

SUPREME COURT OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of

DEVELOP DON'T DESTROY (BROOKLYN), Inc., et al.,

Petitioners-Plaintiffs,

- against -

URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE  
STATE DEVELOPMENT CORPORATION, et al.,

Respondents-Defendants.

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:  
: Index No. 104597/07  
: IAS Part 11  
: Justice Joan A. Madden  
:  
: **VERIFIED ANSWER OF**  
: **RESPONDENT NEW**  
: **YORK STATE PUBLIC**  
: **AUTHORITIES**  
: **CONTROL BOARD**

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Respondent-defendant the New York State Public Authorities Control Board (PACB), by its attorney, Andrew M. Cuomo, Attorney General of the State of New York, answers the petitioners-plaintiffs' petition and complaint:

1. In response to paragraph 1 of the petition-complaint, states that it purports merely to summarize the nature of the action, so no response is required.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the petition-complaint.
3. In response to paragraph 3 of the petition-complaint, states that it contains only conclusions of law that do not relate to the PACB, and so no response is required, but insofar as this paragraph may be deemed to allege a basis for relief against the PACB, such allegations are denied.
4. Denies the allegations contained in paragraphs 4 and 5 of the petition-complaint, except admits that the PACB in December 2006 considered the Atlantic Yards Land Use

Improvement and Civic Project, which includes the development of an approximately 18,000 seat arena, a reconfigured and improved Vanderbilt train yard to be used by the Long Island Railroad, and the development of 16 buildings for assorted uses, including but not limited to, residential, office, and retail uses, on a 22-acre site in Brooklyn (the Atlantic Yards Project).

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the petition-complaint

6. Denies the allegations of paragraph 7 of the petition-complaint.

7. Denies the allegations of paragraph 8 of the petition-complaint, except admits that the Empire State Development Corporation (ESDC) has been the lead agency for the Atlantic Yards Project under the State Environmental Quality Review Act.

8. In response to paragraphs 9 through 12 of the petition-complaint, states that they contain only allegations or conclusions of law that do not relate to the PACB, and so no response is required, but insofar as these paragraphs may be deemed to allege a basis for relief against the PACB, such allegations are denied.

9. Denies the allegations (and conclusions of law) contained in paragraphs 13 and 14 of the petition-complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 15 through 18 of the petition-complaint.

11. In response to paragraph 19 of the petition-complaint, states that it contains only conclusions of law that do not relate to the PACB, and so no response is required, but insofar as this paragraph may be deemed to allege a basis for relief against the PACB, such allegations are denied.

12. In response to paragraph 20 of the petition-complaint, states it contains no factual or legal allegations and that no response is required.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 21 through 53 of the petition complaint.

14. In response to paragraphs 54 through 56 of the petition-complaint, states that they contain only allegations that do not relate to the PACB, and so no response is required, but insofar as these paragraphs may be deemed to allege a basis for relief against the PACB, such allegations are denied.

15. Denies the allegations of paragraph 57 of the petition-complaint, except admits that the PACB exists pursuant to Public Authorities Law §§ 50 and 51, and respectfully refers the Court to those statutory provisions.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the petition-complaint, except admits that ESDC maintains an office in New York County.

17. In response to paragraphs 59 through 80 of the petition-complaint, states that they contain only allegations that do not relate to the PACB, and so no response is required, but insofar as these paragraphs may be deemed to allege a basis for relief against the PACB, such allegations are denied.

18. In response to paragraphs 81 through 94 of the petition-complaint, states that they purport to summarize allegedly applicable provisions of the SEQRA and regulations, and are legal conclusions which require no response, and respectfully refers the Court to that statute and

regulations. Insofar as these paragraphs may be deemed to allege a basis for relief against the PACB, such allegations are denied

19. In response to paragraphs 95 through 98 of the petition-complaint, states that they contain only allegations that do not relate to the PACB, and so no response is required, but insofar as these paragraphs may be deemed to allege a basis for relief against the PACB, such allegations are denied.

20. Denies the allegations contained in paragraph 99 of the petition-complaint, except admit that in December 2006 the PACB approved ESDC's financial participation in the Atlantic Yards Project in accordance with Public Authorities Law § 51(3) after determining that there were commitments of funds sufficient to finance the acquisition and construction of the Atlantic Yards Project.

21. Denies the allegations contained in paragraph 100 of the petition-complaint.

22. In response to paragraph 101 of the petition-complaint, states that it purports to summarize the provisions of a regulatory provision, 6 N.Y.C.R.R. § 617.11(c), and respectfully refers the Court to the regulation. Insofar as this paragraph may be deemed to allege a basis for relief against the PACB, such allegations are denied

23. Denies the allegations contained in paragraph 102 of the petition-complaint, except admit that the PACB was not required to make a "written findings statement" under 6 N.Y.C.R.R. § 617.11(c).

24. In response to paragraphs 103 through 110 of the petition-complaint, states that they contain only allegations that do not relate to the PACB, and so no response is required, but

insofar as these paragraphs may be deemed to allege a basis for relief against the PACB, such allegations are denied.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 111 of the petition-complaint, except admits that the PACB in December 2006 considered the Atlantic Yards Land Use Improvement and Civic Project, which includes the development of an approximately 18,000 seat arena, a reconfigured and improved Vanderbilt train yard to be used by the Long Island Railroad and the development of 16 buildings for assorted uses including, but not limited to, residential, office, and retail uses, on a 22-acre site in Brooklyn.

26. In response to paragraphs 112 through 249 of the petition-complaint, states that they contain only allegations that do not relate to the PACB or conclusions of law, and so no response is required, but insofar as these paragraphs may be deemed to allege a basis for relief against the PACB, such allegations are denied.

27. Denies the allegations contained in paragraph 250 of the petition-complaint, except admits that on December 20, 2006, the PACB adopted a resolution approving ESDC's financing of the Atlantic Yards Project in accordance with the Modified General Project Plan only after determining pursuant to section 51(3) of the Public Authorities Law that there were commitments of funds sufficient to finance the acquisition and construction of the Atlantic Yards Project, and respectfully refers the Court to that resolution for its terms.

28. In response to paragraph 251 of the petition-complaint, states that it contains only conclusions of law, and so no response is required, but insofar as this paragraph may be deemed to allege a basis for relief against the PACB, such allegations are denied.

29. In response to paragraphs 252 through 359 of the petition-complaint, states that they contain only allegations that do not relate to the PACB, and so no response is required, but insofar as these paragraphs may be deemed to allege a basis for relief against the PACB, such allegations are denied.

30. In response to paragraph 360 of the petition-complaint, repeats and realleges its responses to paragraphs 1 through 359.

31. Denies the allegations contained in paragraphs 361 through 365 of the petition-complaint.

32. In response to paragraph 366 of the petition-complaint, repeats and realleges its responses to paragraphs 1 through 365.

33. In response to paragraphs 367 through 429 of the petition-complaint, states that they contain only allegations that do not relate to the PACB, and so no response is required, but insofar as these paragraphs may be deemed to allege a basis for relief against the PACB, such allegations are denied.

34. Any allegation in the 429-paragraph petition-complaint that is not specifically addressed in the foregoing and that may be deemed to allege a basis for relief against the PACB is denied.

#### First Objection in Point of Law

35. Petitioners-petitioners lack standing to assert their claim against the PACB.

#### Second Objection in Point of Law

36. Petitioners-plaintiffs' claim under SEQRA against the PACB fails to state a cause of action because the PACB's adoption of the December 20, 2006, Resolution was not an "action"

subject to SEQRA because under Public Authorities Law § 51 the PACB's discretion was limited to determining the sufficiency of commitments of funds for ESDC's financial participation in the Atlantic Yards Project.

Third Objection in Point of Law

37. Petitioners-plaintiffs' claim under SEQRA against the PACB fails to state a cause of action because the PACB's adoption of the December 20, 2006 Resolution was not an "action" subject to SEQRA as it primarily involved the authorization, sale and issuance of Personal Income Tax Revenue Bonds, which under section 68-b(11) of the State Finance Law is not an action under SEQRA.

Fourth Objection in Point of Law

38. Petitioners-plaintiffs' claim under SEQRA against the PACB fails to state a cause of action because given the PACB's history, its singular composition and purpose, and given the earlier legislation appropriating money and granting bonding authority, the PACB's vote to approve ESDC's financial participation in the Atlantic Yards Project was not subject to SEQRA. 6 N.Y.C.R.R. 617.5(a) and (c)(37).

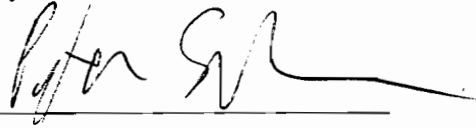
Fifth Objection in Point of Law

39. Petitioners-plaintiffs' claim under SEQRA against the PACB fails to state a cause of action because the PACB was not an "involved agency" under SEQRA because its limited approval of ESDC's financial participation in the Atlantic Yards Project was not an "approval" under 6 N.Y.C.R.R. 617.3(a) and 617.11(c).

WHEREFORE, respondent-defendant the Public Authorities Control Board demands judgment dismissing the petition-complaint and such other relief as this Court deems proper.

Dated: New York, New York  
April 25, 2007

ANDREW M. CUOMO  
Attorney General for the State of New York

By:  \_\_\_\_\_

Peter Siström  
Assistant Attorney General  
120 Broadway, 24th Floor  
New York, New York 10271  
(212) 416-8568

*Attorney for New York State Public  
Authorities Control Board*



**VERIFICATION**

Peter Siström, an attorney admitted to practice in the courts of this state who is not a party to this action, affirms under the penalties of perjury pursuant to CPLR § 3020(d)(2) and 3021 that the foregoing answer of respondent-defendant the New York State Public Authorities Control Board is true to my knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters I believe it to be true.

Dated: New York, New York  
April 25, 2007

A handwritten signature in black ink, appearing to read "Peter Siström", written over a horizontal line.

Peter Siström  
Assistant Attorney General

Index No.: 104597/07 (The Hon. Joan A. Madden, J.S.C.)

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COUNTY OF NEW YORK: IAS PART 11

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Respondents-Defendants.

**VERIFIED ANSWER  
OF RESPONDENT  
NEW YORK STATE PUBLIC  
AUTHORITIES CONTROL BOARD**

**ANDREW M. CUOMO**  
Attorney General of the State of  
New York

**ATTORNEY FOR RESPONDENT-DEFENDANT**  
NEW YORK STATE  
PUBLIC AUTHORITIES CONTROL BOARD (PACB)

**BY: PETER SISTROM**  
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New York, New York 10271

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*Due Service of a copy of the within is  
admitted this \_\_\_ day of April, 2007*