sustainable, resilient, and inclusive neighborhood. The Plan and Proposed Actions do not preclude or stop ongoing and parallel processes like the Natural Resources Damage Assessment.

Comment 7: No Rezoning of the contaminated parcels comprising or—in the vicinity of—the three former Manufactured Gas Plant sites on the banks of the Gowanus Canal (Citizens, Metropolitan, and Fulton) can occur until the parcels are formally recognized and redesignated as Operable Units of the Gowanus Canal Superfund site and Public Place is separately reviewed for potential inclusion on the National Priorities list if its soil, air, or water exposure levels meet the Hazard Ranking Score threshold of 28.5

Response: See responses to Comments 1 and 5 above. See also the responses to Comments 1-7 and 1-21, response to Comments 10-1 and 10-4, and comments made by EPA in Comment 10-14.

Comment 8: No Rezoning of any parcels in the Gowanus Neighborhood should occur without a fully compliant Impact Assessment meeting all applicable requirements under the National Environmental Policy Act, the State Environmental Quality Review Act, the City Environmental Quality Review Technical Manual, and Executive Order No. 91 of 1977.

Response: See response to Comment 1 above. The Proposed Actions do not require actions to be taken by either EPA or NYS Department of Environmental Coordination (DEC); however, to the extent that subsequent actions by individual lot owners require EPA or DEC approvals, such subsequent actions will have to comply with all applicable federal and state requirements.

Comment 9: The Rezoning presents a unique form of conflict of interest, requiring special scrutiny of the DEIS. The City is subject to ongoing compliance requirements as a result of multiple enforcement actions, which makes it both a proponent of this Action and the Respondent in significant open Administrative Orders.

Response: See responses to Comments 1 and 5 above. See also the response to Comment 1-1-41.

Comment 10: The DEIS must be revised to comply with the provisions and requirements of the National Environmental Policy Act (NEPA) [because the Draft Scope of Work (DSOW) from 2008 for an EIS to rezone Public Place for the "Gowanus Green" project by the Department of Housing Preservation and Development (HPD) anticipate[d] the use of federal funding from the U.S. Department of Housing and Urban Development (HUD) including HUD HOME Investment Partnerships Program to facilitate the construction of affordable housing.

Response: See response to Comment 1-18.

Comment 11: The DEIS must include Cooperating and Involved Agencies under NEPA and SEQRA. Under NEPA (42 U.S.C. 4321 et. seq.), all agencies of the Federal Government are directed to prepare a detailed statement on "the environmental impact of the proposed action." In addition, that section of the law provides that "[p]rior to making any detailed statement, the responsible federal official shall consult with and obtain the comments of any federal agency which has jurisdiction by law of special expertise with respect to any environmental impact involved. This should include EPA and DEC because of various state and federal orders of consent related to the Clean Water Act, Superfund, and NYS Environmental conservation Law. In addition, FEMA, HUD, and ACOE should be included.

Response: See response to Comment 8 above. See also responses to Comments 1-18, 1-21 and 1-22.

Comment 12: The 2008 DSOW for HPD's Gowanus Green proposal set out the applicable federal statutes for that project. This legally required transparency stemmed from the recognition that Federal Funds from the Department of Housing and Urban Development would be used, a factor the current Administration has obfuscated, and only recently confirmed in published documents and public statements.

Response: See response to Comment 1-18. As noted, in Chapter 1 of the DEIS, "Project Description," in the event HUD funding is used for construction of affordable housing at Gowanus Green, the project would be fully reviewed in accordance with NEPA and HUD environmental regulations, as required by law. The timing and construction of the Gowanus Green proposal remains contingent on a number of factors (such as whether the City-owned site is needed for staging work for the in-Canal dredging, review and timing of site remediation, etc…) and financing cannot be secured until the project can move forward.

Comment 13: The 2017 Final Scope of Work for the Gowanus Canal Combined Sewer Overflow (CSO) Facilities Project (the Superfund Retention Tanks) also included a partial list (Figure 2) of "Permits" and "Approvals or Equivalents" that trigger Involved Agency status (see also 2008 DSOW and regulatory references above). Notably, the list failed to include the Long Term Control Plan as a compliance

requirement, even though compliance is required to prevent the otherwise required setting of a Total Maximum Daily Load (TMDL) for all loadings into the Gowanus Canal.

Response: See response to comment 1-25; review of prior EISs is beyond the scope of the Gowanus Rezoning EIS. See also response to Comment 1 above. The DEIS comprehensively assesses the potential for significant adverse impacts of the Proposed Actions, proposes a range of mitigation measures for the identified impacts for decision-makers to consider as they weigh the benefits and impacts of the zoning proposal. Neither the Proposed Actions nor the EIS for the Gowanus rezoning supplant or preclude ongoing compliance with applicable laws and regulations, including but not limited to the federal Clean Water Act and the City's CSO program which is being implemented in accordance with that statute.

Comment 14: The DEIS fails to evaluate cumulative effects/impacts as required by both NEPA and SEQRA. Cumulative impacts must be assessed when actions are proposed, or can be foreseen as likely, to take place simultaneously or sequentially in a way that the combined impacts may be significant. [The cumulative effects of development resulting from the rezoning of Atlantic Yards, Downtown Brooklyn, and Governors Island must be accounted for in the DEIS]. The accumulated loading of four large-scale developments, including the Gowanus Rezoning, throughout just the Red Hook sewershed is thus adding almost 6 million gpd to a current flow of 27 million gpd, approximately a 20% increase to a wastewater treatment plant system that relies on in-line storage and other aspects of dry weather sewage system operation to handle wet weather loading, CSO outfalls, and backups in the Gowanus.

Response: See responses to Comments 1-25 and 11-14. As described in detail in the Final Scope of Work for the DEIS, the DEIS, the FEIS, including Chapter 27 of the FEIS, "Response to Comments," the impact assessment methodology is comprehensive and takes into account cumulative effects by including the planned No Build projects through the 2035 analysis year and also the future projected No Action demands on wastewater, transportation, schools, libraries and parks, by including these projected demands through 2035 in the analysis.

Comment 15: EPA acknowledged a gap in necessary data disclosure when it called out problems with DEIS calculations in a July 13, 2021 letter to Congresswoman Velazquez: "As stated above, EPA has identified apparent errors in some of the DEIS calculations and will be providing comments on the document. EPA will review the revised calculations once the document is revised to address EPA's comments. It is expected that retaining additional stormwater on redeveloped lots will change the sewage-to-stormwater ratio in the combined sewer system during rain events by a small degree, but CSO loading originates from the entire sewershed, and the local changes derived from the proposed development may not be measurable."

The ongoing NYC practice in all its development EISs is to count only marginal increases in dry weather sewage generation against total plant capacity, as if each were separated/segmented unrelated actions. Failing to add up the total additive loading to the "entire sewershed" as USEPA points out amounts to a deceptive incrementalism that both violates cumulative impacts requirements and indicates the EIS has failed to take a "hard look." Meanwhile, this accumulated increase in sanitary loadings means less capacity is available to take stormwater flows, leading to potentially larger, longer, and more frequent CSO discharges into the Canal and other outfall locations.

Response: See responses to Comments 1-141, 11-1, 11-5, 11-6, and 11-15.

Comment 16: The DEIS must fully disclose all ongoing compliance requirements and potential compliance interference. In the case of the Gowanus Rezoning, these include (but are not limited to) requirements under the Clean Water Act, the Clean Air Act, Local Laws 66 and related state and local greenhouse gas control mechanisms, the Comprehensive Environmental Response Compensation, and Liability Act, the Rivers and Harbors Act, and the Stafford Act. If any action related to the Rezoning would interfere with execution of binding legal orders or decisions, or violate other lawful requirements, the zoning action should not proceed unless and until brought into compliance.

Response: As stated in response to Comment 1 above and Comment 1-23, the DEIS was prepared in accordance with SEQRA and CEQR and meets all City and State environmental review requirements. The analysis thresholds and criteria for determining significance in the *CEQR Technical Manual*, which were relied upon for this environmental review, are informed by relevant Federal and State statutes, and generally reflect or are more restrictive than the State's criteria.

Comment 17: The Reasonable Worst Case Development Scenario constitutes a form of segmentation embedded in the *CEQR Technical Manual*. Development that would have occurred "without" the planned action cannot be segmented or excluded from the accumulated effects of an analyzed project.

Response: See response to Comment 1-133.

Comment 18: The attempt to avoid NEPA review by withholding information on use of Federal Funds at the Gowanus Green/Pubic Place redevelopment is arguably an improper attempt to segment the analysis, and only apply the fully required analysis requirements to a small portion of the project at an unspecified future date. In fact, the development of affordable housing at the Gowanus Green/Public Place site is integral to the entire rezoning as it will be used to satisfy Mandatory Inclusionary Housing provisions that enable the Rezoning.

Response: See response to Comment 1-18. The entirety of the Gowanus Green proposal, including the provision of approximately 950 affordable housing units, has been comprehensively included in the RWCDS and the land use actions necessary to facilitate Gowanus Green have been identified in the EIS as part of the Proposed Actions. As indicated in Chapter 1, "Project Description," in the event the City determines that HUD approvals, including funding, would be needed in the future to facilitate the construction of affordable housing at Gowanus Green, the project would be fully reviewed in accordance with NEPA and HUD environmental regulations, as required by law. As such, given that the Gowanus Green proposal was incorporated into the RWCDS, the proposal was properly considered.

HAZARDOUS MATERIALS

Comment 19: The DEIS fails to evaluate all the Remedial Investigation and Feasibility Studies conducted for the Manufactured Gas Plant sites to determine exposure risk from disturbance and construction from the Rezoning. Although the DEIS indicates "subsurface contamination in the study area is likely to be principally associated with...[coal-tar and other contamination migrating from former MGP facilities," the data and information in key documents such as the 2005 Final Remedial Investigation for Public Place, the full Remedial Investigation and Feasibility Study for the Superfund Cleanup, and other published reports detailing the full extent of the contamination as currently known are not disclosed, discussed, or evaluated in relation to the impacts of allowing significant redevelopment and potential exposure to the Rezoning area.

The DEIS includes a discussion of (E) Designations and other regulatory mechanisms to address contamination. The DEIS cannot punt full disclosure and mitigation requirements for redeveloping contaminated land to a perfunctory "regulatory requirements would need to be followed." This is precisely the type of segmented, kick-the-can-down-the-road invitation to continue ongoing unmitigated impacts that NEPA/ SEQRA was enacted to prevent.

Response: See responses to Comments 10-2 and 10-4. As discussed in the EIS, and in accordance with the New York City Zoning Resolution and the City's Rules (Title 15, Chapter 24), the Proposed Actions include the placement of (E) Designations for hazardous materials on rezoned development sites. The City's (E) designation program ensures that when potentially contaminated sites are developed in the future, site conditions are investigated and remediated if necessary, thereby eliminating the potential for significant adverse impacts. The (E) Designation ensures that appropriate remedial measures approved by the NYC Office of Environmental Remediation are completed prior to the issuance of certificates of occupancy by the New York City Department of Buildings (DOB). As such, an (E) Designation is an effective, site-specific approach to ensuring contaminated sites are properly remediated.

Comment 20: The DEIS must include a full analysis of soil characterization, institutional and engineering controls required to prevent exposure, vapor intrusion impacts, operation and maintenance of remedies, and all remedial requirements to prevent harm to human health should parcels be sold or transferred.

Response: See the response to Comment 19 above. See also the responses to comments 10-2 and 10-4.

Comment 21: The DEIS must disclose data and information sufficient to demonstrate any future development will comply with the requirements of the 2013 Gowanus Canal Cleanup Record of Decision (ROD) that specifically states: "To prevent recontamination of the canal following the implementation of the above-described remedial actions, the upland sources of hazardous substances, including discharges from three former manufactured gas plants (MGPs), CSOs, other contaminated upland areas and unpermitted pipes along the canal, must be addressed prior to the commencement of, or in phased coordination with, the implementation of the selected remedy."

Response: See response to Comment 1 above. Ensuring compliance with this and other applicable Superfund requirements is the responsibility of the EPA. EPA procedures will require coordination with the Potentially Responsible Parties, developers, City agencies, community, etc. As indicated in Chapter 11 of the FEIS, "Water and Sewer Infrastructure," the City is continuing discussions with EPA concerning any potential actions that EPA believes might be necessary to implement the Superfund remedy.

Comment 22: The DEIS must disclose the extent to which the City has sufficiently budgeted for all remediation and exposure control requirements necessary to allow uses intended by the new zoning designations.

Response: See response to Comment 10-1. Numerous agencies across multiple jurisdictions are committed to overseeing remediation and remedial control measures. A specific budgetary analysis is beyond the scope of the CEQR EIS. The DEIS sets out procedures to avoid impacts and, as appropriate, the mechanisms under the City's control (e.g., E-Designations) and/or via another agency (e.g., EPA's Superfund Program or DEC's Brownfield Cleanup) to ensure such procedures are followed.

Comment 23: The DEIS fails to sufficiently address data, information, and impact analysis regarding residual toxics at the three MGP sites upland of the Gowanus Canal. Inadequate remediation could leave hazardous materials subject to rain and flood-based migration, risking re-contamination of the Gowanus Canal in violation of the Superfund ROD, the Clean Water Act, and the Rivers and Harbors Act. The DEIS must take a hard look at the potential for continued—and illegal—releases

of toxic residuals from the site into the Canal under all applicable laws in conjunction with redevelopment.

Response: See the response to Comment 21 above. See also the responses to Comments 1-23, 1-24, 10-2, 10-4, 10-5, and 10-6. As indicated in Chapter 11, "Water and Sewer Infrastructure," the City is continuing discussions with EPA concerning any potential actions that EPA believes might be necessary to implement the Superfund remedy.

Comment 24: The DEIS fails to evaluate the Environmental Justice equities of reusing contaminated land for low-income housing and a school, impacts that must particularly be assessed due to the real risk of New Yorkers.

Response: See response to Comment 18-4 and EPA statements in Comment 10-14 indicating that it is feasible for the referenced site, Gowanus Green/Public Place, to be cleaned up to allow for the envisioned uses, which primarily include housing, a school, and open space. The MGP sites fall under DEC's Brownfield Cleanup Program. Required Citizen Participation Plans must address Environmental Justice issues, e.g., where the site is located on or adjacent to a DEC mapped Potential Environmental Justice Area. DEC's role in the remediation of the Public Place site is described in Chapter 10, "Hazardous Materials."

Comment 25: The DEIS must also include data and information regarding the consistency with law and regulation across New York State of applying restricted residential zoning (which would permit residential and school uses) on contaminated land, as well as the human health impacts of such land uses.

Response: As stated in the Final Scope of Work for the DEIS and Chapter 1 of the DEIS, "Project Description," (specifically the *Required Approvals and Review Procedures, Analysis Framework, and Public Review Process* sections) the DEIS was prepared in conformance with SEQRA and CEQR, which incorporate relevant regulations set by other State laws.

WATER AND SEWER INFRASTRUCTURE

Comment 26: Up-to-Date population levels for the Red Hook and Owls Head Sewershed are available to generate sewage flow data and must be used. Neither population apportionment methods developed by DEP in 2014 (and used in the LTCP models) or the Appendix F Transportation Analysis Zone (TAZ) modeling (using only lots undergoing rezoning) provide accurate data as to actual population increases in the Red Hook and Owls Head sewersheds since the 2010 census numbers relied on were published.

Response: See response to Comment 11-6. The FEIS was revised to address relevant census data available at the time of the FEIS preparation.

Comment 27: The FEIS for the Gowanus Canal Development known as the Lightstone Project on Bond Street states the Red Hook WRRF dry weather flow was 33 mgd in 2009, and notes that project alone added 114,032 gpd of sanitary sewage loading that is cumulative with the Rezoning.

Appendix F of the DEIS claims the current dry weather flow to the Red Hook WRRF is only 24 mgd (a massive 33% decrease from 2009), in spite of the limited reductions in water use City wide, the addition of 3 inches of stormwater to the area (see below), and at least a 20% increase in water use from various developments.

Response: See responses to Comments 11-4, 11-5 and 11-17. As stated in Chapter 11, "Water and Sewer Infrastructure" of the DEIS, substantial decrease in water usage and sanitary sewage have been achieved since 2009 and are attributable to Local Law 33 and requirement of low-flow fixtures. As indicated in Chapter 27, "Response to Comments," the Department of Environmental Protection (DEP) found the most recent average water usage is 73 gallons per day in Brooklyn—below the 100 gallons per day standard threshold used in the 2010 *CEQR Technical Manual* guidance.

Comment 28: The DEIS fails to note if tanks and other mitigation measures required by the Atlantic Yards development have actually been built and could in any way be contributing to the significant reduction in dry weather flow in the face of countervailing flow increases.

Response: While the investigation of operational infrastructure at Atlantic Yards is beyond the scope of the EIS, the analysis conservatively includes all development online and projected to be online and contributing to the combined sewer system by the 2035 build year.

Comment 29: Up-to-Date rainfall levels consistent with current Climate patterns are available to generate accurate stormwater flow data and must be used. The JFK Airport Standard rainfall level from 13 years ago is entirely superseded by actual rainfall measurements. Rainfall across New York City areas is increasing, and annual rainfall in both the Red Hook and Owls Head areas are substantially above levels applied in various calculations and analysis. All sewage and stormwater calculations must use actual rainfall totals to assure the DEIS meets legal requirements for a "hard look" and avoids arbitrary outcomes.

Response: See responses to Comment 11-10 and 11-22.

Comment 30: Gallon per Person calculations are inconsistent and arbitrary and fail to provide an accurate hard look. Actual water consumption in New York City in 2020 was 118 gallons per person, per day (gpd). The CEQR Manual calculates water use and subsequent sewage loading at a rate of 100 gpd. The LTCP calculations used

only 75 gpd, and Appendix F wastewater generation calculations assumed 73 gpd used in the segmented "RWCDS lots." No data is included in the DEIS that demonstrates or confirms that presumed "proactive water conservation efforts undertaken by developers in recent projects" have or will further reduce sanitary flow in any significant level given most water conservation gains were made in the 30 years from 1979 to 2009, and have tapered off significantly since.

Response: See response to Comment 11-4.

Comment 31: The Combined Sewer System (CSS) Loading Rates in Table 11-4 Assign Arbitrary and Unsupportable Rain Duration Rates. The DEIS "Flow Volume Matrix: Existing Conditions" (Table 11-4), which purports to show a current baseline flow of stormwater into sub-catchment areas (which happen to coincide with the surface metes and bounds of the Rezoning) contains two major data failures that violate legal and regulatory requirements for NEPA and SEQRA: (1) The delineation of "sub-catchment" areas as the zone of analysis is an improper segmentation of the Red Hook and Owls Head sewer systems that are the proper basis for analysis under both laws, and the CEQR Manual; and (2) The presumption that rain inches correspond directly to rainfall durations is misleading. If rain fell according to schedule, the backups and overflows and street inundations seen regularly throughout NYC would not exist—yet they do.

Response: See responses to Comments 11-5 and 11-10. See also the response to Comment 11-4 in Appendix 1 to the Final Scope of Work, "Response to Comments on the Draft Scope of Work." The *CEQR Technical Manual* is clear that the sewer system assessment should consider the drainage/catchment area where a proposed project's flows would be discharged and not the larger area that a City facility services, which goes beyond the area directly affected by the Proposed Actions.

Comment 32: The DEIS fails to accurately identify and assess the knowable impacts from the "original drainage plan" which is a euphemism for 104 acres of the Gowanus Area that NYCDEP has acknowledged have no current sewer system piping or drainage.

- The last collection grate in the street are located on the west side of Bond Street on the west, and on Nevins Street or 3rd Ave on the east.
- The modeling of existing conditions needs to specifically address and account for impacts occurring because these 104 acres remain totally unsewered and can drain directly into the Canal, which DEP once acknowledged are not sewered in Gowanus.
- Public Place doesn't currently drain stormwater into any sewer (a new sewer is projected for the new street on that site in the Rezoning). Sites in what are labeled TAZ Polygon 1584 on page 20 of Appendix F are parking lots that drain to the Canal, as are sites in TAZ 1566 which are located on the banks

of the Canal, and this additive load must be factored into wet-weather calculations.

- New sewer hookup to these sites will bring not just additional sanitary flow into the system but can send stormwater in excess of the required Uniform Stormwater Rule retention/detention rules.
- The DEIS does not confirm or assess whether unsewered areas will become sewered under the 2012 and/or Unified Stormwater Rules so heavily relied on by Proponents for Gowanus area CWA compliance assurance.

Response: See response to Comment 14 above. See also the responses to Comments 11-12, 11-16, and 11-31. As noted in Chapter 27, "Response to Comments", analysis of the local sewer infrastructure was developed to be conservative, using conservative assumptions and standards to assess the potential for impacts resulting from the Proposed Actions. The detailed analysis in the FEIS was based on the existing sewer system and included site specific details for development sites.

Comment 33: The DEIS analysis cannot use data presumptions that include Superfund Retention Tank Completion. The DEIS estimates Superfund CSO Retention Tank buildout and completion in 2028 in Figure 11-4. In the 2015 Long Term Control Plan, NYC adopted analysis that did not consider the tank buildout necessary to meet water quality standards for the Canal, but conceded that meeting reduced levels for Total Suspended Solids (which provide an indicator of likely sediment recontamination) made the tanks necessary.

Response: See responses to Comments 11-12 and 11-14.

Comment 34: Multiple and conflicting CSO Discharge Increases are used in the DEIS and other NYC reporting. The inconsistent calculations and assertions of the DEIS regarding additive CSS loading to the affected sewersheds undermines the validity of impact conclusions; the data must be verifiable and accurate before any Rezoning of this magnitude is approved for an already overburdened and degraded natural asset system.

Response: See response to Comment 11-3.

Comment 35: The DEIS fails to assess changes to in-line storage and other CSO controls subject to change from cumulative development loading. The capacity for in-line storage available as an active measure against CSOs is potentially reduced by cumulative development loading to those pipes, as well as infiltration due to sea-level rise. The DEIS must evaluate the extent to which CSO capacity is reduced by competing users of sewer system capacity or other water management requirements (including increased closure of tidal gates due to climate change), and cannot rely on presumptions of operational efficiency

Response: See response to Comment 14 above. See also the responses to Comments 11-4, 11-6 and 11-14. As noted in the response to Comment 11-14 and presented in Chapter 11 of the DEIS, "Water and Sewer Infrastructure," the CSO tanks are a significant provider of CSO control/capacity, as the tanks were designed beyond the EPA ROD solids reduction requirements to support protection of the remedy. Moreover, to provide a conservative analysis and respond to comments, an interim year analysis was performed for the year 2030 that looked at future development related to the rezoning projected to be operational and occupied but before the EPA ordered CSO storage tanks are online. This interim year analysis establishes a decrease in CSO outfalls from the present baseline.

Comment 36: The DEIS fails to include key data on reduction or loss of historic stormwater retention capacity in calculating future CSO events and volumes. The DEIS relies on presumed retention capacity created under the 2012 Stormwater Rules, and the pending Unified Stormwater Rules. However, throughout the Red Hook and Owls Head sewersheds, development has eliminated historic stormwater detention and retention capacities such as that of the Vanderbilt Train Yards (covered by the Atlantic Yards Project). Although the City has promulgated a new stormwater rule regarding detention and retention, the loss of natural infiltration and/or recharge capacity must be calculated and offset against claims of retention improvement in DEIS calculations.

Response: To the extent that the comment concerns lots outside the Project Area, see response to Comment 31 above. With respect to lots within the Project Area, the analysis considers increased stormwater flows on the development sites due to changes in surface coverage/increase in rooftop area and reduced softscape, as stated in Chapter 11 of the DEIS. Note that the proposed stormwater rules allow for a range of retention or detention practices to afford flexibility for development site constraints.

Comment 37: A recent Canal-side development at 365 Bond Street has alarmingly high pathogen levels in the Canal water nearby; the DEIS should evaluate whether the unintended consequences of the 2012 and pending Unified Stormwater Rules will be incentives for building projects to avoid sewer loadings and avail projects of the option to discharge into the Canal.

Response: The availability of direct discharge is outside the scope of the EIS. The analysis in Chapter 11, "Water and Sewer Infrastructure," conservatively assumes all sites connect to the combined sewer system. Any discussion about direct discharge would need to first occur between EPA, DEC and DEP as part of the ongoing in-Canal cleanup.

Comment 38: The DEIS fails to disclose and analyze the impacts of the Rezoning on the excessive occurrence of Sewage Backups that remain subject to the 2016 Sewage

Backup Administrative Order. On page 11-1, the DEIS states: "Ensuring new development is critical to avoiding environmental and health problems such as sewer back-ups, street flooding, or pressure reductions." However, although the DEIS discusses manhole flooding, there is no data or analysis regarding sewer backups or pressure losses causing what NYC admits are "environmental and health problems."

Response: See response to Comment 11-35.

Comment 39: The DEIS lacks adequate analysis and disclosure regarding Water Quality Standards Compliance. The requirement for post-construction compliance monitoring raises two issues for the legal sufficiency of this DEIS:

- Any and all data and analysis pertaining to compliance with Water Quality Standards under the RWCDS, other scenarios, alternatives, and models must demonstrate consistency—if not direct sourcing—from the required compliance monitoring.
- The need to assure demonstrated compliance and validity of CSO control efficacy and accurate use and application of compliance data reinforces the need for USEPA to be a cooperating and/or involved agency in the DEIS process (the 2001 Guidance was specifically cited and considered applicable to the Gowanus LTCP).

Response: See responses to Comments 1-18, 1-21, and 1-22. The request is beyond the scope of the land use actions assessed in the CEQR EIS.

Comment 40: The DEIS presumes Superfund Retention Tank completion, but fails to disclose or analyze the full array of ongoing pollution and impacts completion of the Superfund remedy is expected to mitigate or eliminate necessary for a sufficiently hard look.

Response: See responses to Comments 11-12 and 11-14. It should be noted that the purpose of the DEIS is to disclose any identified potential significant adverse impacts of the Proposed Actions. As noted in Chapter 1, "Project Description" and throughout the DEIS, pollution in the Gowanus Canal is a long-standing issue that pre-dates the Proposed Actions.

Comment 41: The DEIS has not met CEQR requirements to assess the Rezoning effects and impacts to the Red Hook and Owls Head combine sewage and stormwater system capacities. For reasons that are not explained, the DEIS is basing most of its sewage infrastructure analysis and impact disclosure on the "average Monthly flow for the 12-month period through March 2017" to the WRRF as both a baseline and depiction of sewer system capacity availability. Not only is more recent data available, but reverting to five-year-old data that bypasses load measurement from multiple developments noted above throughout the sewershed that are adding approximately 20% more residential load, as well as additional

large-scale commercial activity such as the Barclays Center, falls short of the hard look required and begs the question as to why available recent data is not used.

Response: See responses to Comments 1-141, 11-1, 11-5, 11-6, and 11-15. As noted in the FEIS Chapter 11, "Water and Sewer Infrastructure" and Chapter 27, "Response to Comments," the analysis was prepared in accordance with the *CEQR Technical Manual*, which uses a two-step process, including a preliminary assessment to first determine if a detailed analysis is warranted. As updated in the FEIS and noted in Chapter 27, the detailed analysis used different, more detailed, refined, and updated assumptions for the detailed analysis of sewer infrastructure.

Comment 42: Wet weather flows must be fully and accurately disclosed and analyzed, the DEIS does not provide any compliance verification of this suggested increase in capture data consistent with USEPA 2001 CSO Guidance. The Red Hook and Owl's Heat WRRFs both currently capture well below 100% of the actual runoff and sanitary flow occurring in wet weather events. The "capture rates" at both WRRFs has increased, in spite of major increases of sanitary loading from development and population increases, and substantial increases in rainfall levels, such that both plants are "achieving" the presumptive 85% capture rate

Response: See response to Comment 1 above. See also the response to Comment 11-16. CSO discharge is overseen by DEC, and the analyses in the FEIS are consistent with the annual reporting by the City to DEC regarding CSO discharges. Similarly, the oversight of the Administrative Orders relating to the Canal is performed by EPA. As such, concerns about the capture rates of various water treatment plants is beyond the scope of the FEIS.

AIR EMISSIONS AND GREENHOUSE GASSES

Comment 43: As the "attainment area" for New York is a geographic "setting" and "scope" beyond the immediate area of the Rezoning, the DEIS must evaluate the full cumulative impacts of the Rezoning in conjunction with loading from allocated growth and development occurring throughout the designation-wide attainment areas.

Response: Please see response to comment 15-1. As noted in that response and in the FEIS, the analyses examined potential air quality impacts associated with mobile and stationary sources of emissions along with analyzing the effect from groups or "clusters" of development sites. The analyses followed CEQR Technical Manual procedures, and the FEIS determined there would there would be no potential significant adverse air quality impacts. At distances further away from the locations modeled for the air quality analyses, pollutant concentrations would be even lower, and would therefore not result in a predicted violation of air quality standards for the modeled pollutants.

Comment 44: The DEIS fails to take a hard look at whether and how Greenhouse Gas emissions from the Rezoning will be controlled in accordance with reduction requirements under state and local law. The DEIS lacks the required analysis of these compliance requirements or data and calculations that show planned development will not interfere with compliance with these legal mandates.

Response: As stated in response to Comment 1 and 16 above and response to Comment 1-23, the DEIS was prepared in conformance to the guidance in the *CEQR Technical Manual*. To the extent that the comment seeks greenhouse gas (GHG) analyses beyond that recommended in the *CEQR Technical Manual*, such analyses are beyond the scope of this environmental review. Although specific decisions regarding construction and building design, which would affect energy use and GHG emissions, are equally beyond the scope of the Proposed Actions, both the City and State are addressing building energy efficiency and other GHG-related design questions through ongoing long-term GHG policy development and implementation processes, including Local Law 97 and New York State's Climate Leadership and Community Protection Act.

Comment 45: The DEIS analysis of state and local greenhouse gas control impacts must also be cumulative. Like all other fugitive loadings to airshed, sewershed, waterbodies, and other publicly owned natural assets, the analysis of greenhouse gases must include cumulative loadings entering the same air and water systems.

Response: See response to Comment 44 above. As discussed in the DEIS, the *CEQR Technical Manual* recommends that a GHG consistency assessment be conducted for an individual project to assess the impact of the projected development for the whole Project Area. The Proposed Actions are conservatively projected to result in up to 135,902 metric tons of carbon dioxide equivalent (CO2e) emissions per year—which accounts for less than one percent of the New York City's total annual GHG emissions of 55,117,940 metric tons in 2019.

Comment 46: The DEIS presents countervailing/contradictory propositions about resiliency controls that are arbitrary and insufficient to met "hard look" requirements for a massive project being built in a flood zone. In light of the near decade since Superstorm Sandy, standards for analysis of effects of climate change are overdue, and NYC as a zoning proponent cannot again punt responsibility to provide full disclosure and analysis of these effects because it fails to act as a zoning regulator.

Response: See response to Comment 2-2. To the extent the comment seeks to have the City implement resiliency recommendations beyond the substantial resilience measures incorporated into the Proposed Actions, such recommendations are beyond the scope of the Proposed Actions and this environmental review.

Comment 47: The CPC as proponent of the proposed action is disqualified as the reviewing agency for the Waterfront Revitalization Program Consistency Assessment Form.

Response: Comment noted.

Comment 48: The DEIS fails to include useful or accurate Waterfront Revitalization and Resilience analysis to meet the hard look regarding Climate Change needed for so vulnerable an area. The DEIS suggests that no one is responsible for assuring all increases in flooding risk created by foreseeable effects of the Rezoning and that indeterminate "long-term solution" are under consideration.

Response: See the response to Comment 2-2. See also response to Comment 46 above.

FLOODING AND RESILIENCY (NATURAL RESOURCES)

Comment 49: The DEIS chapter assessing Natural Resources confirms the multiple Federal and State statutes with which the Rezoning actions will have to comply, necessitating Cooperating and Involved Agencies in DEIS preparation. The significant implications of assuring ongoing compliance with these statutory and regulatory requirements to prevent adverse impacts is not sufficiently evaluated or analyzed in the DEIS.

Response: See responses to Comments 1 and 16 above. See also the responses to Comments 1-18, 1-21, and 1-22. There are no permits being sought now that would require federal or state approval. The relevant federal and state agencies will be involved for individual projects to the extent that they involve project elements regulated by these agencies.

Comment 50: The DEIS fails to assess flood risk occurring from changes to the floodplain, flood water pathways, and/or distribution from high-rise and large-scale structure development near and around the contaminated Gowanus. The DEIS fails to offer detailed analysis of the effects of buildout under the upzoned FAR and bulk allowances.

Response: See the responses to Comment 2-2 and 16-3. See also response to Comment 46 above. Separately from the Proposed Actions, development projects will also have to comply with applicable resiliency measures in the NYC Construction Codes.

Comment 51: The DEIS fails to assess impacts to the floodplain and risks to established neighborhoods from changes to the Gowanus canal embankments and uplands areas from a Waterfront Access Plan (WAP). The DEIS fails to evaluate how this WAP would prevent adverse impacts to surrounding areas in the event of flooding.

Response: See response to Comment 2-2 and 16-3.

Comment 52: The DEIS fails to evaluate the impacts of the City of New York appeal of FEMA's preliminary flood insurance rate maps on June 26, 2015, following an independent review that claimed scientific and technical errors in the maps.

Response: See response to Comment 46 above. See also the responses to Comments 1-23 and 2-2. FEMA encourages communities to use the preliminary flood insurance rate maps (FIRMs) when making decisions about floodplain management where final maps are not yet available, such as for New York City. Therefore, the preliminary FIRMS were used for the analysis in the DEIS, as they are the best available flood hazard data at this time and are the FIRMS used by DCP to evaluate consistency with Policy 6.2 of the Waterfront Revitalization Program.

Comment 53: The DEIS failed to identify or evaluate the impacts of the Rezoning on ongoing compliance with the Rivers and Harbors Act, which DEIS chapter nine notes as controlling authority.

Response: See response to Comment 16 above. Section 9 of the Rivers and Harbors Act of 1899 prohibits the construction of any bridge, dam, dike or causeway over or in navigable waterways of the US without Congressional approval and is administered by the US Coast Guard. The Proposed Actions will cause such activities that require a Section 9 permit from the US Coast Guard. Section 10 of the Rivers and Harbors Act, prohibits the building of any wharfs, piers, jetties, and other structures without Congressional approval and excavation or fill within navigable waters requires the approval of the Chief of Engineers. Section 10 approvals are administered by the US Army Corps of Engineers. The Proposed Actions would not result in such activities that require a Section 10 permit from the US Army Corps of Engineers. Any development resulting from the Proposed Action that result in construction within the Gowanus Canal would be required to obtain a Section 10 permit from the US Army Corps of Engineers. Section 13 of the Rivers and Harbors Act of 1899 (33 U.S.C. 407), the Refuse Act, which gave the US Army Corps of Engineers authority to issue permits for the discharge of refuse matter into or affecting navigable waters was modified by tittle IV of Public Law 92-500, October 18, 1972, under the Federal Water Pollution Control Act Amendments of 1972, as amended, which established the National Pollutant Discharge Elimination System (NPDES) Permits. The US Environmental Protection Agency administers the NPDES program, and the DEC the State Pollutant Discharge Elimination System (SPDES) in the State of New York. Development projects resulting from the Proposed Actions would be required to obtain all applicable SPDES permits.

ENVIRONMENTAL JUSTICE

Comment 54: The DEIS fails to include the requisite assessment of environmental justice following the guidance of the Council on Environmental Quality, EPA, and HUD.

Response: See response to Comment 3-7.

Comment 55: The DEIS fails to assess impacts to surrounding communities from sewage management practices, particularly communities already subject to environmental injustice conditions. The extent to which loading from the Rezoning area into the Bond-Lorraine sewer and related interceptor and other Red Hook Sewer system capacity creates CSO discharges in the Red Hook neighborhoods must be assessed.

Response: See response to Comment 1-35. The requested analysis is beyond the study area and the scope of the CEQR EIS.

Comment 56: The DEIS fails to identify communities of concern that could be affected by the Rezoning, particularly communities subject to increased or disproportionately high flood risk and resulting adverse human health or environmental effects from the project.

Response: See responses to Comments 1-26 and 3-7.

Comment 57: The DEIS fails to evaluate the proposed Rezoning impacts on the Integrated Flood Protection System (IFPS) intended to protect vulnerable Environmental Justice Communities encompassing the project area that remain subject to flood risk from coastal storms and sea level rise

Response: Evaluation of the IFPS is outside of the scope of the EIS and beyond the Project Area. The Mayor's Office of Resiliency (MOR), in partnership with the New York City Economic Development Corporation (EDC), is working with federal and local stakeholders to advance resiliency in Red Hook and the IFPS project, aimed at reducing flood risk due to coastal storms and sea level rise in Red Hook.

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