UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

July 13, 2021

The Honorable Stephen Levin
District 33, New York City Council
Legislative Office
250 Broadway Suite 1751
New York, NY 10007

Dear Councilman Levin:

Thank you for your letter of May 21, 2021 requesting that the Environmental Protection Agency (EPA) review New York City's Gowanus Neighborhood Rezoning plan and accompanying draft environmental impact statement (DEIS), including an evaluation of whether the plan is consistent with Superfund requirements and will protect the Superfund remedy. You also pose detailed questions about the role of EPA in relation to potential development projects.

Your correspondence raises many issues, but first and foremost is a concern about how the cleanup of the canal may be adversely affected by land-use changes and population growth near the canal.

Potential Combined Sewer Overflow Increases/Decreases into Gowanus Canal from Rezoning-Related Development

In your letter, you write that you seek an assessment of the modeling done by the New York City Department of Environmental Protection (NYCDEP) to evaluate whether the updated Citywide 2021 Unified Stormwater Rule will achieve the no net combined sewer overflow (CSO) goal that your respective offices and the community have established for the rezoning. You also write that you seek EPA's review of the impact of rezoning-related development on CSOs, given the new 2021 Unified Stormwater Rule. The following are responses to your specific questions.

Is the 2021 Unified Stormwater Rule sufficient to prevent an increase in CSO loading with new development on projected and potential development sites?

EPA expects to provide comments on the draft Environmental Impact Statement (DEIS), identifying a number of inconsistencies in the presentation of wastewater and stormwater calculations. It is unclear whether correcting these flaws and errors will allow the preparers to still claim that the project would result in a net reduction in CSO loading. EPA cannot draw a conclusion about the role the 2021 Unified Stormwater Rule has had in this process. It should be noted that the 2021 Unified Stormwater Rule follows an approach that is being implemented by water utilities globally to reduce stormwater runoff. This approach can likely be effective if implemented properly.

Do you project CSO increases or decreases at individual outfalls, as well as at the aggregate level?

While the DEIS presents loading information for individual outfalls as part of the analysis, it is used for the purpose of developing an aggregate load. EPA does not have the tools to perform calculations about

changes at individual outfalls. NYC performs the modeling of the combined sewer systems and CSOs for the Superfund project. There appear to be inconsistencies between model estimates in the DEIS and previous modeling performed for EPA. EPA will ask NYC to explain these inconsistencies.

How do you assess any risk posed by rezoning-related development under the 2021 Unified Stormwater Rule to the canal remedy in the period before the new CSO tanks are operational?

EPA's Record of Decision (ROD) for the Gowanus Canal site anticipated the possibility that the schedules for completing the CSO retention tanks and the in-canal cleanup may not align. In the event that the in-canal work is completed first, the ROD requires that "interim controls, such as temporary solids capture and removal, will be implemented to mitigate sediment from the CSO discharges until the permanent measures have been implemented." In addition, EPA's most recent CSO order requires monitoring to help determine remedy effectiveness and whether and to what degree any mitigation will be required. EPA will also continue to evaluate calculated sanitary flows, drainage, and mitigation of stormwater discharges to the Gowanus canal for proposed redevelopment projects on a case-by-case basis. These actions are all independent of the of the 2021 Unified Stormwater Rule and the proposed rezoning.

Do the updated design guidelines allow sufficient flexibility to ensure that buildings can meet infiltration requirements even where the high-water table poses challenges to water absorption (e.g. through private investments in green infrastructure in the public right-of-way)?

It is EPA's understanding that the 2021 Unified Stormwater Rule does not require infiltration. In cases where infiltration is not possible, retention and release to the combined sewer system at a delayed and slower rate through an on-site storage method (a tank, for instance) is an alternative, and the DEIS discusses that option.

With the projected increase in sanitary flow and the reduction of stormwater under the new rule, what is the anticipated ratio of sewage to stormwater in future CSO loadings compared to present ones? What will the impact be on water quality?

As stated above, EPA has identified apparent errors in some of the DEIS calculations and will be providing comments on the document. EPA will review the revised calculations once the document is revised to address EPA's comments. It is expected that retaining additional stormwater on redeveloped lots will change the sewage-to-stormwater ratio in the combined sewer system during rain events by a small degree, but CSO loading originates from the entire sewershed, and the local changes derived from the proposed development may not be measurable. NYC did not change the pollutant concentrations in its CSO calculations presented in the DEIS for the future case with the 2021 Unified Stormwater Rule. NYC appears to assume there will be no change in discharge pollutant concentrations with the 2021 Unified Stormwater Rule in place and may be relying on a reduction in the volume of discharges to improve water quality in the canal.

Is the city using accurate/sufficiently conservative baseline assumptions for their analysis of anticipated rainfall volumes, and accounting for sites that currently drain directly to the canal and will require new sewer connections?

Watershed modeling performed in support of the Gowanus Canal 2017 Long-Term Control Plan (LTCP) relied on a 2008 model storm year, which was suitable at the time. As stated previously, there are several inconsistencies in the DEIS between modeling performed for the LTCP, for EPA associated with

the remedial design for the CSO retention tanks, and for the DEIS. These inconsistencies need to be resolved.

In September 2020, NYC released its updated "Climate Resiliency Design Guidelines," the primary goal of which is to incorporate forward-looking climate change data in the design of NYC capital projects. NYC has projections for the metropolitan region that anticipate extreme weather will increase in frequency and severity and that the climate will become more variable. Of particular note for the Gowanus Neighborhood Plan, these projections include 1) mean annual precipitation increasing between 4% to 13% by the 2050s and by 5% to 19% by the 2080s and 2) sea level rising by 11 to 21 inches by the 2050s and by 18 to 39 inches by the 2080s.

It is unclear to EPA if NYC expects these estimates to be relied upon as the baseline conditions in instances such as this. Please note that the Gowanus watershed represents just a small fraction of the Red Hook and Owls Head sewersheds, and the consequences of climate change on NYC's infrastructure may pose formidable challenges, separate and apart from increased development in Gowanus.

Assessment of Combined Sewer Overflow-Shed Level Infrastructure Investments, Requirements, and Needs

The following are responses to your specific questions related to CSO-shed level infrastructure investments, requirements, and needs.

How do open space improvements, including canal-front esplanade requirements (including new measures to ensure long-term resiliency) relate to new bulkhead requirements, etc?

While EPA has a national role in encouraging land-use decisions that are resilient and properly reflect needs related to climate change, it is not in the position to comment on local development proposals.

What are the requirements for future development, including elevation requirements to address sea-level rise, rooftop wind, solar, or green roofs, etc?

NYC has been a leader in developing guidance on how to address the consequences of climate change. EPA is not in a position to judge whether this particular project is living up to those expectations.

Are improvements needed to address potential rezoning-related impacts to sewer pipe bottlenecks that contribute to flooding or CSO events in affected sewersheds?

NYC has acknowledged that its sewer collection infrastructure is, in many places, old, deteriorated, and requiring upgrades to address localized flooding. In the immediate vicinity of the canal, it is possible that street sewer upgrades may accompany development. EPA will continue to monitor changes to Gowanus Canal CSO loading, irrespective of the rezoning proposal, to assure that the remedy remains protective over time. This is a small component of NYC's infrastructure issues.

Are there opportunities for streamlining permitting for direct stormwater discharge from private properties at street ends and the use of oil/water separators (as EPA required at the high-level sewer on 3rd Avenue and Lightstone installed voluntarily on its property)?

Any new stormwater discharge to the canal would require a permit from New York State. If the rezoning proposal proceeds, as appropriate, EPA can consult with the New York State Department of

Environmental Conservation (NYSDEC) about streamlining its permitting process.
Flood mitigation is needed at key locations (e.g., 4th and Carroll, which has flooded during the heaviest storms for many decades)

EPA has no direct role in specific flood mitigation decisions.

Review of Proposed Development Projects on Brownfields

Following are responses to your specific questions related to the proposed development projects on Brownfields

Will EPA review individual development applications in advance of permitting, either by mandate or at the request of owners, as was done at the Lightstone Development site, to ensure compliance with the Superfund remedy, stormwater/CSO management, brownfield remediation, and environmental/human health? Because the Gowanus Green development is located on the former Carroll Gardens/Public Place manufactured gas plant (MGP), will EPA's review address safety concerns related to the migration and vaporization of contaminants in the residual coal tar?

Whether or not there is a successful rezoning of the Gowanus neighborhood, EPA expects to have a role in reviewing certain large-scale development projects that have the potential to affect EPA's selected remedy. For the most part, this will include canal-side projects that may wish to separate stormwater for direct discharge to the canal. Under EPAs recent order issued to the city, NYC is required to monitor CSOs and report development projects within the watershed, including those that may substantially change the wastewater/stormwater loading to the canal.

The former MGP site on which the Gowanus Green development is proposed is already being addressed by the New York State Superfund program. EPA and NYSDEC are jointly reviewing the progress of this cleanup. We will present additional information about this project in the near future.

Oversight

Following are responses to your specific questions related to oversight.

How will EPA monitor CSO and other environmental conditions in the Canal over time? Will there be public reporting on this analysis? How could we connect ongoing oversight of the Superfund remedy with ongoing oversight of rezoning-related development and commitments?

EPA's need to monitor the performance of the selected remedy over time will require an ongoing engagement in the community, including monitoring changes to the CSOs over time, to maintain the effectiveness of the cleanup. This is necessary regardless whether the rezoning project moves forward or not.

You ask that EPA coordinate with the Federal Emergency Management Agency (FEMA) and U.S. Army Corps of Engineers (USACE) under the New York State Environmental Quality Review Act (SEQR).

EPA has no official role in the SEQR process, nor the New York City Environmental Quality Review or CEQR process. As we have stated previously, EPA acknowledges NYC's authority to engage in land-use planning and zoning. With that being said, EPA respectfully submits that any rezoning that will impact the canal must proceed in a manner that is protective of human health and the environment, as

envisioned in EPA's Canal remedy. As you know, FEMA, USACE and NYC have been in discussions about large-scale solutions for coastal flooding in New York City, including a possible infrastructure project at the head of the canal. EPA has been part of these discussions, to brief the other parties about the Gowanus Canal selected remedy and to assure that such a project, were it to move forward, would be implemented in such a way that it would not adversely impact the site remedy.

Thank you again for your letter and your continued engagement at the site. If you have further questions, please do not hesitate to contact me or have your staff contact Sabina Byck, Chief, Intergovernmental Affairs Branch, at byck.sabina@epa.gov or (212) 637-3574.

Sincerely,

Walter Mugdan

Walter Mugdan
Acting Regional Administrator

cc: Nydia Vasquez, Congresswoman
Brad Lander, Councilmember
Jabari Brisport, State Senator
Jo Anne Simon, Assemblymember