



info@thebha.org www.thebha.org

55 Pierrepont Street, Box 17D Brooklyn, NY 11201 (718) 858-9193

**Comments of the Brooklyn Heights Association
in Response to the Request for Comments by the New York State
Urban Development Corporation and Brooklyn Bridge Park Development
Corporation Concerning the Proposed Modification to the Modified General
Project Plan for the Brooklyn Bridge Park Civic and Land Use Improvement
Project**

The Brooklyn Heights Association (“BHA”) respectfully submits these comments to the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) and the Brooklyn Bridge Park Development Corporation (“BBPDC”) (collectively, “ESD/BBPDC”) concerning the proposal by the Brooklyn Bridge Park Corporation (“BBPC”) to modify the current Modified General Project Plan (“2006 General Project Plan”). We have recently joined in a letter signed by seventeen community organizations, as well as Public Advocate Letitia James, that contains many of our reasons for opposing the proposed modification. We agree with our neighbors that the modification should be rejected as an attempted breach of the fundamental commitment to limit housing on Pier 6 to only that necessary to support the Brooklyn Bridge Park (the “Park”). We agree with our neighbors that in light of the significant increase in real estate prices since 2005 and the concomitant increase in revenue that already existing developments will provide to the Park, the ESD and the BBPDC have an obligation to assess independently what revenue, if any, is needed from further development on Pier 6 after full financial disclosure by the BBPC. We agree with our neighbors that if after that assessment the ESD and BBPDC decide that some revenue is needed from Pier 6, a new environmental impact statement must be prepared. We are submitting these comments on select issues as a supplement to the community letter.

Executive Summary

The recently-proposed modification (“Proposed 2015 Modification” or “Modification”) would eliminate the longstanding commitment reflected in the existing 2006 General Project Plan and multiple other written commitments of BBPDC and ESD (including the FEIS and SEQRA Findings) that commercial development in the Park would be limited to “only what is necessary to support annual maintenance and operations.” (2006 General Project Plan, p. 12) The Proposed 2015 Modification sought by BBPC staff violates that commitment, is ill-considered and should not be approved. At a minimum, since even the BBPC’s own financial model indicates no immediate need for the funds generated by the proposed massive Pier 6 development, no change in the 2006 General Project Plan and no development should be authorized at Pier 6 at this time.

The BHA has opposed for more than a decade the building of two major luxury residential towers, including a 315 foot (about 30 stories) skyscraper, at the end of Atlantic Avenue on Pier 6 unless they were required to financially support the Park. Such buildings would loom incongruously over both the Park and the height-limited Brooklyn Heights Historic District. They would be completely out of context with the rest of the neighborhood. They would erect a massive visual barrier to the waterfront from the community. They would unnecessarily take scarce open space that could otherwise be added as parkland. They would impose an additional significant burden on the local public elementary school that is already drastically overcrowded and forced to turn away many neighborhood schoolchildren. They would add to the untenable over-use of Joralemon Street as a Park entrance. They would add to the burden on the City when faced with another large storm. They would set an unforgivable precedent for the possible development of the waterfront to the south, potentially leading to a wall of towers blocking the river from the low rise neighborhoods behind them. They would prevent the Atlantic Avenue entrance to the Park from ever realizing its potential – as described in the 2006 General Project Plan – as a “generous” gateway that is a “visual beacon” with “vantage points” that are “unobstructed, visually interesting and welcoming.” (2006 General Project Plan, p. 7-8)

In a nutshell, erecting two massive towers would forever disfigure and harm both the Park and the adjacent neighborhood.

In response to the community's resistance in 2005 to the two-tower plan for Pier 6, including repeated testimony and comments by the BHA, the 2006 General Project Plan unequivocally committed that those towers would not be built unless they were shown to be financially necessary to fund the Park. As the 2006 General Project Plan states in describing the proposed development, including the two towers for Pier 6: "The building envelopes described below represent the maximum build-out within the Project, with the intention to build only what is necessary to support annual maintenance and operations." (2006 General Project Plan, p. 12.) The BHA accepted that promise and supported the 2006 General Project Plan, choosing not to join other neighbors who asserted a legal challenge to that plan nearly a decade ago; indeed, the ESD and BBPDC trumpeted BHA's support to the Court in 2006 in defending against that legal challenge and the Court expressly relied in part on the community's general support in rejecting the challenge to the 2006 General Project Plan.

Now that the financial benefits from BBPC's other development projects have skyrocketed in conjunction with the dramatic increase in real estate values in many Brooklyn neighborhoods, any significant Pier 6 development has become presumptively unnecessary; notably, BBPC itself has conceded that it has no need for revenue from at least 30% of the proposed towers. As a result, the time has come for BBPC to honor the promises made in the 2006 General Project Plan by eliminating or dramatically reducing the scope of residential development at Pier 6 as financially unnecessary. But rather than honoring those commitments, or disclosing financial data that would show a need for the massive proposed development, BBPC has instead put forward the 2015 Proposed Modification to eliminate entirely the financial need pre-condition for Pier 6 development. In an inexplicable affront to the community that supported the 2006 General Project Plan, the 2015 Proposed Modification explicitly authorizes building the two towers "without regard to Project finances." (2015 Proposed Modification, first sentence)

The 2015 Proposed Modification reneges on a fundamental commitment that was made to the public repeatedly in writing, and that was a key premise upon which many in

the community supported the 2006 General Project Plan. It is troubling that BBPC staff has not publicly acknowledged that important fact, and its failure to do so makes the entire public hearing and comment process deficient. In that context, it is striking that the “Description of the Modification” in the hearing notice and request for public comment on the 2015 Proposed Modification fails to disclose that the modification would eliminate the longstanding financial need constraint on Pier 6 development. Although the public notice is nearly four pages long, it omits the modification’s text – with its key phrase “without regard to Project finances” -- even though that text comprises only three paragraphs.

Sound public policy requires that government entities honor their commitments. Although a failure to abide by a clear, written commitment might be excused where there has been a change in circumstances that the public finds sufficiently compelling to justify the change in position, no such change in circumstances warranting dispensing with the financial need condition has occurred in the last decade. To the contrary, the opposite is true: the changes in circumstances since the 2006 General Project Plan was adopted, such as the improvement in BBPC’s financial prospects due to the dramatic increase in real estate values, the explosion of other real estate development in the area, the increase in school population, the elevated flood risk, and the unacceptable congestion on Joralemon Street, all demonstrate that Pier 6 and the neighborhood should be spared unnecessary housing, not that the development should go forward “without regard to the Project’s finances.”

Sound public policy and good governance also require the BBPC to consider the views of the Community Advisory Council that was created to facilitate community input into material BBPC decisions. Yet its voice has been repeatedly disregarded as it has called for greater financial transparency and a moratorium on development pending a new assessment of what development, if any, might be necessary on Pier 6. BHA asks the ESD and BBPDC to vindicate principles of good governance and sound public policy by insisting that BBPC comply with the fundamental commitment in the 2006 General Project Plan and reject the BBPC’s 2015 Proposed Modification.

These Comments include the following sections:

1. A background section on the BHA
2. A discussion of the many written commitments made by BBPC, ESD and BBPDC to limit development in the Park to the minimum required to fund the Park's maintenance and operations, and the absence of any justification to depart from those commitments
3. A discussion of the BHA's longstanding opposition to unnecessary massive development on Pier 6, and its and the community's reliance on the written commitments to condition development on a showing of financial need
4. An explanation of why the most recent information available to the community indicates that no additional revenue-producing development is required for the Park, and that at a minimum no such development under any scenario could be required for at least another decade
5. A short explanation of why, if ESD/BBPDC were inclined to permit development to proceed at this time, it should first prepare a Supplemental Environmental Impact Statement ("SEIS"), including some key reasons why the Technical Memorandum of November 21, 2014 is significantly flawed

1. The Brooklyn Heights Association

The BHA is a volunteer community organization whose mission is to preserve and improve the quality of life in the Brooklyn Heights neighborhood. Established in 1910, the BHA is among the oldest ongoing neighborhood associations in the City of New York. As a unique repository of information about the neighborhood, as a sponsor of neighborhood events and improvement projects, and as an advocate for the community, the BHA works with residents, local businesses, and elected officials to address local issues of importance including real estate development, parks, schools, traffic, transit, sanitation, and preservation of the neighborhood's historic character.

Supported by dues-paying members and donations, the BHA maintains a small permanent staff and acts through its volunteer Board of Governors, President, and various committees of local residents.

The BHA has a long history of accomplished advocacy on behalf of the Brooklyn Heights community. Its efforts helped establish the Brooklyn Heights Promenade and Cadman Plaza Park. It played a critical role in causing Brooklyn Heights to be designated New York City's first Historic District under the Landmarks Law in 1965 and to become the first neighborhood protected by Limited Height zoning in 1967. And, in the mid-1970's the BHA was instrumental in the NYS Parks Department's purchase of the land that is now Empire State Park.

Since the 1980s, when the public planning process began for redevelopment of the docks and piers beneath the Brooklyn Promenade and near the Brooklyn Bridge, the BHA has vigorously supported the vision and creation of a park on Brooklyn Heights' waterfront.¹ It devoted considerable effort to the planning and development of the Park, repeatedly offering testimony and written comments throughout the process that culminated in the 2006 General Project Plan and associated Final Environmental Impact Statement ("FEIS").

Although not all of its recommendations were accepted, the BHA ultimately supported the 2006 General Project Plan and did not challenge the adequacy of the FEIS. That support was premised, at least in part, on ESD and BBPDC representations—in both the 2006 General Project Plan and the FEIS—that they would permit private development only to the extent economically necessary to fund the Park's operations.

¹ See Scott M. Hand & Otis Pratt Pearsall, *The Origins of Brooklyn Bridge Park, 1986-1988* (2014) (unpublished manuscript), *available at* <http://brooklynhistory.org/docs/OriginsBrooklynBridgePark.pdf> (discussing early debates, in the late 1980s, among BHA members concerning need for private development to support park infrastructure).

2. The Longstanding Commitment of the BBPDC and ESD To Limit Development to the Minimum Required to Fund the Park and to Reduce the Scale of Planned Projects if Economic Circumstances Permitted

ESD and BBPDC have consistently and repeatedly committed that real estate development in the Park would be limited to the minimum necessary to finance the Park's maintenance and operations. These commitments are not merely aspirational or statements of a hoped-for outcome but rather constitute binding obligations of government entities. As shown below, they appear in the FEIS, the SEQRA Findings, and the 2006 General Project Plan.

ESD and BBPDC made these commitments irrevocable when they relied upon them to help defeat a community group's legal challenge to the FEIS and the 2006 General Project Plan. In the brief that ESD and BBPDC submitted to the New York Supreme Court, Kings County to oppose that challenge, ESD and BBPDC told the Court, in writing and without any qualification, that they were "*committed to building the minimum development necessary to cover the park's maintenance and operations needs.... If, once requests for proposals are issued for the development components it becomes clear that market conditions will allow for less development to support the park's needs, the development program would be reduced accordingly.*" Mem. of Law Supp. Respts' Cross-Mot. to Dismiss and Opp'n Pet. at 11, *Brooklyn Bridge Park Legal Def. Fund, Inc. v. N.Y. State Urban Dev. Corp.*, 14 Misc. 3d 515 (Sup. Ct. Kings Cnty. 2006), *aff'd*, 50 A.D.3d 1029 (2d Dep't 2008) (emphasis added).

These binding representations to the Court in the litigation in 2006 were not novel. Instead, they simply reiterated the fundamental principle and understanding that had governed the creation of the Park from the beginning: that due to the City's fiscal constraints, the Park required some development to fund its ongoing operations and maintenance, but that development would be limited to the minimum necessary for that purpose so that neither the Park nor the adjacent community would be adversely affected by unnecessary development.

In the FEIS, ESD made the following statements in response to concerns expressed by the community, including the BHA, about the scale of the two towers that might be built at Pier 6:

- “[O]nly the development needed to support the park, as determined by the RFP process, would be developed.” (p. 24-34, resp. to cmt. 80)
- “If it is determined during the RFP process that less development is needed to support the park’s maintenance and operations, then less development will be incorporated into the final park plan.” (p. 24-34, resp. to cmt. 79)
- “The BBPDC has committed to reducing the size of the proposed development program should market conditions allow for it to do so.” (p. 24-47, resp. to cmt. 123)

The formal “Findings Statement” issued by ESD pursuant to the State Environmental Quality Review Act (“SEQRA Findings”) embraced and memorialized these commitments. On the very first page of the SEQRA Findings, ESD summarized the project by stating, “The park would include...a limited amount of development *essential* to the park’s maintenance and operation...” (emphasis added) In describing the selection of appropriate land uses, the SEQRA Findings state that the “final step in the analysis was to create *the smallest program* that could prudently support the annual maintenance and operations of the park.” (SEQRA Findings, p. 14). The SEQRA Findings also state:

The development program contained in the Proposed Project represents the minimal level of development that is required to prudently support the annual maintenance and operations of the park *based on the analysis undertaken in 2004. However, the actual development ...will emerge as the result of a competitive developer selection process, and therefore development may be smaller, if market conditions permit it, because the value of the land and other factors may well be different from those assumed in this analysis.* (SEQRA Findings, p. 16) (emphasis added).

The FEIS and SEQRA Findings are reflected in the 2006 General Project Plan, which explains that the Project needs to include “appropriate commercial uses that can generate sufficient funds to support the annual maintenance and operations of the Project.” (p. 2) It also explains that the extensive planning process included a “revenue

analysis” that “consisted of determining how much development was necessary to support the Project” and to assess any development by its “compatibility with the park, and the ability to maximize parkland while creating an appropriate income stream for park maintenance.” (p. 3-4). Finally, the 2006 General Project Plan states that the “building envelopes described below,” which include Pier 6, “represent *the maximum build-out* within the Project, with the intention being *to build only what is necessary to support annual maintenance and operations.*” (p. 12) (emphasis added)

It is notable that the 2006 General Project Plan has been modified several times, most recently in July 2013, but the statements quoted above have not been altered in any respect. Each subsequent modification affirmed that the 2006 General Project Plan except as explicitly modified remains “in full force and effect.” (Modified General Project Plan, adopted July 18, 2013, p. 6).²

3. The Longstanding Opposition of the BHA to Unnecessary Condo Towers at Pier 6

The BHA was an active participant in what the 2006 General Project Plan describes as the “extensive planning and community participation for the last twenty years.” (2006 General Project Plan, p. 3) Significantly, although the BHA acknowledged as a pragmatic matter the need for limited private development to fund the Park, it expressly requested through the SEQRA environmental review process that “[o]nly the number of residential units or development necessary to meet the revenue requirements and pay for ongoing [park] maintenance should be built.” Brooklyn Bridge Park, FEIS 24-34, cmt. 80 (Dec. 2005) (then-BHA President Mary Pat Thornton), *available at* <http://www.brooklynbridgepark.org/pages/Final-Environmental-Impact-Statement-FEIS>; *see also id.* at 24-59, cmt. 156 (Thornton) (“If development precedes the construction of park space and financial demands for revenue generation were to

² The FEIS, SEQRA Findings and the 2006 General Project Plan in turn reflect the understandings that had guided the Park’s creation and development from the beginning. The original Memorandum of Understanding between the State and the City, dated May 2, 2002, commits that all revenues “shall be dedicated to the maintenance and on-going operational needs of the Project.” (MOU, p. 5).

decrease, the opportunity to reduce the commercial program could be lost. Phasing should be sensible to prevent this.”).

The BHA also repeatedly expressed opposition a decade ago to the possible 31-story condominium tower at Pier 6. *See, e.g.*, FEIS at 24-45, cmt. 117 (then-BHA Governor Susan Rifkin) (“Effort should be made to decrease the height of the residential buildings and bulk could be redistributed”); *id.* at 24-51, cmt. 134 (Thornton & Rifkin) (“Changes in building location, massing, and height are needed to open the park and waterfront and to promote better access. Pier 6 must be an open entrance. The Atlantic Avenue Gateway needs to be grand and attractive and provide free access for visitors. It needs to be improved. It should be open and inviting, not physically and visually blocked and impeded by roadways and traffic.”); *id.* at 24-83, cmt. 215 (Thornton & Rifkin) (“Thirty-one stories is a bad precedent, including for future development on the Columbia Street corridor.”); *id.* at 24-88, cmt. 222 (Thornton) (“The DEIS is incorrect in asserting that the 30-story building is not out of context with neighboring buildings. The nearest building is only 2-stories tall. It is inappropriate for the waterfront and should be reduced.”); *id.* at 24-91, cmt. 228 (Thornton) (“The buildings on Pier 6 should decrease in height by one third. They must fit into the neighborhood context. A 30 story building is inappropriate when neighboring buildings are 5 to 6 stories.”); *id.* at 24-91, cmt. 229 (Rifkin) (“The Atlantic Avenue entrance should be protected. Structures should not overwhelm the neighborhood. The Pier 6 buildings create a wall with insufficient provisions for open space and visual view planes.”).

In 2005 the BHA was joined in its opposition to a thirty story tower on Pier 6 by then-City Councilman Bill de Blasio. Councilman de Blasio submitted written comments in the EIS process that mirrored BHA’s: “The 30 story building needs to decrease in height. It is not necessary from a budget perspective. There are other ways to achieve the revenue necessary.” (FEIS at 24-31, cmt. 41 (de Blasio) “Changes in building location, massing, and height are needed to open the park and waterfront to promote better access. Pier 6 must be an open entrance.” (*id.* at 24-51, cmt. 134 (de Blasio).

Some have recently criticized opponents of the current Pier 6 plan, under which about 35 percent of the new housing units will be made available to moderate-income renters, on the ground that the opponents are acting out of unacceptable Not-In-My-

Backyard (“NIMBY”) objectives. That type of argument is disingenuous and irresponsible. As the above chronology of BHA’s position shows, BHA’s opposition to unnecessary residential development at Pier 6, including the 315 foot tall condominium tower, dates back a decade and, accordingly, long pre-dates any notion that the development would include anything other than luxury housing. The BHA has always maintained that only the minimum amount of housing or other commercial development needed to support the Park should be built regardless of the income level of the future residents.

BBPC’s inclusion in 2014 of an affordable housing section in its Pier 6 proposal and the inclusion in the 2015 Proposed Modification of *carte blanche* authority (but no obligation) for BBPC to include whatever amount of affordable housing it wishes at Pier 6 cannot immunize the proposal from criticism for the same reasons BHA and many others, including Mayor de Blasio, opposed it in 2005: a giant 315 foot building is completely out of scale and character for the location on which BBPC proposes to build it. Further, it will exacerbate the negative impacts of the Park on our neighborhood: increases in traffic, overcrowding of our schools, and the risks of placing more vulnerable housing in an adjacent flood zone. It bears noting in this context that numerous local elected officials who are unquestionable supporters of affordable housing in the neighborhood have joined BHA in calling upon BBPC to reconsider its Pier 6 plan. *See* Letter from Sen. Daniel Squadron, Rep. Nydia Velazquez, Public Advocate Letitia James, Councilmembers Brad Lander and Stephen Levin, and Asm. Jo Anne Simon to BBPC (Oct. 6, 2014), *available at* <http://media.virbcdn.com/files/d5/b7ad1a11ad653519-106BBPPier6CACResoLetter.pdf> . Moreover, as recently as six months ago now-Mayor de Blasio, in describing his affordable housing initiatives in his annual “State of the City” remarks, mentioned that his initiative was “not embarking on a mission to build towering skyscrapers where they don’t belong.” Bill de Blasio, State of the City Remarks (Feb. 3, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/089-15/state-the-city-remarks-bill-de-blasio-prepared-delivery>. As both the BHA and the Mayor maintained as long ago as 2005, the BBP’s “towering skyscraper” does not belong on Pier 6.

There was no building near the proposed tower in 2005 that was anywhere close to it in height, nor is there today. The roofline of the closest building, One Brooklyn

Bridge Park (“1BBP”), is 146 feet high (with a narrow tower reaching 224 feet). FEIS at 8-1. The adjoining neighborhood of Brooklyn Heights was designated the Brooklyn Heights Historic District in 1965, the first such district created by the New York City Landmarks Preservation Commission.³ Much of the historic district was also declared New York City’s first Limited Height District in 1967 and given an LH-1 zoning designation.⁴ Within the LH-1 district, no new construction can be taller than 50 feet. The LH-1 limit does not extend to Pier 6, but the prospect of a 315 foot skyscraper directly adjacent to the Brooklyn Heights Historic District on its western, waterfront boundary threatened the quality of the surrounding neighborhood in 2005 when the BHA made its objections known. Nothing has changed to make that proposed tower any less threatening today.⁵

³ N.Y.C. Landmarks Preservation Comm’n, Brooklyn Heights Historic District (Nov. 23, 1965), *available at* http://www.nyc.gov/html/lpc/downloads/pdf/reports/BROOKLYN_HEIGHTS_HISTORIC_DISTRICT.pdf.

⁴ *See* Otis Pratt Pearsall, *Reminiscences of the Nine Year Effort to Designate Brooklyn Heights as New York City’s First Historic District and Its First Limited Height District* (Mar. 8, 1993), *in* 7 *Village Views*, *available at* <http://www.nypap.org/sites/default/files/Pearsall.pdf>.

⁵ We note that the June 30, 2015 press release issued by BBPC concerning Pier 6 claims that the two proposed buildings “would be reduced in height by approximately 30 feet” from the 2005 plan, but that statement appears to be a sleight-of-hand. The maximum heights of the two towers described in the 2006 General Project Plan are no different than the heights permitted by the 2015 Proposed Modification – the taller building will still be 315 feet tall and the other building will still be 155 feet tall. Significantly, the total number of apartment units permitted in the 2015 Proposed Modification, 430, is identical to the number that appears in the 2006 General Project Plan. BBPC’s June 30 press release reports that it now plans to reduce the number of units to 339, but nothing in the 2015 Proposed Modification obligates BBPC to that reduction. As to the purported 30 foot reduction in heights of the two buildings, the June 30 press release is notably silent about what the proposed new heights – including mechanical structures – would actually be; BHA is concerned that the purported reduction of 30 feet is more illusory than real, as it may be premised on BBPC taking the position that under the 2006 General Project Plan it was entitled to erect buildings – including mechanical structures – that would be 345 feet and 185 feet tall, *i.e.* 30 feet *higher* than appears in the 2006 General Project Plan. Significantly, the June 30 press release does not disclose the number of stories of the two towers that are the subject of that release; the community understood, when commenting during the EIS process in 2005, that the proposal for Pier 6 was for a 31-story building and a 15-story building; unless BBPC reports that its revised proposal calls for a 28-story

In ultimately deciding to support a plan that included private development in the Park, the BHA relied upon the statements in the GPP and FEIS that described the tower proposal for Pier 6 as a theoretical “maximum” amount of development, that made a pledge to develop the minimum amount of housing necessary and that made a commitment to reduce the scale of the planned development if future economic conditions permitted. In reliance on those statements, the BHA did not join the litigation nearly a decade ago that challenged the FEIS and 2006 General Project Plan. BHA’s decision to forgo participating in the litigation challenge helped ESD and BBPDC defeat that lawsuit. In rejecting the petition the Court explicitly noted that “there is widespread support for the project by neighborhood associations, elected officials and park advocacy groups.” *Brooklyn Bridge Park Legal Def. Fund, Inc. v. N.Y. State Urban Dev. Corp.*, 14 Misc. 3d 515, 520-21 (Sup. Ct. Kings Cnty. 2006).

As perhaps the most significant neighborhood association that supported the FEIS and 2006 General Project Plan a decade ago, BHA expects ESD and BBPDC to abide by their commitments to the community as well as their representations to the Court. The BHA also feels strongly that the ESD and BBPDC decision now will impact the future of public-private partnerships that adhere to the model created here. While there is much dispute throughout our community as to whether public assets should be privatized at all, especially in pursuit of short-term economic gain, it seems clear that when a decision to do so is made and ground rules are agreed upon, it is absolutely essential that they not be altered when political leadership with different priorities emerges.

4. The Spectacular Improvement in BBPC’s Financial Condition—and BBPC’s Failure to Share Meaningful Financial Information—Indicate that No Development Is Needed at Pier 6

Available data demonstrates that indisputable, recent increases in real estate values have improved BBPC’s financial circumstances in just the manner that should lead BBPC to eliminate or dramatically reduce the scale of Pier 6 development as required by the FEIS and 2006 General Project Plan. In accepting a developer proposal that calls for

and 12-story building, its claim that the revision significantly reduces the scale of the buildings is incorrect.

approximately 35% affordable housing, the BBPC admits that it does not need any revenue from at least that percentage of housing. So without spending one moment on financial analysis, consistent with prior commitments and the 2006 General Project Plan, ESD and BBPDC should order the proposed housing on Pier 6 to be reduced by 35%.

However, even that would leave open the question of whether any housing is needed on Pier 6 under the terms of the 2006 General Project Plan that limits housing to only that which is necessary to support the Park. In order to answer that question, it is necessary to review the finances of the Park. That review must be done with financial information as of today, not as of 2005.

Many in our community, including the Park's Community Advisory Council, our elected officials, and the BHA, have tried to obtain financial information from the BBPC that would help us make a reasoned determination as to how much revenue, if any, is still needed from Pier 6 given the indisputable fact that the Park will be obtaining far more revenue from the already existing commercial projects than could possibly have been anticipated in 2005.

Our requests have fallen upon deaf ears. Instead of providing relevant financial information, the BBPC has presented a series of conclusory "financial models" that, to be frank, have changed each time a challenge to one is made. Operating expenses and the proposed capital reserve fund have dramatically increased. Most significantly, the BBPC recently suggested abandoning its long term plan to repair the piles that support the piers as they deteriorate gradually over the next 50 years with a "preventative" plan to encapsulate them all in a single year. Thus, the BBPC has proposed spending 90 million dollars in 2016 alone. This proposal raises many questions, including whether it makes economic sense to accelerate such a huge capital expenditure when it is not necessary, whether it makes sense to place all of one's trust in one repair approach (not even the one that has been favored for more than a decade), and whether it would make far more sense to be in a position to take advantage of technological improvements in piling repairs over the next 50 years. As one BBPC Board member suggested at the July 30th hearing, this question alone warrants careful, public analysis of alternatives.

Of course, even if there were merit to the accelerated replacement program, the cost, like any other capital expenditure, can and should be spread over some portion of

the useful life of the improvement through borrowing at current, historically low interest rates. Debt is the traditional tool government authorities use to finance public infrastructure. Financing long-term capital improvements makes common and economic sense. First, it eliminates the inevitable “lumpiness” in such capital expenses, which occurs when large amounts must be paid to contractors in the near term, outstripping the current revenues available to pay them, by transforming those large near-term expenses into manageable annual debt service that can be paid from recurring annual revenues over time. Second, it matches the useful life of the capital improvement with the payment for it. This principle of municipal finance applies with special force to Pier 6 where the threatened alternative to the typical approach is the construction of massive out-of-place towers that will permanently disfigure the Park and the community.

BBPC, BBPDC and ESD each has legal authority to issue bonds or otherwise engage in borrowing. The significant revenue stream from the payments in lieu of taxes (“PILOTS”) collected by BBPDC and committed to BBPC provide a ready source of repayment that can be pledged to secure any bonds. *See* N.Y. State Urban Development Corp. Act (“UDC Act”), Secs. 5(20), 12(1) and 17 (ESD and its subsidiaries have power to issue bonds and notes repayable from project revenue); N.Y. Bus. Corp. L. Sec. 402 and Certificate of Incorporation of BBPDC, a subsidiary of ESD (BBPDC formed “to facilitate performance of all purposes, power and functions entrusted to UDC by the UDC Act, and to exercise all or any part of same, in furtherance of...the development of...Brooklyn Bridge Park”); N.Y. State Not-for-Profit Corp. Law, Sec. 202(9) (NY not-for-profit corporations, such as BBPC, have power to borrow money and issue notes and bonds and to pledge its interests in any of its property).

Consequently, the choice between immediate and future pile repair and replacement should have no bearing on the analysis of whether the BBPC requires massive Pier 6 development to fund its ongoing operations and maintenance requirements. Indeed, if BBPC staff is correct that the immediate replacement will be materially less costly than the existing approach of maintenance over time, that cost savings seems likely to reduce, not increase, BBPC’s financial justification for Pier 6 development; any immediate cash flow need should be addressed through typical cash

management techniques such as borrowing, not by permanently defacing the Park and the community with massive Pier 6 development solely to obtain a one-time cash payment.

Even without any meaningful disclosure by BBPC of future revenue, both common sense and available public information strongly suggest that BBPC will achieve revenue far in excess of what was anticipated in 2005. In particular, the values of the Park's residential real estate—the developments at 1BBP, at Pierhouse, and at John Street in the DUMBO section of the Park—have skyrocketed since the 2004-2005 financial assumptions that the FEIS relied upon. *See* FEIS at 1-18. Instead of the assumed sales prices in the FEIS of \$725 and \$750 per square foot for the condominiums at Pier 6 and Pierhouse respectively, FEIS, App'x C at 3, condominiums at Pierhouse were selling a year ago at an average price of \$1,800 per square foot, setting a record for Brooklyn, *Pet'rs' Ex. X* (Josh Barbanel, *Brooklyn Park Condos Sizzle*, Wall St. J., May 5, 2014, at p. 1-2).

The profits from Pierhouse are so high that Toll Brothers, the publicly-held nationwide real estate company that is developing it (as half of a joint venture with Starwood Capital), specifically announced them during a recent quarterly “earnings call” with Wall Street analysts. The Toll Brothers Chief Financial Officer told the analysts that “For the Pierhouse at Brooklyn Bridge, the condominiums are expected to have revenue just shy of \$500 million. Bear in mind, we're half of that.” *Tr. of Toll Bros. Inc., Q4 2014 Earnings Call at 8* (Dec. 10, 2014), *available at* http://www.tollbrothers.com/pdfs/TOL-Transcript-2014-12-10T19_00.pdf. He continued, “the other thing that's worth noting is: There is a hotel there at Pierhouse that we own half of; and at some point, that will be sold as well, and that could be as much as \$100 million of revenue for each of us and Starwood.” *Id.* at 9. Toll Brothers also reported that its half of the total of \$700 million in anticipated revenue will be achieved from an investment of \$24 million in the residential development and \$14 million for its half of the hotel. *Id.* at 15-16. That data appears to support a gross return on investment of more than 900 percent.

The huge profit generated by, and high valuations of, Pierhouse translate into increased revenue for BBPC. The BHA was informed at a meeting on January 8, 2015 that BBPC has a profit-sharing interest in Pierhouse. High sales prices also translate into

high valuations for property tax calculations and resulting PILOT payments. And it is highly likely that the rent BBPC is paid by Pierhouse pursuant to its 2012 ground lease is far higher than the amounts anticipated when the FEIS was prepared in 2005.

The significant increase over 2005 estimates for Pierhouse ground rents, tax payments, and profit-sharing are likely mirrored in BBPC's other residential developments at 1BBP and John Street, as well as its pending Empire Stores commercial development in DUMBO. BBPC's 2014 financial statement included the startling statistic that it expects to be paid—solely from the “minimum base rents” from its then-existing ground leases through the end of their lease terms (likely 99 years)—a total of nearly \$1.5 billion! (To be precise, \$1,450,176,000.) That imposing sum does not include any of the PILOT and other tax payments it will receive. And it does not include any revenue attributable to residential development at Pier 6.

In an attempt to rebut the many criticisms of its evolving financial models in recent months, BBPC hired an economic consultant, Barbara Denham, allegedly to give an independent assessment of them. Her report, which was released only hours before the July 30th public meeting on the Modification, appears to be more of a rubber stamp exercise than a serious one. While we will leave a thorough critique of that report to the financial experts in our community, we would like to point out some very obvious deficiencies: i) Ms. Denham understates PILOT revenues through making factual errors in her use of Department of Finance statistics and through a patently incorrect selection of comparable properties, ii) she ignores any revenue from the profit sharing components in Pierhouse and Empire Stores, which we have been told exist, and iii) she insists on viewing this property in a purely Brooklyn context instead of recognizing that development in the Park is much more analogous to parts of Manhattan than Brooklyn. Along with others, the BHA asked the BBPC to give it the same financial data that Ms. Denham had been given so that we could conduct our own analysis; that request was refused.

In the end it is not necessary for ESD or BBPDC to decide which economic estimates to rely upon. It is indisputable that the Park does not need money today. BBPC has itself admitted that it has sufficient cash until 2029 using a viable pier repair approach. *See* BBP July 9 Fin. Model Presentation at 23. We understand that

Department of Finance numbers will start to become available within the next six months and that within the next several years revenue available to the Park from PILOTS will be clarified. There is simply no reason to saddle our community with two huge towers now when they may not ever be necessary.

5. The Inadequacy of the Technical Memorandum and the Need for an SEIS

The BHA opposes the massive development on Pier 6 because we have not been convinced that any revenue from Pier 6 is necessary to sustain the Park. If, however, ESD and BBPDC disagree and decide to permit development, they must comply with their statutory obligations to prepare a Supplemental Environmental Impact Statement. Much has changed since 2005 when the FEIS was completed, and ESD is legally obligated to take another “hard look” at the adverse environmental impacts of any proposed construction.

The Technical Memorandum of November 2014 suffers from major flaws that render it legally insufficient to support a determination that no SEIS is necessary. We briefly highlight only three of those flaws here: First, because BBPC unquestionably has far greater financial resources today than it anticipated in 2005 when it performed the initial environmental review, alternatives to the Pier 6 development plans that were then dismissed as “not feasible” for financial reasons (*i.e.*, smaller-scale development, or no development at all) cannot necessarily be rejected on that basis today. ESD and BBPDC must prepare a SEIS that assesses newly-feasible alternatives, consistent with their repeatedly-expressed commitment to do just that. The assessment of alternatives is a core part of any environmental impact assessment but the Technical Memorandum utterly ignores ESD’s obligation to assess alternatives in light of BBPC’s significantly changed financial circumstances. For that reason alone the Technical Memorandum cannot be relied upon.

Second, the Technical Memorandum is demonstrably incorrect in concluding that because the scope of the project is essentially the same as that planned in 2005, its environmental impact can be no greater than it was a decade ago. That conclusion assumes that our neighborhood has stayed the same since 2005—something that is certainly not the case. The area surrounding the Park has experienced explosive growth

since 2005, especially in DUMBO and downtown Brooklyn, and further growth is anticipated, most notably on the former Long Island College Hospital site and the piers south of Pier 6. The Park was flooded during Hurricane Sandy and is deemed to be at extremely high risk for future flooding. The use of the Park exceeds all projections made in 2005 and the streets leading to entrances, especially Joralemon Steet, are frequently inundated with traffic. Our schools do not have seats for all of our children.

Finally, the examination of school impact is a perfect example of the flawed analysis in the FEIS and the recent Technical Memorandum. The projection in the FEIS was that in the originally planned final build year of 2012, the Park's contribution of students to the relevant sub-district would not result in a school utilization rate above 75 percent for elementary schools and 69 percent for intermediate schools. (FEIS at p.4-7) But those projections have proven to be woefully wrong: instead of the expectation 10 years ago that the local lower schools would have excess space even after the students from the Park's several residential developments arrived, there is now no dispute that the eight elementary schools the FEIS analyzed in 2005 (*i.e.*, Sub-District 2) will be forced to operate in the build year of 2018 at more than 140.59 percent of their capacity! And that drastic over-crowding is the current "no-build" scenario – it will occur *before* taking into account the 125 new elementary school students that the Technical Memorandum concedes the Pier 6 project will bring to the neighborhood.

The situation is even graver with respect to P.S. 8, Brooklyn Heights' only public elementary school and the school for which all Pier 6 students, and all students living in any of the Park's other residential developments, are zoned. P.S. 8 is dreadfully overcrowded as it is. For each of the two most recent school years, P.S. 8's enrollment has been at least 133 percent of capacity, squeezing 700 students into a facility designed for 500 and resulting in a loss of dedicated arts space and significant over-crowding in common areas such as the cafeteria and schoolyard.⁶

⁶ P.S. 8 total enrollment in school-year 2013-2014 was 702; it was 703 in school-year 2014-2015. See P.S. 8 Parents & Teachers Association Presentation, PS8 Overcrowding 6 (Nov. 20, 2014), <https://ps8brooklyn.org/wp-content/uploads/2015/02/PS8-overcrowdingmtg.1120.todistribute-revised-3-w-new-simon-address.pdf> ("P.S. 8 PTA Presentation").

The 125 new students to be added by the Pier 6 towers alone account for about 25 percent of P.S. 8's entire capacity. And including the other residential developments at the Park, both built and not-yet-built, the Park would be responsible for a total of nearly 300 new students, essentially two-thirds of P.S. 8's entire capacity. Nonetheless, the Technical Memorandum concludes that the Pier 6 development will not "contribute significantly" to overcrowding. It does so by applying a distorted interpretation of the City's *CEQR Technical Manual* that is indefensible as a matter of both law and common sense.

The BHA would hope that a new SEIS will not rely upon misleading formulas and improper project segmentation techniques to reach conclusions that do not protect our community. We need to identify thoughtful and financially-feasible alternatives that will provide whatever revenue is needed by the Park while minimizing the impact on our adjacent communities and enhancing the Park itself.

Conclusion

For all the foregoing reasons, the BHA requests that ESD and BBPDC reject the 2015 Proposed Modification and require BBPC to demonstrate through a public and transparent process a need for revenue from Pier 6 before any residential development occurs at Pier 6. At a minimum this project should be put on hold pending the development of accurate data concerning PILOTS revenue. When, if ever, it is deemed necessary to proceed, a Supplemental Environmental Impact Statement should be prepared that will evaluate all alternatives in light of today's realities, not those of 2005.