

WILLETS POINT PHASE 1 DEVELOPMENT RFP

Questions & Answers Summary

From RFP Release through June 7, 2011, including Information Session

Questions & Answers from In-Person Info Session (May 24, 2011)

Note: Some questions have been edited for brevity and clarity.

- 1. The RFP states that “all proposals must fully conform to the special district zoning”, yet the contract envisions time periods by which the designated developer will “file for and obtain any and all special permits”. Given this discrepancy, can you clarify to what extent EDC will consider responses that require additional ULURP actions such as to modify zoning provisions in the Special District?**

Does the City have a preference on whether or not the developer should seek special permits allowed for under the Special District Zoning?

The City hopes to commence work as soon as possible and will therefore give preference to proposals that do not require additional ULURP review. Special Permits requiring ULURP, including Special Permits discussed in the Special District Zoning, are discouraged. However, Proposals including Special Permits indicated in the Special District Zoning requiring non-ULURP approval, including but not limited to approval of the NYC Board of Standards and Appeals may be considered; however, projects will be viewed less favorably to the degree that any discretionary approvals prolong the Project schedule. It is understood that the Special District Zoning provides for City Planning Commission approval of various aspects of the project, such as City Planning Commission Certifications; respondents acknowledging such approvals in their project schedules will not be penalized.

- 2. Page 42 of the RFP discusses information needed from a respondent “if utilizing federal New Market Tax Credits.” Does the site currently qualify for New Market Tax Credits?**

Currently, Willets Point is not currently located in a census tract eligible for New Market Tax Credit (NMTC) Investment. Please note that the census tract data, as used in calculation of NMTC eligibility, will be updated pursuant to the 2010 census in the fall of 2011. It is uncertain whether or not the Project will qualify at that point. Additionally, it is our understanding that census tracts with a population less than 2,000 or serving a “Targeted Population” may also qualify for NMTC program. Respondents are encouraged to consult with NMTC specialists for further information as to current and potential future applicability of the NMTC program.

- 3. It appears difficult to efficiently mass the required 1,000 parking spaces in Phase 1. Can the Buffer Area be used for parking required for Phase 1 development, provided such required parking is replaced elsewhere upon development of Phase II?**

How should parking be distributed throughout the development?

Please clarify the duration that NYCEDC will have the right to demand additional parking in Phase 1 at the developer's expense. Is the additional parking only deemed to be surface parking to be provided in the Buffer Area (per page 18 of the RFP)?

Parking may be provided within buildings in the Phase 1 Area, in the Buffer Area, as street parking, or as collective structured parking for all or part of the Phase 1 Area. Respondents are encouraged to consult the Special District Zoning (esp. section 124) for further information.

The Environmental Documents, as defined in the RFP, contemplate temporary parking within the Buffer Area only to the extent that parking provided within the Project is insufficient to meet actual post-construction parking demand. Accessory parking that is required by zoning may not be located in the Buffer Area, as the Buffer Area is temporary in nature. Please consult the Environmental Documents for further description of the contemplated Buffer Area parking option.

- 4. What is the elevation of 126th Street on the approved (but not yet filed) city map? It is envisioned that 126th will be raised above the flood plain or will stay below the flood plain? If the former, is the Citi Field side of 126th designed to accommodate such an elevation increase?**

It is anticipated that 126th street will remain at its current elevation, which is coordinated with that of Citi Field. Respondents must propose an approach to dealing with the flood plain within the Phase 1 Site, which may, but does not have to involve raising the grade elevation of the site above the floodplain. The Design Guidelines propose a split-level sidewalk and linear plaza that negotiates between the grade elevation of the stadium and future development at the elevation of the 100-yr floodplain. Electing not to raise the grade elevation of the site above the floodplain may preclude certain uses from the ground floor as well as trigger other NYC building code requirements and additional environmental review.

- 5. The RFP states that the post-construction traffic monitoring program is intended to "verify the need and effectiveness of the proposed mitigation measures identified in the Environmental Documents." However, the Environmental Documents identify unmitigatable impacts in the vicinity (and failed intersections even in the no-build condition), which seems to imply that the proposed mitigation measures have already**

been determined to not fully mitigate traffic impacts. As such, how will any traffic monitoring program determine if impacts are due to Willet's Point development or other changes in the area (e.g. increased attendance at Met games, etc.)? How does EDC envision the \$1.025 million traffic mitigation fund to work? Who will determine how the fund is spent and on what intersections? What will be the timing for expenditure of the fund?

The traffic monitoring program will determine whether actual future build conditions have, in fact, resulted in significant traffic and pedestrian impacts at the completion of the Phase I program and verify the need for improvement/mitigation measures. The monitoring plan will include all locations where significant impacts and improvements were disclosed in the FGEIS and subsequent Technical Memoranda and other locations that NYC DOT believes improvements will be warranted. As impacts have been disclosed in the FGEIS and Technical Memoranda at these locations, this monitoring study will not be responsible for improving the level of service to existing or no build levels of service, but rather, improving the network to the best extent practicable.

The \$1.025 Traffic Mitigation Fund will be drawn upon after construction completion, and will be used to fund (1) a traffic monitoring study that will analyze actual levels of service and verify the need for mitigation measures identified in the Environmental Documents and/or other infrastructure improvements proposed by the City, and (2) implement such practicable measures to the extent funds permit.

6. Can you provide an update as to the most current status of eminent domain proceedings against properties in Phase 1, in the Buffer Zone, and in Phase II?

What is the current status of the City's acquisition of property for Phase I? Could the City provide a map showing the Phase I parcels which have already been acquired, and the parcels which remain to be acquired?

The City has made substantial progress through negotiated acquisition, and currently has nearly 90% of Phase 1 Area and Buffer Area property under contract or within city control. We have held the required public hearing pursuant to the Eminent Domain Procedure Law and have issued a Determination and Findings for the Phase 1 properties inclusive of the Buffer Zone. A lawsuit was filed on June 2nd challenging our Determination and Findings.

The City's priority remains to reach acquisition agreements via negotiation; however, the City would acquire through condemnation any un-acquired sites within the Phase 1 Site and the Buffer Area in mid-2012. The City will not release a map of acquired and to-be-acquired parcels. The City has not initiated the Eminent Domain Procedure Law process for properties outside of the Phase 1 Site and Buffer Area.



- 7. The RFP indicates that “environmental contamination in the Buffer Area must be addressed as required by applicable regulatory agencies to achieve the design intent of the Buffer Area.” If agencies require remediation of some or all of the Buffer Area, will EDC permit any required containment walls or sheet piling to extend into such portions of the Buffer Area to prevent re-contamination of such area (rather than merely construction of a containment barrier “along the boundaries of the Phase 1 site” as discussed in the RFP)?**

Yes.

- 8. Will ULURP be required for the redevelopment?**

The City has already secured ULURP approval for the Willets Point Development Plan in 2008. The 2008 approvals authorized disposition of the Property, and created the Willets Point Special Zoning District which changed the underlying zoning of the district from M3-1 to C4-4, among other changes. Proposals that are compliant with the previously approved Special Zoning District requirements and the Urban Renewal Plan will not be required to undertake ULURP.

- 9. What is the status of the approval of the Van Wyck ramps? If the Expressway Work is not approved, what steps will be taken to address the impacts on land value due to the decreased access to Willets Point?**

NYCEDC has been working closely with the regulatory agencies – State DOT and Federal Highway Administration (FHWA) – regarding the proposed Van Wyck Expressway ramps. A draft Environmental Assessment (EA) for the proposed ramps has been released for public comment through June 20th. A public hearing on the proposed ramps is scheduled for June 8th. SDOT and FHWA will consider the EA prior to issuing any approval. The City anticipates approval of the Expressway Work.

- 10. How should floodplain levels be addressed?**

Respondents must propose an approach to dealing with the flood plain within the Phase 1 Site, which may, but does not have to involve raising the grade elevation above the floodplain. Electing not to raise the grade elevation of the building above the floodplain may preclude certain uses from the ground floor as well as trigger other NYC building code requirements and additional environmental review. The Design Guidelines propose a split-level sidewalk and linear plaza along 126th Street that negotiates between the existing grade elevation of 126th Street and future development at the elevation of the 100-yr floodplain.

- 11. The RFP states that the developer must ensure that the buffer is “secured;” can you clarify?**

The buffer will remain City-owned, but it will be maintained by the Selected Developer via a maintenance and operation agreement, which would obligate the developer to, among other things, ensure that the Buffer Area remains inaccessible to the public, in a tidy condition, and free from any illegal dumping of trash or debris.

12. Who has jurisdiction over the environmental issues? Under which City agency, if any, will the environmental mitigation fall for the development of the site – NYCOER or NYCDEP?

It is anticipated that development of the Phase 1 Site will require a Phase II Environmental Site Assessment. The agency(ies) that has jurisdiction over the environmental issues will be dependent on the results of the Phase II testing.

13. What is the timing of future project phases?

The City contemplates full development of the entire District by 2022. The exact timing and location of future development phases within the district have not yet been determined.

14. Is the utility easement along Willets Point Boulevard in a fixed location?

EDC understands that the utility easement along Willets Point Boulevard is referenced on the approved maps, but not established and therefore the location of that easement can be adjusted within the current mapped bed of the street prior to filling the approved alteration maps. This amendment to the approved but not filed maps would not require a ULURP approval but rather a modified alteration map would need to be provided and approved by the BP Topo office and the City Planning Commission. Notwithstanding the forgoing, any change in the easement location would need to be reviewed and agreed to by the New York City Department of Environmental Protection (NYC DEP).

The current location of the utility easement referenced on the approved but not filed City Maps along Willets Point Boulevard is provided in the RFP Site Information File.

15. How does the design of the 126th Street sewer relate to the development?

The 126th Street stormwater sewer will be complete by summer 2013. The Developer can connect to the storm sewer approximately 125 feet south of the existing intersection of 35th Avenue and 126th Street. It is recommended that Respondents consult the design documents for the storm sewer included in the Site Information File for further detail.

16. What are the criteria for developer selection?

Please refer to page 47 of the RFP.

17. In the selection process, will points be given to how the Phase 1 design compliments later phases?

The proposal requirements include both a Phase 1 Site Plan and a District Conceptual Plan. The intent of the Conceptual Plan is to assess the compatibility of the Phase 1 plan with future phases of development to ensure that the Project is appropriately considered in the larger context. The relationship between the Phase 1 Site Plan and the District Conceptual Plan will impact Proposal scores in the “Land Use and Design” criterion. Respondents are encouraged to review pages 47 and 48 of the RFP for a full list of the selection criteria.

18. Should affordable housing be included in a “blended environment”?

It is anticipated that market-rate units will be, to the extent possible, interspersed with affordable units without differentiation in size or location. Please see Section XI of the RFP (p.26) for further information on housing requirements.

19. Are there any additional market analyses available to share with the potential respondents?

Respondents should conduct and provide their own market analyses to the extent necessary in connection with their responses.

20. Which streets could be de-mapped?

ULURP approval is in place allowing for the adoption of several variations to the City Map that collectively allow for any street within the Phase 1 Site and Buffer Area to be de-mapped. The Selected Developer can choose which streets will be de-mapped, and would be responsible for filing the appropriate amended maps. This amendment to the approved but not filed maps would not require a ULURP approval but rather a modified alteration map would need to be provided and approved by the BP Topo office and the City Planning Commission. The approved but-not-filed amended City Maps have been included in the Site Information File. The City anticipates that Willets Point Boulevard will either remain mapped, or that an easement would be mapped as there are significant utilities present beneath this street.

21. Is all Phase 1 land considered a “brownfield”?

Willets Point is an environmentally compromised area. In New York City, the term “brownfield” suggests the area conforms to the New York State Department of Environmental Conservation (NYS DEC) requirements for entrance into the State Brownfields Cleanup and Tax Credit Program. According to NYS DEC, “A Brownfield site is real property the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant. Contaminants include hazardous waste and/or petroleum.” While the Selected Developer will have to conduct independent site

investigation, current limited investigations and the history of uses in the District suggest the Project site may be eligible for this active State program.

22. Will the attendance list be circulated?

The attendance list will be circulated to the RFP Invitees, as defined in the RFP. Additionally, a list of all attendees at the information session who asked for their name be so shared will be circulated to all who attended the information session.

23. The City has provided limited environmental analysis for the development site in the Site Information File. Is the City considering providing the Selected Developer with a due diligence period in which to conduct further environmental investigations.

Proposals may address this request in their comments to the Term Sheet located in Appendix 1 of the RFP.

24. The approved program evaluated 600k s.f. of retail. Does the city have a preference as to what kind of retail would be preferred and is it required to build out the full 600k s.f.?

The city is open to any form of retail development that is consistent with the applicable zoning. Respondents are encouraged to review the special district zoning with respect to unit size and frontage restrictions relating to retail development. Respondents are not required to propose building out the full 680,000 s.f. of retail space as provided in the Approved Program. However, Respondents are strongly encouraged to conform to the Approved Program as proposals that vary from the Approved Program may require further environmental review.

25. According to the RFP (page 22), "Respondents are encouraged to submit Proposals to construct any or all of elements (1) - (6) of the Accessory Infrastructure in lieu of the City." Please provide more detail on how Respondents may propose to undertake elements 1 and 2 given the fact that they have already been put out to bid?

The City is progressing elements 1, 2 and 3 of the Accessory infrastructure and intends to commence construction within the 2011 calendar year. Notwithstanding the forgoing, if for unforeseen reasons the City does not commence some or all of these elements, and the Selected Developer's proposal indicates that they are able to construct those elements more cost efficiently than the City, the City may elect to assign those elements to the respondent.

26. If respondents propose to construct any or all of elements 1 through 6 of the Accessory Infrastructure in lieu of the City, how will this be weighted in the selection criteria during the proposal evaluation process?

Respondents who are willing and able to construct the Accessory Infrastructure more cost efficiently than the City will be viewed favorably.

27. What are the steps and timeline of the approvals process for the Expressway Work (Accessory Infrastructure item #5 on page 22 of the RFP)?

A draft Environmental Assessment (EA) for the proposed Van Wyck Expressway connections has been released for public comment through June 20th. A public hearing on the EA is scheduled for June 8th. The draft EA concludes that the ramps project would not have significant environmental impacts. Following the environmental review process, a final Access Modification Report will be submitted for agency approval. Approval of the Expressway work is not necessary to proceed with Phase 1 work.

28. According to page 31 of the Executive Summary of the FGEIS, the City will be funding a pump station in the District. However, this has not been addressed under the section in the RFP describing the City's Accessory Infrastructure. Can you please clarify if a decision has been made to address the development of a pump station, including (a) where it will be built, (b) who will fund the project, (c) whether its location will be determined by the City or the developer?

As described in the RFP, identified in the Construction Documents included in the Site Information File, and disclosed in the most recent technical memorandum, the off-site sanitary sewer infrastructure to be constructed by the City will accommodate waste water flows from the District will be constructed as a "gravity flow" sewer, thus eliminating the requirement for an on-site pump station and force main.

29. Is it the City's intention for the entire Phase 1 area to be a single zoning lot, or is each "block," bounded by mapped and unmapped streets, its own zoning lot?

Respondents may elect to merge and subdivide tax lots in their development plan as they choose, but shall be required to merge and/or subdivide tax lots as required to effectuate the disposition of the property and the payment of Real Estate Taxes. Respondents should note that the responsibility to complete the merging or subdivision of tax lots within the Phase 1 Site has been listed as a Preliminary Obligation and Closing Condition in the term sheet included in the RFP as Appendix 1.

30. Does the City require a specific level of clean-up for the Phase I Buffer Area, or will the City defer to NYSDEC?

The City will require the site be remediated to the extent required by the appropriate regulatory agency or agencies based on the proposed interim use as a fenced-in and secured open area that is inaccessible to the public.

31. Page 29 of the RFP states that “the Selected Developer will be required to... eliminate exposure pathways to groundwater and vapor contamination.” Please clarify whether the boundary for these exposure pathways is intended to be the boundaries of the Phase 1 site only, or the boundaries of Phase 1 site and Buffer Area.

It is anticipated that a containment wall will be required to ensure that remediated soils remain separate from contaminated soils. Respondents are welcome to propose other measures to achieve the same effect. As site remediation approaches will likely vary between respondents, the location of a containment wall, to the extent that it would be required, has not been fixed. Moreover, additional measures may be required to address exposure pathways from groundwater and soil vapors that could migrate notwithstanding a containment wall.

32. We request a summary of the past and pending litigations on this project, as well as copies of the papers in those litigations.

Summary of Willets Point litigation history:

- Willets Point Industry & Realty Association et al. v. City of New York et al., Case # 1:08-cv-01453-ERK-JO in the U.S. District Court for the Eastern District of New York. The Court granted the City’s motion to dismiss this action in November 2009.
- Joseph Ardizzone et al. v. Michael Bloomberg et al., Index # 103406/2009 in the Supreme Court of New York County. The Court denied petitioners’ claims and dismissed the Article 78 petition in August 2010. Petitioners have filed a Notice of Appeal as well as a Motion to Vacate the Judgment, which is currently pending.
- Janice Serrone et al. v. City of New York, recently initiated in the Appellate Division, Second Department. This Eminent Domain Procedure Law challenge is currently pending.

Information regarding past and present litigations on the project is publicly accessible, and copies of the papers in each litigation are available from the relevant court clerks’ offices.