

**A. INTRODUCTION**

This chapter summarizes and responds to all substantive comments on the Draft Environmental Impact Statement (DEIS) for the Brooklyn Bay Center Project made during the public review period. The comments consist of spoken or written testimony submitted at the public hearing held by the New York City Planning Commission (CPC) on July 13, 2011. Written comments were accepted through the public comment period which ended on July 25, 2011. Written comments received on the DEIS are included in Appendix E.

Section B of this chapter lists the elected officials, community board and organization members, and individuals who commented at the DEIS public hearing or in writing. The comments are summarized and responded to in Section C. The organization and/or individual that commented are identified after each comment. These summaries convey the substance of the comments but do not necessarily quote the comments verbatim. Comments are organized by subject matter and generally parallel the chapter structure of the DEIS. Where more than one commenter expressed a similar view, the comments have been grouped and addressed together.

Some commenters did not make specific comments related to the proposed approach or methodology for the impact assessments. Others had suggested editorial changes. Where relevant and appropriate these edits, as well as other substantive changes to the DEIS, have been incorporated into the Final Environmental Impact Statement (FEIS).

**B. LIST OF ORGANIZATIONS AND INDIVIDUALS WHO COMMENTED ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT****ELECTED OFFICIALS**

1. Marty Markowitz, written comments dated June 9, 2011; June 20, 2011; and June 21, 2011. (Markowitz)

**COMMUNITY BOARDS**

2. Community Board 11, written comments dated June 1, 2011. (CB 11)

**ORGANIZATIONS**

3. Ida Sanoff, Chair, Natural Resources Protective Association, written comments dated July 23, 2011. (Natural Resources Protective Association)

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<sup>1</sup> This chapter is new to the FEIS.

## INTERESTED PUBLIC

4. Melvin Wolfson, written comments dated July 20, 2011. (Wolfson)

## C. COMMENTS AND RESPONSES

### GENERAL/PROJECT DESCRIPTION

**Comment 1:** The applicant should provide on-site parking for employees. (CB 11)

**Response:** The on-site parking garage is expected to accommodate employees. The proposed project would include approximately 690 public parking spaces. The peak parking demand of 585 spaces (see page 11-22 of Chapter 11, “Transportation,”) accounts for retail employees, as well as customers and users of the public waterfront walkway open space.

**Comment 2:** The applicant should work with appropriate agencies for feasibility of providing public access to the water and an Eco Dock. (CB 11)

**Response:** As noted in Chapter 1, “Project Description,” one of the purposes of the proposed project is to provide new public waterfront access, which would be accomplished with the proposed 2.4 acre landscaped shore public walkway with benches and additional lawn space. Providing direct public access to the water, including docking facilities, is outside of the scope of the proposed project.

**Comment 3:** Use of the proposed waterfront open space will be limited due to the limited street access along Bay Parkway and Bay 26th Street from the nearby residential community north of Shore Parkway. (Markowitz)

**Response:** Although pedestrian access to the project site from the nearby residential community north of Shore Parkway is limited to crossings at Bay Parkway and 26th Avenue, the proposed project would also be accessible by the B6 bus and automobile. As detailed in Chapter 11, “Transportation,” it is expected that most users of the waterfront open space would arrive by automobile, with a small portion arriving by taxi or bus. The proposed open space is not expected to generate pedestrian walk trips from the surrounding area.

As stated at the CPC public hearing, it is expected that users of the esplanade will be able to park in the project’s parking garage. The parking demand generated by the proposed public waterfront walkway has been accounted for in the parking analysis presented in Chapter 11, “Transportation.”

**Comment 4:** The applicant should include a destination restaurant as part of the project and locate the restaurant adjacent to the outermost publicly accessible waterfront. (Markowitz)

**Response:** As discussed in Chapter 1, “Project Description,” the proposed project is currently anticipated to house a BJ’s Wholesale Club and other retail stores. The proposed actions would allow a restaurant use in the other retail space, but would not require it. As stated at the CPC public hearing, the applicant would be willing to consider leasing space to a restaurant in one of the proposed retail spaces.

**Comment 5:** The applicant should make respectable efforts to hire willing residents within the local community for the retail complex. (Markowitz, CB11)

**Response:** Although hiring standards are not relevant to CEQR review, the applicant’s letter to the Brooklyn Borough President (dated June 16, 2011, see Appendix E) states that the applicant will commit to working with its retail tenants to maximize hiring for their retail stores from the local communities.

**Comment 6:** The applicant should develop a strategy to include Brooklyn-based contractors and material supply firms in the construction of the project. (Markowitz)

**Response:** Although the use of local construction suppliers is not relevant to CEQR review, the applicant’s letter to the Brooklyn Borough President states that the applicant commits maximizing the purchase of building supplies for the development from Brooklyn suppliers, given equivalent availability and pricing, and to maximizing the use of local contractors in store construction, while working within the structures of all applicable labor agreements.

## NATURAL RESOURCES

**Comment 7:** We are concerned about construction impacts to local marine biota. The DEIS acknowledges Essential Fish Habitat in the area. The DEIS notes that temporary erosion control measures such as hay bales, silt booms, silt fences will be used. However, there is considerable controversy over whether or not the currents in the project area will even accommodate the use of silt curtains. The DEIS for the proposed Southwest Brooklyn Marine Transfer Station site, located only one tenth of a mile from the proposed Brooklyn Bay Center Project, states that “because of swift currents in the area silt curtains would not be feasible.” The efficacy of silt curtains is impacted by many factors including current rates. Furthermore, suspended sediments can pass under and/or around silt curtains. (Natural Resources Protective Association)

**Response:** As described under “Endangered, Threatened, and Special Concern Species,” on page 6-18 of Chapter 6, “Natural Resources and Water Quality,” under the Endangered Species General Condition 17 of Nationwide Permit No. 13 issued by the United States Army Corps of Engineers (USACE) for the proposed project, no activity is authorized which may affect a listed species or critical habitat under Section 7 of the Endangered Species Act. By issuing Nationwide

Permit No. 13, USACE has determined that the proposed project would have no effect on listed species and an EFH study was not necessary.

With regards to best management practices and as described on page 6-22 of Chapter 6, “Natural Resources and Water Quality,” a Stormwater Pollution Prevention Plan (SWPPP) will be prepared for the proposed project in accordance with established engineering practices as part of the SPDES permitting process for General Permit 0-10-001. In addition (and as described on page 6-23), USACE authorized Nationwide Permit No. 13 for the proposed bank stabilization and restoration activities (see Appendix C). Based on the authorization, USACE has determined that the subject activity would not have a significant effect on the Waters of the United States.

**Comment 8:** Groundwater at the site is 1-4 feet above mean high water and movement is likely towards Gravesend Bay. The DEIS describes measures that will be used to remove or cap some areas of contaminated soil, but a sizeable portion of the site will not be covered. In view of the nature and quantity of contaminants present on the site, we question if a sheet pile wall along the shoreline should be required to prevent continuing migration of contaminants from the groundwater into Gravesend Bay. (Natural Resources Protective Association)

**Response:** Although the use of a sheet pile wall along the shoreline to prevent the potential migration of contaminants is not specifically analyzed in Chapter 6, “Natural Resources,” the Chapter considers the proposed shoreline restoration and stabilization, the removal of the eroding solid waste berm, installation of two new stormwater outfalls and water filtration devices, which are expected to result in beneficial environmental impacts on existing conditions. In authorizing Nationwide Permit No. 13, the United States Army Corps of Engineers (USACE) has determined that the subject activity would not have a significant effect on the aquatic environment. The New York State Department of Environmental Conservation (NYSDEC) approval of the procedures for site cleanup and required permits for the proposed site development included evaluation of potential impacts from the site’s existing contaminated soil and groundwater on marine resources. To the extent that the cleanup will remove the vast majority of the existing contamination, any post-cleanup impacts from migration of residual contamination in groundwater will be greatly reduced and, to the extent that impervious sheeting could itself result in adverse impacts, NYSDEC did not determine that sheeting should be required. In addition, as described in Chapter 6, the project requires a Tidal Wetlands Permit and Clean Water Quality Certification, and it is expected that NYSDEC will approve the Joint Permit Application upon the completion of the CEQR process.

## HAZARDOUS MATERIALS

**Comment 9:** The proposed project includes removal of an existing berm, recontouring the shoreline with riprap and installation of two 36-inch stormwater outfalls. However, the DEIS does not acknowledge the presence of unexploded ordnances in the vicinity of the project. In March 1954, a barge offloading munitions from the U.S.S. Bennington capsized in the area and some munitions were not recovered. In the 19th century, the Gravesend Bay Explosives Anchorage was utilized by numerous vessels carrying explosives. Recently, a pile of approximately 1500 munitions was discovered underwater, near the Brooklyn side of the Verrazano Bridge. What measures will be instituted to determine if unexploded munitions are present in the project area and if so, what steps will be taken to ensure their safe removal? (Natural Resources Protective Association)

**Response:** As discussed in Chapter 6, “Natural Resources,” the proposed project would not result in any dredging. The proposed project would construct a riprap slope landward of the mean high water line, and would involve only limited in-water work. Therefore, the proposed project would not be expected to disturb unexploded ordnance in New York harbor. Furthermore, more than 120 soil and groundwater samples have been taken at the project site, and no unexploded ordnance has been encountered.

**Comment 10:** The land between Shore Parkway and Gravesend Bay is known to contain toxic materials. It is my understanding that the improvements being made to Calvert Vaux Park were delayed significantly because toxic soil was found at the site. The environmental impact statement does not even mention the problems encountered at Calvert Vaux. I am concerned that unless very rigid conditions are imposed, more rigid than the ones proposed in the EIS, there would be adverse consequences both for the surrounding properties and of even more concern, to the wild life in Gravesend Bay. (Wolfson)

**Response:** As discussed in Chapter 7, “Hazardous Materials,” the project sponsor has obtained approval from New York State Department of Environmental Conservation (NYSDEC) of a Solid Waste Mitigation and Soil Management Plan (SWMSMP) and a Beneficial Use Determination (BUD) to reuse certain materials excavated from the western portion of the project site to raise the grade on the eastern portion of the site in connection with the site redevelopment. NYSDEC’s approval of the SWMSMP and BUD binds the project sponsor to ensure that certain measures are conducted to avoid significant adverse impacts associated with hazardous materials. These measures include the preparation of a Site Management Plan and associated Restrictive Declaration (a legally enforceable recorded document) with NYSDEC. In addition, the New York City Department of Environmental

Protection (NYCDEP) has required the applicant to enter into a NYCDEP restrictive declaration that is consistent with the NYSDEC measures. The restrictive declaration would serve as an additional mechanism to ensure the measures would be implemented and would be subject to review and approval by the New York City Office of Environmental Remediation. An (E) designation will be placed on the project site to ensure that the Restrictive Declaration is executed and recorded. NYSDEC and NYCDEP have determined that the measures outlined in Chapter 7, “Hazardous Materials” would be sufficient to avoid significant adverse impacts related to hazardous materials. Furthermore, Chapter 6, “Natural Resources” concludes that the proposed project would not result in significant adverse impacts on any natural resources, including water quality, terrestrial resources, wetlands, aquatic resources, or endangered or threatened species, or species of special concern during construction or operation of the proposed project.

## TRAFFIC

**Comment 11:** In the Final EIS (FEIS), traffic recommendations for mitigation will likely include some combination of signal installation and other measures including: standard traffic engineering measures such as signal timing adjustments, lane re-striping and parking prohibition (to create turning lanes at intersections and in front of the development). It is possible that residents and business entrepreneurs might not want measures that require the loss of nearby parking spaces implemented, despite anticipated benefits associated with reduced congestion for the neighborhood at large. (Markowitz)

Soon after the issuance of the FEIS, the applicant should engage CB 11, along with the area’s affected local elected officials, in a proactive role in formulating a community position in terms of what mitigation should be pursued prior to the opening of the retail complex. The applicant should then advise the New York City Department of Transportation (DOT), in writing, of its consultation with CB 11 of which measures the board would like to be implemented in advance of construction, where feasible. The applicant should then be of assistance to DOT as the agency reviews the analysis and develops an implementation plan. (Markowitz, CB 11)

**Response:** Based on the analyses presented in Chapter 11, “Transportation,” mitigation measures for traffic impacts are described in Chapter 17, “Mitigation,” Mitigation is generally pursued after the project is operational so that DOT can evaluate whether or not such measures are warranted. However, as stated in the applicant’s letter to the Brooklyn Borough President, the developer will commit to working with the local Community Board and elected officials to identify the EIS traffic mitigation measures that they would like to see implemented prior to completion of the project. Once those measures are identified, the developer will commit to working with DOT to support implementation of those measures

prior to completion of the project. While actual implementation of the mitigation falls within the purview of DOT, the developer will nonetheless work to encourage DOT to implement all identified measures prior to the opening of the retailers on the site.

**Comment 12:** Certain proposed traffic mitigation measures would eliminate parking along the service road. The loss of such parking would be a burden to patrons of such businesses like the New York Sports Club and Adventurer's amusement park. In anticipation of DOT implementing such a plan, the applicant should seek the authorization of its tenants to reach out to these businesses in regards to supplementing some of the parking that will be lost to their respective patrons. (Markowitz)

**Response:** Some parking on the service road is being eliminated to allow for transition in the traffic flow on the service road for vehicles accessing the site. As discussed on page 11-19 of Chapter 11, "Transportation," typical utilization of the metered and free parking in the vicinity of the project site is low, and the elimination of some parking would not be a burden to patrons of other sites along the service road.

**Comment 13:** It should be noted that traffic studies developed as part of the required environmental assessment are more theoretical than exact. Environmental assessments serve as predictive tools, whereas actual conditions will demonstrate a more valid view on the impacts that development have on a community. The developer should perform a traffic analysis in conjunction with DOT, CB11 and its local elected officials to determine the actual impacts on the Bath Beach and Gravesend community approximately one year after the opening of the primary tenant. If the study reveals that this project contributes to traffic impact, the applicant should provide funds for any traffic improvements deemed necessary. (Markowitz)

**Response:** The applicant has conducted an extensive study of potential transportation impacts in accordance with the *CEQR Technical Manual*, as described in Chapter 11, "Transportation," and has identified mitigation measures to address significant adverse impacts as described in Chapter 17, "Mitigation." As is standard practice, the applicant will work with DOT, CB11, and its local elected officials to implement these mitigation measures. However, unforeseen circumstances can arise after a project is completed, and the applicant commits to funding and implementing a traffic monitoring program one year after the opening of the primary retailer on the site to be performed in conjunction with DOT, CB11, and its local elected officials. This program will serve to identify any reasonably practicable measures, in conjunction with DOT, CB11, and its local elected officials, that could further improve traffic flow at the locations

studied, and the applicant will work with these entities to facilitate the implementation of such improvements.

*BELT PARKWAY ACCESS*

**Comment 14:** The traffic conditions leading to Caesar's Bay and the proposed site are already strained. One of the prime challenges is the constraint of entering and exiting the Belt Parkway and the concentration of vehicles doing so. Therefore, a study should be conducted concerning modifications to the entrances and exits of the Belt Parkway at Bay Parkway.

In order to alleviate congestion and unnecessary traffic, the Bay Parkway westbound entrance ramp should be realigned and perhaps widened; the potential to supplement the existing exit ramp to Bay Parkway with a second exit ramp east of Bay Parkway, the relocation of the existing eastbound on-ramp, the widening of the 26th Avenue overpass, and perhaps the shifting of the eastbound Cropsey Avenue exit further east should be analyzed.

DOT should initiate measures to improve connectivity to the Belt Parkway by reviewing the feasibility of making the following improvements:

- Facilitate left-turn access from 22nd Ave/ Bay Pkwy to entrance ramp of westbound Belt Parkway;
- Add a second exit ramp from the eastbound Belt Parkway further east of 22nd Avenue/ Bay Parkway; and
- Relocate the current eastbound entrance ramp to Belt Parkway further east along the service road. (Markowitz)

At a minimum, improvements should include widening Shore Parkway in the area and installing a traffic light at the intersection of Shore Parkway and 26th Avenue before this project is approved. (Wolfson)

**Response:** The entrances and exits of the Belt Parkway at Bay Parkway were included as study locations and are listed on page 11-4 of Chapter 11, "Transportation," as Locations 8 and 9. Significant adverse impacts were identified at the Bay Parkway and Belt Parkway eastbound ramps intersection during all three peak hours analyzed, and no significant adverse impacts were identified at the Bay Parkway and Belt Parkway westbound ramps intersection. As described in Chapter 17, "Mitigation," improvements are proposed to mitigate all significant adverse impacts at the Bay Parkway and Belt Parkway eastbound ramps intersection. Further improvements to relieve congestion beyond the significant adverse impacts caused by the proposed project are outside the scope of the EIS and should be undertaken by the relevant agencies (e.g., NYCDOT).

**Comment 15:** The DEIS notes that the proposed Southwest Brooklyn Converted Marine Transfer Station (MTS) is unlikely to be operational by the proposed project's



2013 Build Year. However, it should be noted that the Brooklyn Bay Center will have substantial traffic impacts on the Shore Parkway (Belt Parkway) service road. If the MTS is ever constructed, Shore Parkway will be virtually gridlocked. The minimum improvements required would be to widen Shore Parkway in this area and install a traffic light at Shore Parkway and 26th Avenue. (Natural Resources Protective Association, Wolfson)

**Response:** As discussed on page 11-10 of Chapter 11, “Transportation,” the proposed MTS was included as a No Build project in the traffic analysis. The analysis shows that all significant adverse impacts identified for the Shore Parkway service road would be mitigated by the improvements proposed in the DEIS (see Chapter 17, “Mitigation.”)

#### **GENERAL/MISCELLANEOUS**

**Comment 16:** The applicant should initiate a charitable giving program for community-based organizations within Community Board 11. (CB11)

**Response:** Comment noted. A charitable giving program for community-based organizations is not relevant for CEQR review.

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