

3.26 RESPONSES TO COMMENTS¹

A. INTRODUCTION

This chapter of the FEIS summarizes and responds to the substantive oral and written comments received during the public comment period on the Draft Environmental Impact Statement (DEIS). The public hearing on the DEIS was held concurrently with the hearing on the project's Uniform Land Use Review Procedure (ULURP) applications. Public review under the ULURP began on March 24, 2008, with the certification of the applications. Comments on the DEIS were received at the public hearing on the ULURP applications and DEIS held on July 23, 2008 at the City of New York Department of City Planning, Spector Hall, 22 Reade Street, and the record for written comments submitted to the New York City Planning Commission (the Commission) remained open through August 4, 2008, the close of the public comment period (see Appendix M for written comments).

Section B identifies the elected officials, community board and organization members, and individuals who commented at the public hearing or in writing; each is assigned a commenter reference number. Section C summarizes and responds to each substantive comment, which are organized by subject area. Where like multiple comments were made on the same subject matter, a single comment combines and summarizes the individual comments. After each comment is a list of the people who made the comment, as referenced in Section B. Where no further elaboration is required to address a comment, or where comments do not relate to the analysis of the proposed project in the DEIS, the response provided is "comment noted."

B. ORGANIZATIONS AND INDIVIDUALS WHO COMMENTED ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)

1. Manhattan Community Board 11 (CB11), written recommendations on ULURP Applications, dated June 2, 2008.
2. New York City Department of Transportation (NYCDOT), written submission dated April 15, 2008.
3. New York City Landmarks Preservation Commission (LPC), written submission dated April 8, 2008.
4. Scott M. Stringer, Manhattan Borough President, written recommendations on ULURP Applications, dated July 2, 2008.
5. Carolee Fink, New York City Economic Development Corporation (EDC), oral statements at public hearing, July 23, 2008.
6. Melissa Mark-Viverito, New York City Council Member, oral statements at public hearing, July 23, 2008.
7. Charles Marcus, Director of Operations, New York City Department of Housing Preservation and Development (HPD), oral statement at public hearing, July 23, 2008.
8. Kerim Odekon, Finance Unit, HPD, oral statements at public hearing, July 23, 2008.

¹ This entire chapter is new for the FEIS.

9. Patrick Khalil, SEIU 32BJ, oral statement at public hearing, July 23, 2008.
10. Anthony Borelli, Manhattan Borough President's Office, oral statements at public hearing, July 23, 2008.
11. Damien Bae, oral statements at public hearing, July 23, 2008.
12. George Sarkissian, District Manager, Manhattan Community Board 11, oral statement at public hearing, July 23, 2008.
13. Gary Spindler, oral statements at public hearing, July 23, 2008.
14. Jay Krantz, New York City Transit, email dated July 15, 2008.

C. RESPONSE TO COMMENTS

GENERAL/PUBLIC REVIEW PROCESS

Comment 1: Community Board 11 expressed its strong objection to proceeding with the ULURP approval for the East 125th Street Development without first designating a developer [see Appendix M]. Throughout our ULURP review we did not receive a detailed summary of a specific project from a specific developer (as we always typically do) – we were not provided any commitments beyond the minimum requirements of the RFP. It is inappropriate to expect a community to approve a project without knowing the details of what will ultimately be developed or the developer's identity. Community Board 11 will continue to request the termination of this project unless all of the conditions [indicated in the Board's Resolution of May 30, 2008] are met and we are again consulted in a formal manner once the final project is selected, with a full presentation by the development team before a meeting of our Full Board, with an opportunity to respond prior to the City Council vote. (1) (4)

Response 1: The proposed program of development and design features of the proposed East 125th Street Development project that were analyzed in the DEIS (see Chapter 2.0 Project Description, Figure 2-7, Illustrative Site Plan, and Figure 2-8, Illustrative Plan – Isometric View) were the result of the extensive East 125th Street Development Taskforce consultation process. The Taskforce was created by the leadership of Manhattan Community Board 11 composed of approximately one dozen representatives of community organizations and elected officials, working with the New York City Economic Development Corporation, the Mayor's Office, the New York City Department of City Planning, the New York City Department of Housing Preservation and Development, and the New York City Department of Small Business Services. Numerous meetings were held with the Taskforce starting in January 2006 to review principles and goals for the project, and to develop site specific guidelines for development that were included in the Request for Proposals (RFP) issued in October 2006. Key features of the project including its majority of affordable housing units, the inclusion of a local development partner, and height limits and other design parameters, directly resulted from this Taskforce input. The design guidelines for the project resulting from the Taskforce consultations are included in DEIS Appendix C.

The DEIS describes and illustrates a reasonable worst case scenario for the development of the project site in Chapter 2.0 (see Figures 2-7 and 2-8) for the purpose of advancing the project's

environmental review, and to illustrate the guidelines prepared for the site. The essential elements of the development as exemplified by the shortlisted proposals now under consideration – the mix of uses, building heights, bulk and massing, level of affordable housing, and the nature and form of its retail uses and open space – reflect the urban design guidelines prepared by the City and Taskforce.

Information on all proposals received was shared with the Taskforce and Taskforce comments were considered as the City advanced the developer selection process. Proposal information was also shared with the Community Board prior to issuing a shortlist. This input enabled the City to refine the proposals in the context of a competitive bidding process, while the overall form and definition of the project remained consistent with the goals and objectives identified early on in the RFP process.

Developer designation was postponed until after ULURP certification in order to keep the competition high among the short-listed developers and to minimize the concessions typically given once designation occurs, such as compromising the amount of affordable housing, open space, and other amenities integral to the project. EDC and HPD are committed to continue working with the Taskforce. Recently, the Taskforce drafted a final recommendation document that was included as part of the City’s “best and final offer” solicitation. Developer designation is expected in early September and the ULURP clock expires in October. During that period, it is expected that the selected proposal will be vetted with the Taskforce. Following designation, with the assistance of the Councilwoman Mark-Viverito’s office, a series of outreach meetings will be conducted so that questions on the project from the public can be addressed.

The developer requirements that are intended to maximize community benefits, as described in the RFP, will be required of any development team that is ultimately selected. The community objectives for the project site that are listed in the comment above -- related to affordable housing, local business development, local job development and the creation of community-focused cultural and public open spaces – have shaped the development of proposals for the project. The development teams under consideration have adhered to these guidelines in their proposals, and those specific proposals were shared with the Taskforce.

Comment 2: The Community Board will not be able to accurately determine if the final project will meet our desired outcomes until after our review period, when the final project is actually selected, thus not providing the Community Board a fair opportunity to review this project. (1)

Response 2: See response above. The project will be vetted with the Taskforce prior to the conclusion of the ULURP process; the Community Board has three members on the Taskforce.

Comment 3: LEED Silver Certification is achieved through use of the East 125th Street Development Community Taskforces’ priorities listed in a memo titled “LEED Points Requirements”. (1, 4)

Response 3: Comment noted. The proposed project is expected to achieve LEED Silver Certification.

Comment 4: This project is reflective of a more than two and a half year community based planning process. In January 2006 the leadership of Community Board 11 created a Community Taskforce composed of local organizations and elected officials, including Borough President Scott Stringer and Council Member Mark-Viverito, to address the community's concerns regarding the development of the site, including affordable housing, economic development, local participation in development and retail, the impact of development on health and services, and promoting arts and culture.

For nearly a year the Taskforce met frequently, posted town hall meetings to solicit input and feedback, and met on a regular basis with the City to establish goals for the project. In October 2006 EDC released the RFP, which reflects the needs, goals and aspirations of both the local community and the City.

In January 2007 RFP responses were received and developers responded favorably to the RFP requirements and preferences. EDC, along with the Mayor's office, Department of City Planning and HPD, met regularly with the Community Task Force to review the proposals. The Taskforce's questions and concerns raised at the review meetings were then included in the City's clarification letters. And responses to those questions and concerns were reported back in subsequent meetings.

This collaboration produced great results and real community participation in the developer selection process, including the selection of three finalists. In September 2007, as the real estate market began to turn, it was determined that in order to maintain the competition between development teams and deliver the project as outlined in the RFP, the City would extend the pre-designation period in response to the project while moving forward with the Land Use process. The selection process was extended and EDC continued to vet the three [developer] finalists' proposals. There were concerns expressed by the Community Board at that time, although there was also support, most notably from Councilwoman Mark-Viverito.

EDC does not see the concerns of CB11 as reflecting a fundamental disagreement over the project. All of the finalist developer teams reflect the intent of the RFP. EDC has passed CB11's recommendations on to the developer teams. However, recommendations of CB11 that differ from the RFP will not be requested of the developers, since those were negotiated and agreed to as a result of a two and a half year process, including ten months of consultation with the community on the goals and guidelines of the RFP.

The Deputy Mayor took their objections into account and decided that the best way to proceed with the project, because of the unprecedented amount of community benefits, was to extend the designation period so that we could deliver the project as envisioned in the RFP. EDC is in active consultation with the Taskforce, which most recently submitted a recommendations

document that EDC will include with its Best and Final Offer of Solicitation. EDC has always committed to consulting with the community Taskforce and involving them in the process.

Designation of the developer is expected shortly after Labor Day. If the City Planning Commission decides to make modifications to the project, then those revisions would need to be incorporated into the developer's program and they would be addressed with the developers. The Deputy Mayor will make the decision over the developer selection. I believe that he will take the recommendations of the Taskforce into consideration in his recommendation. Through the assistance of Councilwoman Mark-Viverito's office, a series of public outreach meetings will be conducted following designation so that questions on the project from the public can be addressed. (5)

Response 4: Comment noted.

Comment 5: I differ in my position with the Community Board and the Borough President. I feel very strongly that we are experiencing an unprecedented process here in the City of New York with regards to the level of engagement at a local level with the community when it comes to a project of this magnitude. Due to that unity within the community, that included the Borough President's advocacy as well as the Community Board, we were able to really scrap the original designation many years ago and the original process, and then start from scratch.

So this Taskforce that has been mentioned consistently has been very aggressively engaged in the whole process, from detailing the RFP to reviewing the proposals to making recommendations. . . As a Taskforce, we have also brought in many different representatives to provide us with guidance as we were developing our ultimate recommendations that were provided about two weeks ago and that are now being shared with the developers. . . So I feel very confident that there has been a lot of community review and community input. And ultimately the designation will happen before the ULURP is completed. I believe, and also hope, that the Borough President and the Community Board, as well as the Taskforce, will present this and vet it more thoroughly with the community, through forums, prior to it coming to a vote at City Council.

Again, I am at odds individually with the Borough President and the Community Board on this, on the way the process has proceeded. But I believe ultimately that the work of the Taskforce is going to leverage the best benefits package for this community on a project of this magnitude.

Lastly, I understand that there are greater issues here. I know that we have some of the owners of the different parcels on 125th Street here and I'm sure they will speak. That is an issue that I feel very strongly about as well, that we really need to come to some sort of resolution on. But that is an issue that would have existed even if they would have followed the standard ULURP process.

Overall, the Taskforce has been meeting and has engaged in a really good process with the City where they have demonstrated good faith in the conversations. And there's been nothing that

leads me to believe that our wishes or our recommendations would not be seriously considered. Once the responses are provided back, the Best and Final Offers from the three finalists, we are going to review that again as a Taskforce. And we ultimately will make a recommendation.

. . . There is very close proximity [between the Taskforce recommendations being conveyed to the developer and the recommendations of the Community Board] because the Community Board has been part of this process for a number of years. A lot of what is provided [in the current Taskforce recommendations] are things that have already been considered and already have been presented as recommendations by the Taskforce. . . the recommendations already made by the Taskforce and that we are asking the developers to speak to in their Best and Final Offer really address the majority of those [recommendations]. (6)

Response 5: Comment noted.

Comment 6: I'm with the SEIU Local 32BJ. With more than 100,000 members in six states, including 70,000 in New York City, Local 32BJ is the largest property service workers union in the country. And just to clarify, we are in favor of the project, though we want to see a responsible developer chosen. So I'm going to deliver a statement from Hector Figueroa, Local 32BJ's secretary/treasurer.

The development of the East 125th corridor has the potential to truly change the face of Uptown Manhattan. And we call on the City to award the project to a responsible developer who will work toward a better future for the local community and the working families of New York. New Yorkers should be leery of one potential bidder, General Growth Properties, which has a history of seeking public subsidies and tax rebates that help finance its development projects. (9)

Response 6: Comment noted.

Comment 7: My name is Anthony Borelli. I'm the Director of Land Use for Manhattan Borough President Scott Stringer [and I am speaking on behalf of myself]. As you know from the Borough President's recommendations, he recommends disapproving this application. Primarily because the ULURP players up to now -- the Community Board and the Borough President's office -- have not had an opportunity to truly review the development program of any of the developers in the way that normally would happen under ULURP. And I might add that the same opportunity may in fact be denied to this body as well.

As much as the process up until now has involved the community, [it] has been good. Our office has been involved since the beginning of the Taskforce when it was created, over just about two years ago. We have been deeply involved in their positions and we will continue to be committed to that community input process. But this is about the ULURP process and about empowering communities to make decisions about land use as envisioned in the Charter.

There are rarely -- in fact I have not seen a ULURP application since I've been at the Borough President's office, and neither at my five years at Community Board 4 -- rezoning applications

that do not have a specific developer accompanying them. And when there were applications that had multiple bidders, there were opportunities to discuss each of those bidders' ideas about what it is they intend to do after the rezoning. So the rezoning actions are clear in terms of the urban renewal area and the land restrictions and what zoning districts we're talking about here.

But there are many aspects of the project that are integral to the project that are all about economic development at the root of this process. What sort of employment programs will this project create? What type of affordable housing will actually be built? We're not talking about what will be preferred, or what will be the optimal mix.

If we knew the developer, we could ask him or her exactly what they intend to do and then ask exactly what financing programs they intend to use. We cannot ask those questions. We cannot get a specific understanding of exactly what the affordable housing component is going to be like. Similarly, we do not know what the local retail commitments are going to be like. We do not know exactly what the local cultural component will be like. We do not know exactly what the open space will be like.

The diagram you see here is the theoretical model of what could happen in each of the bids they have. The Taskforce does not look like this, there is a variation. And, as this body knows, the devil's in the details. And you may look at this theoretically and say in concept it works, but if there were three different proposals here, you'd have specific questions about each of them.

One important thing to consider is that there is a hotel envisioned in the RFP, but it's not necessarily part of the final program. Also in the RFP is a bus depot, a below grade bus depot that would be underneath some of the residential buildings. That may not be part of this project ultimately, at least that's what we are hearing.

So those are two very important components of this project that have big question marks [associated with them] right now. And because we're unable to resolve those questions or because we're unable to have definitive answers from the [developers] who are making these proposals, we are unable to support the rezoning right now.

We would like to see ultimately the project come before the Community Board and the Borough President's office before a final decision is made. We think the Borough Board is the perfect place for that because it includes the Borough President's office.

. . . Once the developer has been designated, it leaves many fewer days to hammer out the details that would ordinarily be hammered out through the ULURP process. So we're cutting down those types of discussions from a normal seven and a half month process to less than two months, and maybe even a few weeks. We don't know if a developer will be selected the day after Labor Day. That's the intention, but we don't know.

. . . When property -- when large economic developments -- get disposed of through EDC, the Borough Board is required to approve the financial terms of that transaction through the 384(b)4

process of the [New York City] Charter. That process would provide an opportunity for the Community Board, the Board President's office and the local [City Council] member to weigh in with full information regarding this project.

Because HPD is technically listed as the lead agency, the project according to HPD and the City does not require the 384(b)4 process. However, we feel that the project has very much been led by EDC. And you've seen it through the amount of representation that they have had here today that they are much in lead and very much in charge of the project. The [project has been] presented publicly with EDC as the project's representative. If this is an EDC project, it should go through the 384(b)4 process in order to enable the Borough Board to weigh in officially on the project before it is all said and done.

We'd still like an official response from EDC as to whether or not they feel 348(b)4 is required or not. Even though HPD is technically at least listed as the lead, we think that EDC in every way has really been in charge of this project. And ordinarily EDC projects go through the 348(b)4 process . . . it's that process that I think is actually really important from a policy perspective, because we are talking about disposition of City property. And we do have a responsibility to making decisions not just from a land perspective but also from a financial perspective, to truly consider whether or not it is in the City's and best public interest to dispose of property in a particular way, and how it should be used and to what under what financial terms. (10)

Response 7: Comment noted. See Responses 1 and 2. Regarding 384(b)4 approvals, because this project is primarily an affordable housing project, HDP is the lead applicant for the ULURP application and the project is going through HPD's disposition process. 384 (b) 4 is not a required approval.

Comment 8: My name is Damien Bae. I am the property owner for the corner parcel on 126th Street and Third Avenue. I represent the dry cleaners that is currently there right now . . . [and that has been there since 2005 following the property's use by a sheet metal company].

Before I begin I just want to say that I heard a lot of talk about community involvement and community and so forth and working with the community. Yet I just want to point out -- reiterate again -- that Community Board 11 has unanimously rejected this proposal.

This urban renewal plan has been in effect since 1968. And back when this plan was first adopted, certain parcels were left out because they were at the time viable existing businesses that did not call for any further development.

Now, 40 years after the fact, the City, instead of looking to reduce the scope of the urban renewal zone, plans to include our property in the urban renewal plan. More than 33 percent of the land [125th Street to 126th Street between Second and Third Avenue] is indeed privately owned. There are income producing -- not only just viable but thriving -- businesses currently operating on the parcels. Now the City is planning to include these viable parcels in the urban renewal

zone, which to me makes no sense. It goes against the original intent of the urban renewal plan. The only thing that it really does do is facilitate the use of eminent domain for private gain by creating an attractive package for a large developer.

And basically my opinion is this: if you want to spur development, instead of planning these massive development projects which only end up artificially injecting themselves into a community that may or may not be ready for such a large development, why not just simply change the zoning and let natural development occur. There has been tremendous interest in the area by smaller developers with smaller projects that are truly reflective of the needs of the community that have been stifled thus far because of the existence of the East 125th Street project.

. . . [Regarding the timeframe that we realized that our parcel was to be included in this plan], we found out about it a week prior to [our] closing, and we only found out because the lumber yard next to us, which now is vacant land, was closing up and going out of business. We asked them why they were closing up. And they said that there was a big project and the City was going to buy their property. We actually did all the title searches. Apparently, because the parcel on the corner [the dry cleaners] was not included in the original urban renewal zone (40 years ago it was still a sheet metal company or some other use), it didn't show up. Now we are getting included to help facilitate this project. (11)

Response 8: Comment noted. See Response 10.

Comment 9: My name is George Sarkissian. I'm the district manager of Community Board 11. I'll be speaking on behalf of our Community Board and our Chair, Robert Rodriguez. The East 125th Street Development project will undoubtedly have an enormous impact on our community of East Harlem. Development on the scale that is proposed has not happened in East Harlem for a generation, and it presents our community with a unique opportunity to plan and build something that will serve the residents of East Harlem.

It was with great enthusiasm that Manhattan Community Board 11 created and participated on the East 125th Street Development Community Taskforce over the past two years. This model of community based planning led to the development of an RFP that incorporated most of the community's goals for this site. Setting goals without being provided an opportunity to review the end product does not afford this community the rights and respect it deserves to see a project through to fruition. It was for that reason that Community Board 11 voted unanimously to disapprove, with conditions, the East 125th Street Development ULURP applications. We believe allowing this project to move forward without first designating a developer is a form of disrespect to the community that will now inherit this project.

While the Community Taskforce hopes to continue to review the remaining proposals and participate in the selection process, the Community Board, in its City Charter mandated role, was not able to review the final project. The selected project will include specifics and details not shared with the community by EDC when they instead presented us with the broad goals of the

RFP during our ULURP review period. CB11 was not afforded the decency of meeting a selected developer and reviewing a specific set of commitments. The Community Board could not in good conscience support a project and trust a process that we have now been excluded from.

In lieu of a detailed, final project to vote on, our Community Board felt obligated to still represent the needs of our community and provide EDC and City Planning with a set of conditions in our ULURP resolution that specify our expectations for each and every component of this proposed development.

Community Board 11 also disapproves without condition the use of eminent domain as part of this project. The property owners invested in our community by choice. And they should not be removed without freely choosing to leave. As East Harlem develops and opportunities increase, forcibly relocating these businesses and property owners to only benefit a future property owner is unfair.

We formally request that the City Planning Commission require the selected development team to appear before a meeting of the full board of Manhattan Community Board 11 before the City Council votes on the project, to allow our Community Board an opportunity to review what we could not review during our 60 day review period, specifically the full selected proposal with all its details. If we choose to include Community Board's interim land use review process, it is important that they are afforded a real opportunity to assess the project's impact on the communities they serve.

We request that the model of land use review used for the East 125th Street Development Project never again be utilized in future City projects. And that we again work cooperatively in the future to ensure that the development of City-owned properties occurs in a responsible and respectful manner that allows for true community based planning. (12)

Response 9: Comment noted. See Responses 1 and 2.

Comment 10: My name is Gary Spindler, and I own the property at 213-223 East 125th Street. My company has been involved in this property for many years, specifically 1994, first as tenant and now as landlord. Currently two tenants occupy the building. One tenant runs a successful auto repair shop on the 10,000-square foot ground floor. An auto repair shop has been in that location for approximately 30 years now. In the same amount of space on the second floor Addicts Rehabilitation Center, a not-for-profit organization, offers recovery services to the local residents.

EDC is proposing to add our property to the urban renewal zone through the East 125th Street Development Plan, and is claiming that the area is blighted. I respectfully request that my property not be included in the urban renewal zone. My property is not blighted or in peril. On the contrary, the property has been occupied with quality tenants who provide necessary services to area residents.

213 East 125th Street has never been part of the urban renewal site plan. I believe the only reason EDC and HPD want to include our property in the urban renewal zone is to make it easier for the taking. Manhattan Community Board 11, as you just heard, has reached a similar conclusion as they have supported our rights as local property owners by voting its disapproval of the East 125th Street Development.

The City has been unable to develop this property for the past 40 years. This plan is due to expire at the end of this year. Why do they need time to extend it now? I say rezone the area and let private property owners decide the fate of their parcels and, in turn, the fate of the area.

The City wants to rezone and give the benefits of the higher FAR to some future unknown developer. My site is well maintained and we pay our taxes. There is no basis to say that our property is blighted. With more generous zoning, there is much more that we can do in the immediate future.

EDC has contacted us about a possible parcel swap. We investigated and found that the parcel they sited is roughly 50 percent smaller than our current site, and is in a much inferior location. I find it hard to believe that this is the best effort EDC can provide to the property owners on the existing site.

We would like to see any documents that establish why and when these properties were carved out of the 125th Street corridor rezoning. Particularly after the River To River [125th Street Corridor Rezoning and Related Actions] study was done. Is EDC actively hiding documents that show it is trying to keep the property values of our parcel low?

In any case, the City's failure to consider all of the alternatives as was required under the environmental law, including allowing property owners to redevelop their own properties with enhanced zoning, makes our possible inclusion in the urban renewal area an illegal taking of our property.

Once again, my property has never been part of the urban renewal site and should not be included. Please vote against the inclusion of our property in the urban renewal zone and the East 125th Street plan.

. . . [EDC's] reaction [to our indication that the proposed property swap is unacceptable to us] was "okay, we are going to make you an offer." I said okay, on what basis (on the upzone that you are proposing or on the current zoning)? We'll get an appraisal. They stated that they are going to do the appraisal based on the current zoning. And the conversations went back and forth. I said that I felt that was a little unfair, but if that's how the process goes I guess we'll continue the process and see how everything plays out. They have not made a specific offer.

. . . Nobody has explained to me the process. We have been left on our own. If I hadn't been so proactive, EDC might have never really reached out to me. I can speak for myself, Damien and

some of the other property owners in the area -- they're facing the same thing – in stating that EDC is just trying to shuffle papers behind the scene and is not really coming out in full force by this time in making us proper offers in this process.

. . . Once again I'd like to add that we bought my property when it was in an undesirable area. And now all of a sudden when things are growing in the area, they want to upzone and give the benefit of my hard work over to an unknown developer. (13)

Response 10: EDC is actively seeking to acquire all non-City owned parcels. EDC anticipates that the selected developer will help acquire any remaining sites. The City will reserve the right to use eminent domain as a last resort. Should condemnation be required, an Eminent Domain Procedure Law (EDPL) hearing, which is the first stage of the process, would take place most likely at the end of January 2009.

With regard to the comment above related to the zoning boundary of the 125th Street Corridor Rezoning and Related Actions project, the decision not to include the project site of the East 125th Street Development in the 125th Street Corridor Rezoning and Related Actions project rezoning area was based on DCP's determination during project planning and through meetings with HPD and EDC that an appropriate and more regularly shaped rezoning boundary would not include the East 125th Street Development project site. This determination was based on DCP's preference to establish zoning district boundaries that follow avenues or streets rather than following individual lot lines, and the differing intention of the proposed rezoning associated with the East 125th Street Development as opposed to the recently approved 125th Street Corridor Rezoning and Related Actions project.

Comment 11: EDC has been in touch with the private land owners on the project site. They're trying to negotiate purchasing the properties from them. The City would like to avoid use of eminent domain and I think there is a very good chance that we will be able to avoid it, and that they will purchase [the necessary properties] and that HPD's condemnation won't be necessary. (7)

Response 11: Comment noted.

LAND USE, ZONING AND PUBLIC POLICY

Comment 12: The Church located on the southeast corner of East 127th Street and Third Avenue, as not planned as part of this project, should be removed from the rezoning area of the ULURP. (1)

Response 12: The proposed rezoning boundaries were prepared in consultation with the New York City Department of City Planning (DCP). Although the site of the United Moravian Church is not currently proposed for development, the rezoning of the entire block would result in a more consistent zoning boundary than would be the case if the Church lot was excluded. Establishing a zoning boundary that follows individual lot lines to exclude only one lot on an

otherwise full block rezoning is generally not the practice of DCP. While the Church is not part of the proposed action, development of its site in the future should it be proposed would be permitted pursuant to the proposed zoning, consistent with the development on the remainder of the block that is currently proposed.

Comment 13: No more than two towers not exceeding 210 feet in height should be located on Second Avenue or East 125th Street. (1)

Response 13: As shown in DEIS Figure 2-7, Illustrative Site Plan, and Figure 2-8, Illustrative Plan – Isometric View, the proposed project contains two buildings facing East 125th Street with heights of 150 feet, and one 210-foot building facing East 125th Street and Third Avenue. The design balances the need to maintain onsite open space with the programmatic space requirements outlined in the RFP and design guidelines, which were prepared in consultation with the East 125th Street Development Taskforce. As a wide avenue with taller existing development within several blocks to the south, East 125th Street is considered to be an appropriate location for the building heights that are proposed.

Comment 14: A hotel must be included in the project. (1)

Response 14: The proposed action includes a hotel as an option.

Comment 15: The proposed rezoning will allow significantly greater density than the surrounding area. The area directly to the north of the site is in an R7-2 district with a 3.44 density with no height limit. The area to the south is a C4-4D which has a 5.4 base FAR bonusable up to a 7.2 through the inclusionary housing bonus with a 120 foot height limit. The proposed rezoning does not contain any contextual controls codified in the Zoning Resolution, as is typical of recently adopted rezonings. Furthermore, unlike the zoning of immediately adjacent areas, the proposed zoning for this site does not provide any mechanisms for realizing community benefits, such as the inclusionary housing and arts bonus provisions of the 125th Street Special District. The proposed rezoning represents a significant upzoning that is out of context with the neighborhood. The East Harlem community has expressed a willingness to support greater density at this site *if* that density is channeled towards meeting community goals such as affordable housing and local economic opportunity, and if contextual controls are established to provide some urban design regulation. Without such assurances, the area would be more sensibly rezoned for a lower-density district consistent with surrounding character. Since no final development program has been established at this time, and since the proposed zoning district provides no contextual controls or mechanisms to meet community benefits, the proposed rezoning should not be approved. (4)

Response 15: As described in DEIS Chapter 3.1 (Land Use, Zoning and Public Policy) and DEIS Chapter 3.7 (Urban Design), the project site is considered to be an appropriate location for the use, form and density of development that is proposed. Relying on use of inclusionary zoning to promote affordable housing on the project site, similar to the 125th Street Special District, would result in far fewer affordable units being developed, since the current proposal

includes a majority of the units as affordable, and does not include market rate housing development. Rezoning the project site to a lower density district would not facilitate the development of up to 1,000 units of affordable and middle income housing, and the array of commercial uses that would bring substantial numbers of workers and visitors to the area. With regard to contextual zoning, while the proposed zoning does not include contextual districts, the RFP guidelines call for active ground floor uses, limits on building heights, appropriate setbacks and other urban design features that reflect principles of contextual zoning. Each of the development proposals under consideration includes new buildings that adhere to these principles.

Comment 16: Generally, the area within the rezoning area that is city-owned is substantially vacant and blighted. The area warrants governmental intervention to ensure development and to prevent the vacant properties from impairing sound development of the area. However, several properties within the rezoning contain viable businesses on private property that may not qualify as blighted property as individual properties. Since no final project has been proposed for consideration, there is no Urban Development Area Act “Project” to approve. It is also impossible to determine whether financial aid is “necessary to enable the project to be undertaken,” as Section 691(4) of Article 16 of the General Municipal Law requires for UDAA designation, since no final program has been established and no completed *pro formas* have been prepared for review. Approval of UDAA and UDAAP designation is therefore premature and should not be approved until a final development program has been proposed and subjected to public review. (4)

Response 16: Comment noted.

Comment 17: The modifications proposed to the Urban Renewal Area would create design controls if the properties are acquired by the City, and would allow for acquisition of private properties. In order to approve the amendment to the Urban Renewal Area, the City must determine that any proposed financial aid is necessary, that the plan meets the needs of the municipality as a whole and conforms to comprehensive community planning. These findings cannot be satisfied without disclosure of a final development plan including final financial information and proposed programs. Further, using the Urban Renewal Area as an urban design control for the site allows for contextual controls only if the city acquires the property. If the city is unable to do so, the sites on those blocks would be rezoned to a high-density district without contextual controls. Development of these sites could then be radically out of context with the neighborhood. A more rational approach would be to use the existing Large Scale Plan, or an extension of the 125th Street Special District, to apply zoning bonuses, contextual controls and transparency requirements to property owners whether or not the City acquires the property. (4)

Response 17: Comment noted.

Comment 18: The Commission must certify that an easement is not necessary for the new Second Avenue Subway at this site. A letter from the MTA has been presented as evidence that

an easement is not required at this site, and deference should be granted to the MTA in this judgment. (4)

Response 18: Comment noted.

Comment 19: A previous Large Scale Plan was developed for a portion of the Urban Renewal Area, which included a portion of this site. The Large Scale Plan, which was not implemented on the site, limits uses and density on the site. Removing this site from the Large Scale Plan would not create any non-compliance in the rest of the Large Scale Plan, and therefore the modification merits approval. (4)

Response 19: Comment noted.

Comment 20: 384(b)(4) review would allow for regulatory oversight and provide a venue for considering whether the ultimate disposition is in the public interest, post-ULURP. Using this process is consistent with other EDC/City-agency partnership projects such as the Bronx Terminal Market and more recently Unity Funeral Home in Central Harlem. For the Bronx Terminal Market, the Department of Small Business Services could issue a lease agreement without being subject to 384(b)(4), but EDC was the executor of the lease and therefore the project was subject to 384(b)(4) approval. Similarly, Unity Funeral Home received disposition and UDAA/UDAAP designation by HPD and was disposed to EDC. The project also required 384(b)(4) review. (4)

Response 20: Comment noted. See Response 7.

Comment 21: The City controls about 80 percent of the project site. And that 80 percent also includes the MTA property. So about 19 percent is privately owned. (5)

Response 21: Comment noted.

OPEN SPACE

Comment 22: The project [must] include a minimum of 25,000 sq.ft. of at-grade landscaped/green public open space. (1)

Response 22: Consistent with the RFP and urban design guidelines for the project site that were prepared in consultation with the East 125th Street Development Taskforce, the total amount of proposed onsite publicly accessible open space is 12,500 square feet of open space. Landscaping features have not yet been identified.

Comment 23: Proposals must include a minimum contribution of \$2.5 million for area parks and waterfront, and the designs should keep waterfront and park accessibility in mind. (1) . . . A complete project must include contributions to the two funds outlined in the RFP. (4)

Response 23: As part of their RFP response, developers were encouraged to offer a contribution, which was not specified, to enhance adjacent parks and waterfront areas.

AFFORDABLE HOUSING

Comment 24: Affordable housing must be maximized, with all units conforming to the RFP guidelines of 30 percent low income, 35 percent moderate income, and 35 percent middle income. (1)

. . . A complete project must contain permanently affordable housing, with as near to 100 percent affordability as possible utilizing affordable housing programs. (4)

Response 24: As indicated on pages 1-3 of the DEIS, the proposed residential units would be split as follows: approximately 30 percent targeted to low income households, 35 percent targeted to moderate income households, and 35 percent targeted to middle income households. It is intended that all units be divided between homeownership and rental units. No market rate units are contemplated in the proposed development program.

Comment 25: Middle income units must target households with incomes between 100% and 130% of AMI, instead of the 150% AMI limit in the RFP which is on the extreme fringe of the community's income distribution. (1)

Response 25: As stated in the developers RFP, the income limits for middle income housing of up to 150 percent of the area median income (AMI) is intended to include such units to ensure the feasibility of the housing component as a financially viable development, without cross-subsidy from other components of the development.

Comment 26: The Community Preference requirement for affordable housing should be limited to those CB11 residents that have maintained residency within the boundaries of CB11 for at least 5 years. (1)

Response 26: As stated in the developers RFP, marketing preferences for the proposed housing units include applicants who are residents of the community board in which the project is being built, for 50 percent of the apartments.

Comment 27: Both rental and homeownership units must be permanently affordable. (1)

Response 27: As stated in the developers RFP, affordable units must comply with the terms of any subsidy programs that are utilized. These may include New York Housing Development Corporation (HDC) Low Income Affordable Marketplace Program (LAMP), New Housing Opportunities Program (New HOP), and Cooperative Housing Program; the City of New York Housing Preservation and Development Mixed Income Rental Program (MIRP) and New Construction Participation Loan Program (PLP); New York State Affordable Housing

Corporation (NYS AHC) AHS Subsidy; and, the New York State Division of Housing and Community Renewal (DHCR) Low Income Housing Trust Fund Program (HTF). EDC has further requested that all respondents to the RFP provide permanently affordable housing units.

Comment 28: Affordability for homeownership should be preserved permanently through the use of either deed restrictions, a community land trust or a limited equity cooperative model. (1)

Response 28: See Response 27 above. The affordable units must comply with the terms of any subsidy programs that are utilized. Further, EDC has expanded the requirements of the RFP to include permanent affordable housing. The mechanism for providing permanence will be determined at the time of project financing.

Comment 29: . . . Each proposal is proposing a slightly different mix of affordable housing programs. They have the entire arsenal of City and State programs available to them. Part of the RFP requirements were for them to be competitive in their subsidy requests. Our standard programs apply for these sites. So the subsidies range [for a tax credit unit] from about \$50,000 from HPD and \$60,000/\$55,000 from HDC and \$50,000 to 60,000 from HPD, to about \$45,000 a unit on some of the home ownership units. So there's quite a wide range depending on the actual program that they are using.

. . . [HPD] would definitely encourage [developers] to reach out to the State in providing additional affordability . . . and to provide noncompetitive backup scenarios so that we can ensure that the project gets done even if they are not successful in their competitive financing [through the state's programs].

Because this is a priority site, [HPD] encourages [the developers] to reach out to as many different sources as possible. It's a big site, and [will be developed] over a stretch of time. So as things change, people might need to go to the State, [or] to the City.

. . . There is a preference for [development teams] that meet tiers within [the income] brackets, so that they're not all at the top of each bracket. But the units are distributed. So in a sense they are more affordable than the brackets that are outlined. (8)

Response 29: Comment noted.

RETAIL AND OFFICE USE

Comment 30: Retail space [should be] limited to 350,000 sq.ft. so as not to dominate the project; national retail be located on East 125th Street and/or Third Avenue between East 125th and East 126th Streets only. (1) . . . A complete project must contain local retail space with affordable rents. (4)

Response 30: As stated on page 2.0-10 of the DEIS, the proposed action includes approximately 470,000 square feet of retail/entertainment space (including 300,000-square feet of anchor retail,

and approximately 120,000 square feet of specialty retail/entertainment space including 50,000 square feet of local retail). Guidelines from the RFP issued in October 2006 call for a retail program that avoids replicating or directly competing with existing and planned retail uses in the surrounding area, and orienting retail toward the street and outdoor public spaces to provide a comfortable pedestrian-friendly environment along the public streets and public open space. A maximum of 300,000 square feet of national anchor retail with individual businesses limited to 125,000 square feet is specified in the RFP guidelines. In terms of the retail tenants, the RFP guidelines state that leasing preference should be given to W/MBE businesses that are certified by DSBS for the 50,000 square feet of retail space dedicated to small and locally-owned businesses. In addition to other specified limitations on the proposed individual businesses, it states that preference will be given to proposals that offer any of the following in order to achieve the goal of attracting and retaining small and locally-owned businesses: 1) below-market rents; 2) tenant improvement allowances; or, 3) other financial inducements.

While the Illustrative Site Plan illustrated in Figure 2-7 includes retail on the ground floor of buildings facing East 125th Street, East 126th Street, Second Avenue and Third Avenue, the RFP guidelines also specify that ground floor commercial space be primarily situated throughout the Project Site along Second Avenue, Third Avenue and East 125th Street, with market rate commercial space concentrated in the high trafficked sections of the Project Site, including East 125th Street and Third Avenue. The guidelines also specify that the majority of retail square footage be located on Parcel B. (1)

Comment 31: At least 10% of the office space [should be] set aside for local non-profits, with rent significantly reduced below market rate. (1)

Response 31: Comment noted. The RFP guidelines call for approximately 30,000 square feet of cultural space for use by not-for-profit arts uses, but do not specify a target for below-market-rate office space dedicated to local non-profits. As stated in the RFP, preference for selection of a development team will be given to proposals that support cultural arts programming by providing at least one of the following: 1) below-market rents; 2) tenant improvement allowances; or, 3) other financial inducements. The RFP further specifies that efforts to engage the local community must be part of any proposed cultural space and space should be dedicated for the use of local not-for-profit organizations, with internship, corporate sponsorship and collaboration with proposed retailers encouraged. The RFP requires that at least one Local Development Partner have an ownership interest in the cultural component of the development.

Comment 32: The development teams must provide funding to fit-out the cultural space. (1) . . . A complete project must contain dedicated cultural space for local non-profits. (4)

Response 32: Comment noted. The RFP does not address the funding for the fit-out of proposed cultural space. However, respondents are encouraged to include cultural programming including performing arts space, film/video exhibition space, visual arts exhibition space and media arts space for not-for-profit uses.

LOCAL HIRING

Comment 33: The project must include a Local Development Corporation with an equity interest in addition to the existing local development partners. (1)

Response 33: The RFP requires that development teams include a joint venture team with at least one member being a Local Development Partner that is ideally both a locally-based development company and W/MBE as certified by the Department of Small Business Services (DSBS). For the small/local retail component of the project, the RFP requires at least one Local Development Partner with an ownership interest in the small and locally-owned retail component of the development.

Comment 34: Provide a minimum of \$10 million for the Local Investment Fund to support local businesses locating in project with start-up capital, low-interest loans, grants, etc. (1)

Response 34: Comment noted. The RFP guidelines encourage respondents to establish a local investment fund -- to be administered by DSBS in conjunction with the Task Force and local elected officials -- that will focus on small businesses and entrepreneurs from Manhattan Community Board #11. No specific amount is specified for a potential one-time capital endowment or annual cross subsidy derived from market-rate commercial rents at the project site, though purposes for such a fund are specified as: marketing of local businesses in the proposed development; a low-interest revolving loan program for small businesses moving into the development; grants to support culture and arts education at the development reflecting East Harlem's ethnic diversity; and seed capital for start-up businesses and local expansion at the new development, and job training programs for local residents to be hired at the new development.

Comment 35: The final proposal must commit to hiring locally for all jobs created through the development of this project and agree to the following local hiring targets: (1)

- a. Retail jobs – 75% locally hired
- b. Office Managerial jobs – 25% locally hired
- c. Office Clerical jobs – 50% locally hired
- d. Building Maintenance jobs – 75% locally hired
- e. Hotel related jobs – 75% locally hired
- f. Construction jobs – 25% locally hired

Response 35: Comment noted. Although the RFP does not call for specific target percentages by worker category, it does specify that W/MBE/Local Hiring and Utilization Plans (LHUP) be submitted, and indicates that such plans that maximize local hiring will be looked at favorably. The RFP requests that the LHUP detail the anticipated targets for local hiring as well as the number, type, and wage level of post construction jobs to be created at the project site.

Comment 36: The Development Team must work with unions to commit upfront to utilizing local labor to help meet our local hiring targets, and work to create apprenticeship opportunities for local residents so that they may benefit and be prepared for future projects as well, and

provide specific opportunities to local community residents that do not have high school diplomas. (1)

Response 36: Comment noted. Development team proposal requirements as specified in the RFP include a W/MBE/Local Hiring and Utilization Plan (LHUP) that includes methods for encouraging provision of training programs, apprenticeships, and other professional development opportunities for local hiring and participation in local trade fairs, as well as working with existing local hiring programs and community organizations. The local community is defined in the RFP as preference for Manhattan Community District #11, and a secondary preference for Manhattan Community Districts #9, #10, and #12, and Bronx Community District #1.

Comment 37: As the project construction will be phased, each separate building should have a separate MWBE architect partner in the design (preferably local firms); no fewer than 3 MWBE Architectural firms must be Joint Ventured with the developer's selected Architect for this project. (1) . . . A complete project must include criteria for local and MWBE and local hiring. (4)

Response 37: Comment noted. The RFP calls for development teams to submit a LHUP that addresses both W/MBE and local business participation in the project, and local hiring. Although the guidelines do not call for a specific number of MWBE Architectural firms or Joint Venture firms, or a specific W/MBE/Local Hiring target by project phase, per the RFP Development Goals and Limitations, the W/MBE component of the LHUP must identify local businesses seeking construction work on the project, the sizing of bid packages to facilitate participation of smaller enterprises, and methods of encouraging local hiring during construction including recruitment, training and other professional development opportunities, targeting unemployed or underemployed segments of the population in recruitment, local trade fair participation, coordination with proposed tenants to create new local hiring programs, working with existing local hiring programs and community organizations to foster training programs in the pre-development phase, and implementation and monitoring measures. The RFP requires that development teams include a Joint Venture team with at least one member being a Local Development Partner that is ideally both a locally-based development company and W/MBE as certified by DSBS. As specified in the RFP, if unachievable, the Local Development Partner must qualify as either a locally-based development company or M/WBE as certified by DSBS.

In terms of the retail tenants, the RFP guidelines state that leasing preference should be given to W/MBE businesses that are certified by DSBS for the 50,000 square feet of retail space dedicated to small and locally-owned businesses.

Comment 38: MWBE firms, contractors and professional services [should be] utilized totaling 30% to 40% of the total contract value of the entire project. (1)

Response 38: Comment noted. See response above. The RFP guidelines do not specify a target contract value that W/MBE firms, contractors and professional services must be utilized for.

Comment 39: Provide and fund a job training component that utilizes a First Source Hiring System that commits to first source new employment from the local community. (1)

Response 39: Comment noted. First Source Hiring System would typically require the creation of hiring systems intended to maximize employment opportunities for disadvantaged residents, and local residents, and require that employers pay prevailing wages and benefits sufficient to support a family. While the RFP calls for an LHUP that maximizes local hiring, targets currently unemployed or underemployed segments of the population, and details the number, type and wage level of post-construction jobs to be created by the project, wage requirements are not specified.

HISTORIC RESOURCES

Comment 40: The LPC is in receipt of the DEIS dated 3/19/08 and concurs with the text regarding archaeological resources. Regarding architectural resources, Table 3.6-1, “Historic Resources” on page 3.6-6 requires the following corrections. Reference 1, the NY Public Library, 125th St. Branch, has been calendared by the LPC for public hearing. The additional items 4 and 5 do not appear eligible for LPC designation. (3)

Response 40: Chapter 3.6, Historic Resources, has been updated in the FEIS to reflect this new information.

TRAFFIC AND PARKING

Comment 41: Based on our comments dated December 21, 2007 requiring changes in the analysis, please provide the HCS files for the No Build and Build PM peak hour scenarios for the following locations: a. West 126th Street @ Lenox Avenue; b. Madison Avenue @ East 125th Street; and, c. Frederick Douglass Boulevard @ 125th Street.

Please verify that the signal timings for Manhattanville mitigated conditions, for the above listed locations, were used in the HCS analysis for the No Build and Build PM peak hour scenarios. (2)

Response 41: Copies of the requested HCS outputs were provided to DOT for review. The analyses reflect the signal timings for Manhattanville mitigated conditions where appropriate. It should be noted, however, that mitigation for the 125th Street Corridor Rezoning and Related Actions project included major changes to many of the intersections along the 125th Street corridor, including prohibiting left-turns between Third Avenue and Fredrick Douglass Boulevard. As these measures were incorporated in the East 125th Street Development project’s No-Build condition, the mitigation signal timing changes for the Manhattanville project were therefore not incorporated where mitigation measures for the two earlier projects were found to be in conflict.

Comment 42: The 125th Street Corridor Rezoning EIS identified eight unmitigated locations. This project has shown that all impacted locations have been mitigated. However, locations at: 1) Second Avenue @ East 125th Street, 2) Lexington Avenue @ 125th Street, and 3) Lenox Avenue @ West 126th Street are disclosed as unmitigated in the 125th Street Rezoning. Please explain how the impacted locations were mitigated if they are unmitigated in the Rezoning EIS. (2)

Response 42: It is important to note that not only are the project increments and traffic assignment patterns for the two projects substantially different, but the No-Build conditions also differ as each of the two projects includes the travel demand from the other in its No-Build scenario. Therefore, not only do the significant adverse traffic impacts generated by each project differ in magnitude (and in some cases lane group), but the No-Build baseline to which each impacted location must be mitigated is also not comparable between the two projects. For example, at the intersection of Lexington Avenue and East 125th Street, the eastbound PM peak hour significant traffic impact from the 125th Street Corridor Rezoning and Related Actions project result from the addition of 107 vehicles per hour (vph) to this approach. By contrast, the PM peak hour traffic impact resulting from the East 125th Street Development project at this same location would result from the addition of only 63 vph. Although the 125th Street Corridor Rezoning and Related Actions project would result in unmitigable traffic impacts at the three locations listed above, it proved feasible to mitigate the impacts from the incremental change in traffic resulting from the East 125th Street Development project at these same three locations based on criteria of the *CEQR Technical Manual*.

TRANSIT AND PEDESTRIANS

Comment 43: V/C ratios should be calculated using the following rounded hourly capacities based on actual throughput:

AM

- 4: 13 trains per hour
- 5: 13 trains per hour
- 6: 23 trains per hour

PM

- 4: 13 trains per hour
- 5: 12 trains per hour
- 6: 21 trains per hour

Capacity should be calculated using the same multiples used previously: each train has ten cars, each with a guideline capacity of 110.

In terms of the proposed mitigation for the NE street stair (S4) at 125th Street and Lexington Avenue, the stair should be widened from the existing 5' 10" to either 7' 6" or 8' 6", with the exact width determined during the design process. In order for the mitigation to be effective, the landing at the bottom of the stair must be widened to 7' 6" / 8' 6" as well. (14)

Response 43: The comments above have been incorporated into the Final EIS revisions.