Chapter 25: Response to Comments on the Draft Scope of Work and DEIS[1]

A. INTRODUCTION

This chapter summarizes and responds to all substantive comments on the Draft Scope of Work (Draft Scope) and the Draft Environmental Impact Statement (DEIS) for the 53 West 53rd Street project made during the public review period. For the Draft Scope, these consist of comments spoken or submitted at the Draft Scope public meeting on November 18, 2008, as well as written comments that were accepted by the lead agency through December 3, 2008. For the DEIS, comments consist of spoken or written testimony submitted at the public hearing held by the New York City Planning Commission (CPC) on July 22, 2009, as well as written comments received during the public comment period, which closed on August 3, 2009. Written comments received on the Draft Scope and DEIS are included in Appendices C and D, respectively.

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

B. LIST OF OFFICIALS AND INDIVIDUALS WHO COMMENTED ON THE DRAFT SCOPE OF WORK

ELECTED OFFICIALS

1. Honorable Scott Stringer, Manhattan Borough President, oral testimony delivered November 18, 2008, and written submission dated November 18, 2008 (Stringer)
2. Honorable Liz Krueger, New York State Senate, 26th Senate District, oral testimony delivered November 18, 2008, and written submission dated November 18, 2008 (Krueger)
3. Honorable Richard N. Gottfried, Member of Assembly, 75th District, oral testimony delivered November 18, 2008, and written submission dated November 18, 2008 (Gottfried)
4. Honorable Daniel R. Garodnick, New York City Council, 4th District, oral testimony delivered November 18, 2008, and written submission dated November 18, 2008 (Garodnick)

[1] This chapter is new to the FEIS.

COMMUNITY BOARDS

5. John Mills, 2nd Vice Chair, Manhattan Community Board 5, oral testimony delivered November 18, 2008, and written submission dated November 18, 2008 (Mills)

INDIVIDUALS

6. Franklin Montgomery, resident of Regent House, oral testimony delivered November 18, 2008 (Montgomery)
7. Daly Reville as read by David Achelis, resident of 38 West 56th Street, oral testimony delivered November 18, 2008, and written submission dated November 18, 2008 (Reville)
8. David Schneiderman, resident of 15 West 55th Street, oral testimony delivered November 18, 2008, and undated written submission (Schneiderman)
9. Anita Rubin, resident of 15 West 55th Street, oral testimony delivered November 18, 2008, and written submission dated November 18, 2008 (Rubin)
10. Wanda Chan, general manager of Warwick Hotel, oral testimony delivered November 18, 2008 (Chan)
11. John Horinek, chief engineer of Warwick Hotel, oral testimony delivered November 18, 2008 (Horinek)
12. G. Paul LeBlanc, Interim General Manager of the Warwick New York Hotel, written submission dated December 2, 2008. (LeBlanc)
13. Warren Chiu, director of Warwick Hotel, oral testimony delivered November 18, 2008 (Chiu)
14. Veronika Conant, President West 54-55 Street Block Association and resident of 45 West 54th Street, oral testimony delivered November 18, 2008, and written submissions dated November 18, 2008 and December 2, 2008 (V. Conant)
15. Leah Gordon, resident of 45 West 54th Street, oral testimony delivered November 18, 2008 (Gordon)
16. Francis Conant, resident of West 54th Street, oral testimony delivered November 18, 2008 (F. Conant)
17. RitaSue Siegel as read by Gelina Marchanco, Vice President of West 54-55 Street Block Association, oral testimony delivered November 18, 2008, and written submission dated November 21, 2008 (Siegel)
18. Hugo Hoogenboom, resident of 45 West 54th Street and member of West 54-55 Street Block Association, oral testimony delivered November 18, 2008 (H. Hoogenboom)
19. Edith Hoogenboom, resident of 45 West 54th Street and member of West 54-55 Street Block Association, oral testimony delivered November 18, 2008 (E. Hoogenboom)
20. Violetta Mandick, resident of West 54th Street, oral testimony delivered November 18, 2008 (Mandick)
21. Mahlia Rockefeller, resident of West 53rd Street, oral testimony delivered November 18, 2008 (Rockefeller)

22. Jean Bullock, resident of 55 West 55th Street, oral testimony delivered November 18, 2008 (Bullock)
23. Annete Rosen, co-chair of the Arts and Landmarks Committee of the Women's City Club of New York, oral testimony delivered November 18, 2008, and written submission dated November 18, 2008 (Rosen)
24. Jane Tsighis, resident of 22 West 56th Street, oral testimony delivered November 18, 2008 and written submission dated November 18, 2008 (Tsighis)
25. Justin Peyser, resident of 45 West 54th Street, oral testimony delivered November 18, 2008 (Peyiser)
26. Joseph Sarno, resident of 45 West 54th Street, oral testimony delivered November 18, 2008 (Sarno)
27. Marilyn C. Hemery as read by Roderick Griffith, president of 27 West 55th Street Co-Op board, oral testimony delivered November 18, 2008, and written submission dated November 17, 2008 (Hemery)
28. William Shea, resident of 25 West 54th Street, oral testimony delivered November 18, 2008 and written submission dated December 3, 2008 (Shea)
29. Maria Bortoluzzi, written submission dated December 3, 2008 (Bortoluzzi)
30. Clyde Butler, resident of 17 West 54th Street, written submission dated December 1, 2008 (Butler)
31. Andrea Sirota, resident of 77 West 55th Street, undated written submission (Sirota)
32. Cliff Strome, resident of 382 Central Park West, written submission dated December 2, 2008 (Strome)
33. Francine Lembo, resident of 35 West 54th Street, written submission dated November 24, 2008. (Lembo)
34. Leopold Godowsky III, resident of 17 West 54th Street, written submission dated November 30, 2008. (Godowsky)
35. Charles Steinberg, resident of 45 West 54th Street, written submission dated December 1, 2008. (Steinberg)

C. RESPONSE TO DRAFT SCOPE COMMENTS

PROJECT DESCRIPTION

Comment 1: Who owns the development site? Why has the zoning lot merger not yet occurred? (Shea)

Response: The development site is owned above a certain plane by W2005 / Hines West Fifty-Third Realty, LLC and below that plane by The Museum of Modern Art (MoMA). The zoning lot merger does not need to occur until the proposed actions are approved, prior to the commencement of construction.

Comment 2: Air rights transfer is a shell game for something that would not be allowed otherwise. (Tsighis)

Response: The New York City Zoning Resolution (ZR) contains provisions for special permits pursuant to ZR Section 74-79 and 74-711 that allow for the transfer of air rights from landmark sites provided that certain conditions are met. For the proposed project, development rights from the University Club would be transferred to the development site pursuant to ZR Section 74-79, and additional development rights from St. Thomas Church would be used to develop the project pursuant to ZR Section 74-711. In connection with the use of these development rights, the proposed actions, and the resulting proposed project, are subject to review under the Uniform Land Use Review Procedure (ULURP) and City Environmental Quality Review (CEQR). In addition, both the proposed actions and project are subject to extensive review by the New York City Landmarks Preservation Commission (LPC).

The purpose of the ZR sections that allow the transfer of development rights from landmark buildings to other sites for development is to provide a mechanism whereby the City's landmark structures, which often have available development rights that cannot be used on their sites because of the properties' landmark protection, can make use of the value of their development rights while ensuring that the City's landmark structures are protected and maintained.

ANALYSIS FRAMEWORK

Comment 3: Under the rules of CEQR, it is necessary for the applicant to project how many additional visitors the expanded museum could accommodate in the baseline projections for the as-of-right environmental impacts. With a more accurate baseline projection, the full extent of the environmental impacts of the proposed actions could be understood. (V. Conant, Stringer)

Response: As stated in the Draft Scope of Work, absent the proposed actions, the applicant will develop the development site with one of two scenarios—the Previously Approved Project or the Expanded Development Scenario. In both these scenarios, the same amount of additional gallery and storage space for MoMA will be provided as in the proposed project. Therefore, there would be no increase in museum visitorship with the proposed project over conditions in the future without the proposed project.

Moreover, as discussed in the *Museum of Modern Art Technical Memorandum* dated March 23, 2007 (CEQR No. 00DCP007M, ULURP Nos. C00649ZMN, N000650ZRM), which was prepared in connection with the review of the Previously Approved Project, the expansion of the museum is not expected to result in a significant change in museum visitorship. By extending the West End galleries devoted to its modern and contemporary collection, MoMA expects to alleviate the current crowded conditions, primarily in the fourth and fifth floor

painting and sculpture galleries. MoMA has stated that it uses both internal and external audience research analyses to plan for future attendance levels. MoMA advises that these studies have proved to be accurate in projecting future attendance. For example, studies of projected attendance accurately predicted the growth of attendance after completion of the most recent expansion in 2004. MoMA's research at that time anticipated that base attendance would grow from the 1.6 million visitor level pre-expansion, to an average reopening year attendance level of approximately 2.5 million visitors; the actual four-year average since the museum reopened in 2004 was 2.57 million visitors.

While the last expansion included a major overhaul and significant expansion of the entry sequence of the museum allowing for more visitors to enter the galleries, the proposed expansion of the West End galleries is a lateral gallery expansion and will not alter or increase in any way the entry capacity; no new entrances or exits are being added, nor will there be an expansion of MoMA's coat check availability. MoMA expects base attendance will remain substantially at the current levels, with annual fluctuations depending on the specific temporary exhibition schedule and exogenous macroeconomic variables. It is not anticipated that the proposed gallery expansion will materially affect base attendance levels. For the proposed hotel and residential uses, the EIS will analyze the projected increment of new hotel visitors and residents compared to conditions in the future without the proposed project.

Comment 4: All environmental study areas should compare to the existing conditions, as defined in the *CEQR Technical Manual*. (V. Conant) Environmental studies should compare multiple circumstances: existing conditions, conditions as they would be in 2013 without any development, as they would in 2013 under each of the two alternative as-of-right options, and as they would be in 2013 with the proposed development in place. (V. Conant, Shea) The EIS studies should be based upon a comparison as if nothing is developed, which is the current status of this development lot. (Shea)

Response: In disclosing impacts, the EIS considers the proposed project's potential adverse impacts on the environmental setting. Because the proposed project would be operational in 2013, its environmental setting is not the current environment, but the future environment. Therefore, the technical analyses and consideration of alternatives assess current conditions and forecast these conditions to 2013 for the purposes of determining potential impacts. The EIS will provide a description of "Existing Conditions" for the 2008 analysis year and assessments of future conditions without the proposed project ("Future Without the Proposed Project") and with the proposed project ("Probable Impacts of the Proposed Project"). The Future Without the Proposed Project in all technical areas assumes that none of the discretionary actions are approved. In this case, and in accordance with established CEQR methodology, in the future without the project, the EIS analyses will consider either of two as-of-right projects that can

be built without any additional discretionary approvals. These two projects are referred to as the Previously Approved Project and the Expanded Development Scenario. Since the project sponsor intends to build one of the two projects if the proposed project is not approved, these projects, and not a vacant lot, represent the most appropriate baseline condition for evaluating the proposed project's incremental impacts. To determine the potential impacts of the proposed project, the Future With the Proposed Project will be compared to each of the future "No Build" scenarios (i.e., the future with the Previously Approved Project and the future with the Expanded Development Scenario).

Comment 5: The as-of-right condition should not be considered as the No Build scenario. The scope of work should consider a smaller alternative that would meet MoMA's goals. (Peyser)

Response: The applicant has stated that it would build either the Previously Approved Project or the Expanded Development Scenario absent approval of the proposed actions. Therefore, in accordance with CEQR methodology, these are appropriately considered as the Future without the Proposed Project against which the proposed actions are compared. Both scenarios are smaller than the proposed project in both square footage and building height: the Previously Approved Project is 258,097 gross square feet (gsf) rising to a height of 285 feet, and the Expanded Development Scenario is 508,012 gsf rising to a height of 1,089 feet. In comparison, the proposed project would contain 786,562 gsf of floor area and would rise to a total height of 1,250 feet.

Comment 6: The study area for all analyses should be expanded to encompass a 1-mile radius (except for the traffic analysis, which should be larger—see Comment 32). (Mills) The area of study proposed for the EIS is too limited. Because the proposed development involves so much bulk and such a great height, the radius of the area within which impacts are to be studied needs to be increased from ¼-mile proposed in the draft EIS scope to a minimum of ½-mile; moreover, where circumstances warrant, it should be extended beyond that. (V. Conant, Shea)

Response: The study areas for all analyses will follow *CEQR Technical Manual* guidance. As such, all study areas are based on the geographic area likely to be affected by the proposed action. In response to this comment, the study area was expanded for urban design and visual resources to include a ¼-mile radius and to consider other locations from which the building would be visible, such as Central Park. Further, the shadow analyses take into consideration the full length of the incremental shadows of the proposed project.

LAND USE, ZONING, AND PUBLIC POLICY

Comment 7: A building of this magnitude on a midblock location violates the basic principles of New York City zoning and good urban planning. It should not be allowed. (Gottfried, Sarno, Steinberg) This building, which should not be allowed on the midblock, will further erode the Preservation Subdistrict of the Midtown District, which MoMA has been eroding for years. (V. Conant) This inappropriately sized and situated building would be a mistake. The building needs a more appropriately designed building for the Preservation Subdistrict that harmonizes with the historic character of the surrounding neighborhood. (Rosen)

Response: The land use, zoning, and public policy analysis will include a description of relevant public policies, such as the Preservation Subdistrict of the Special Midtown District, and will assess the proposed project's consistency with zoning and public policy.

Comment 8: The land use analysis should include a history of the study area since the opening of MoMA. This will document the zoning changes, increased residential and commercial construction, and destruction of historic worthy buildings. (H. Hoogenboom) The EIS should fully document the development history of the site and the study area *since* the founding of MoMA. This should include (1) the removal of parts of the area around MoMA from the Preservation Subdistrict; (2) other zoning changes and exceptions; (3) the construction of residential and office space not for MoMA's use; and (4) the demolition of landmark-worthy buildings like the City Athletic Club on West 54th Street, and the town houses on West 53rd and West 54th Street, resulting in plans for a building mid-block on a small lot without height limits. (V. Conant, Shea)

Response: As described in the Draft Scope of Work, the land use analysis will provide a concise development history of the development site and the land use study area surrounding the development site.

Comment 9: Building to the lot line would be unattractive and not engaging. The most important thing is the ground level and the building's lack of recesses is antithetical to the City's intent. (Tsighis)

Response: The proposed actions include a special permit pursuant to Zoning Resolution (ZR) Section 74-711 for a waiver of pedestrian circulation requirements, which would enable the proposed building to be built to the lot line on both West 53rd and West 54th Street, without recesses for pedestrian circulation. It should be noted that the building complies with the applicable streetwall regulations, which require the maintenance of a consistent streetwall up to a height of 85 feet above the sidewalk. The land use, zoning, and public policy analysis will consider the impacts of the proposed relatively minor pedestrian circulation

waiver. Additionally, the urban design analysis will evaluate the proposed building's urban design and its compatibility with the surrounding neighborhood.

SOCIOECONOMIC CONDITIONS

Comment 10: Will the people living in the residential units, or the commercial tenants, pay less in taxes? (Shea)

Response: As described above, the *CEQR Technical Manual* will serve as the general guide on the methodologies and impact criteria for evaluating the proposed project's potential effects on the various environmental areas of analysis. The *CEQR Technical Manual* guidelines for a socioeconomic analysis do not consider whether the residents or commercial tenants of the proposed project would pay fewer taxes than other area residents. According to the *CEQR Technical Manual*, the five principal issues of concern with respect to socioeconomic conditions are whether a proposed project would result in significant impacts due to: (1) direct residential displacement; (2) direct business and institutional displacement; (3) indirect residential displacement; (4) indirect business and institutional displacement; and (5) adverse effects on a specific industry.

COMMUNITY FACILITIES

Comment 11: A building of this size will overwhelm the area's services. (Krueger)

Response: The community facilities analysis will examine the proposed project's potential effects on the provision of services provided by community facilities that are public or publicly funded and are available to the community. The CEQR analysis examines the potential impacts on existing facilities.

There are two general circumstances that trigger the need for a community facilities analysis. The first circumstance is a direct effect, which occurs if a proposed project would physically alter a community facility. The proposed project would not result in a direct effect because it would not alter a community facility. The second circumstance is an indirect effect. An indirect effect would result from increases in population, which create additional demand on service delivery. The *CEQR Technical Manual* includes thresholds to determine if detailed analyses are necessary to determine potential indirect impacts. As stated in the Draft Scope of Work, the proposed project would not exceed any of the specific thresholds that indicate the need for detailed community facilities analyses.

Comment 12: Response times for emergency vehicles must be studied in real time. (Krueger) Fire and police will not be able to get across West 54th Street and there will be

serious delays in response times due to project-related traffic. (Butler, Harrison, Montgomery, Rosen, Rubin, Schneiderman, Strome) The analysis should consider public safety impacts. (Gottfried, Mills)

Response: The assessment of police and fire protection services will follow the methodologies outlined in the *CEQR Technical Manual*. As described in the Draft Scope of Work, a detailed analysis of police and fire protection services is not warranted because the proposed project would not directly affect either a fire house or a precinct house. While a detailed analysis is not required, information on the location of the existing fire and police facilities that serve the development site will be identified in the EIS.

FDNY, NYPD, and emergency service vehicles, when responding to emergencies, are not bound by standard traffic controls and are able to access sites by maneuvering around and through congested areas. Because of this, they are less affected by traffic congestion.

Comment 13: The EIS needs to study the cumulative impact of the proposed project and other developments in the immediate area on schools within Community Board 5. A number of new projects have increased the population within the district, but no new elementary or intermediate schools have been constructed. (V. Conant, Mills, Shea)

Response: According to the *CEQR Technical Manual*, the demand for community facilities is directly related to the type and size of the new population generated by the development resulting from the proposed project. A detailed schools analysis is warranted if a proposed project would generate more than 50 new elementary/middle school or more than 150 high school students. As stated in the Draft Scope of Work, the proposed project's residential component would generate approximately 48 elementary and middle school students, which is less than the CEQR threshold. Therefore, a more detailed public schools analysis is not warranted and will not be included in the EIS.

Comment 14: The EIS needs to study the cumulative impact of the proposed project and other developments in the immediate area on the area's library needs, particularly with the temporary closure and reduction in size of the Donnell Library. (Mills)

Response: As described in the Draft Scope of Work, a detailed library analysis is warranted if a proposed project would result in a greater than 5 percent increase in the ratio of residential units to libraries in the borough. For Manhattan, this is equivalent to a residential population increase of 901 residential units. The proposed project's residential component is well below this threshold. Therefore, a detailed analysis of the proposed project's impacts on surrounding libraries is not warranted and will not be included in the EIS.

OPEN SPACE

Comment 15: Community Board 5 has very low open space ratios. The EIS should study the open space impacts associated with the proposed project. The Mayor's PlaNYC recommends 1.5 acres of open space for every 1,000 residents. (V. Conant, Mills, Shea)

Response: The *CEQR Technical Manual* recommends performing an open space assessment if a project would have a direct effect on an area open space or an indirect effect through increased population size. Typically, an assessment is conducted if the proposed project's population is greater than 200 residents or 500 employees. Because the proposed project would exceed the CEQR thresholds, the EIS will contain a detailed open space analysis.

Comment 16: Open spaces will be filled with an absence of natural light, an increase in the volume of noise from additional loading docks, an increase in traffic (both automobile and pedestrian) and the added congestion caused by construction crews and related debris. (Sirota)

Response: The EIS will include a detailed open space analysis. This analysis will evaluate the potential for direct impacts on publicly-accessible open spaces (e.g., effects from project shadows) that could occur as a result of the proposed project.

SHADOWS

Comment 17: The EIS analysis should adhere strictly to the *CEQR Technical Manual*, which states that the longest shadow cast during the year is 4.3 times the height of a building. Based on this, the project's shadow would fall deep into Central Park. The EIS must include a study of the shadows cast into Central Park. (V. Conant, Harrison, Hemery, Krueger, Mills, Rosen, Shea, Sirota) The shadows study must also include every historic resource in the neighborhood eligible for the State and National Registers of Historic Places. (V. Conant, Rosen) The shadows study must include not only the Rockefeller Apartments at 17 West 54th Street but also the buildings directly across from the proposed building—35, 37, 39, 41, 43, and 54 West 54th Street. (Gottfried)

Response: As described in the Draft Scope of Work, the environmental analysis will include a detailed shadow assessment following the *CEQR Technical Manual* guidelines. The analysis will first include a screening analysis that shows the maximum extent of project shadows and identifies any publicly-accessible open space, sunlight-dependent historic resource, and important natural feature in the path of the proposed project's shadows. State and National Register-eligible resources as well as State and National Register-listed properties and New York City Landmarks are considered in the category of historic resources. Based on

the preliminary screening, the analysis will analyze in detail those resources that may be affected by project shadow, including Central Park.

Comment 18: The developer must conduct independent shadow studies, which are imperative to assess what the adverse effects will be in terms of access to light and air on structures and open space in the vicinity. (V. Conant, Gottfried) The project will adversely affect the amount of light and air at the Warwick Hotel. (LeBlanc) The building will take away sunlight and make the area dark and depressing. (Bullock, Harrison, Rubin) The building will block sunlight, which will exacerbate seasonal affective disorder. What provisions will be made for the loss of sunlight? (Hemery)

Response: The shadow analysis will follow the *CEQR Technical Manual* guidelines. Shadow increases on publicly accessible open space, sun-sensitive historic resources, and important natural features will be identified and assessed. If necessary, mitigation measures will be identified. However, the *CEQR Technical Manual* does not include guidance to determine how a proposed project would or would not exacerbate seasonal affective disorder and that will not be considered.

HISTORIC RESOURCES

Comment 19: The context of existing historic resources needs to be preserved. As such, the historic resources study area should be expanded to at least 800 feet since this project could overwhelm the historic resources surrounding the project site. (E. Hoogenboom) The study area for the historic resources analysis should be increased from 400 feet to at least 1,000 feet from the site so that the project's effects on the context of Midtown's scarce historic resources can be understood; the project will dwarf the surrounding buildings. (V. Conant)

Response: The proposed study area of 400 feet is appropriate. In its review of the proposed project, LPC has determined that there is no visual relationship between St. Thomas Church and the proposed project or between the University Club and the proposed project since these resources are approximately 470 to 670 feet away. Given that it has been determined that there is no visual relationship between the proposed project and these resources more than 400 feet away, the proposed study area of 400 feet is appropriate. Further, there would be more intervening buildings between the proposed project and historic resources at a distance of 800 feet.

Comment 20: St. Thomas Church will be overwhelmed by this new development. (E. Hoogenboom)

Response: See response to Comment 19, above.

Comment 21: The building should be redesigned so as to harmoniously relate to the adjacent historic and landmarked buildings, resulting in a more appropriate fit for the Preservation Subdistrict of the Special Midtown District. (Bortoluzzi, Rosen)

Response: The relationship between the proposed building and historic buildings in the study area will be considered in the historic resources analysis of the DEIS. However, as stated in response to Comment 19, LPC, in its review of the project, has determined that there is no visual relationship between St. Thomas Church and the proposed project or between the University Club and the proposed project since these resources are approximately 470 to 670 feet away.

Comment 22: The developer needs to provide a written preservation plan, which is imperative to assess whether the new tower will relate harmoniously to the surrounding area and what the adverse effects will be in terms of scale and location. (Gottfried)

Response: Restoration and Continuing Maintenance Plans for the St. Thomas Church and the University Club were approved by LPC in May 2008. LPC issued Certificates of No Effect for the work contemplated in these plans on October 6 and November 28, 2008, respectively. A restrictive declaration to be recorded against each property will require compliance with these approved Restoration and Continuing Maintenance Plans.

Comment 23: LPC approved the sale of air rights, citing that the University Club would use the monies to build a balcony demolished at the beginning of the 20th century. No one alive today has ever seen that missing balcony. This sudden passion for it is all about money (Steinberg)

Response: Comment noted. In a letter dated November 28, 2008, LPC noted that in reaching its decision to issue a favorable report to CPC regarding the continuing maintenance program for the University Club and regarding the relationship between the landmark and the proposed project, the Commission found that the proposed restorative work would bring the University Club up to sound first-class condition, would aid in the building's long-term preservation, and that the implementation of a cyclical maintenance plan will ensure the continued maintenance of the building in a sound first-class condition.

URBAN DESIGN AND VISUAL RESOURCES

Comment 24: The Sculpture Garden wall dominates the pedestrian experience on West 54th Street and should be reopened to provide visual access to the garden. (Reville)

Response: The urban design and visual resources analysis will consider the effects of the proposed project on the urban design and visual resources of the surrounding area in comparison to conditions in the future without the proposed project.

Since the Sculpture Garden is an existing resource, it will be described in the existing conditions analysis. No changes to the existing Sculpture Garden wall are included in the proposed project.

Comment 25: The EIS should carefully study the impact of this project on the environment of the street. West 54th Street between Fifth Avenue and Avenue of the Americas is one of the few outstanding residential streets left in midtown Manhattan and is part of the Preservation Subdistrict. (V. Conant, Reville, Shea) The proposed development seems incompatible with the general tenor and streetscape of these few low-rise midtown blocks. (Harrison)

Response: As described above, the urban design and visual resources analysis will consider the effects of the proposed project on the urban design and visual resources of the surrounding community. Furthermore, the neighborhood character analysis will consider how the proposed project could affect the elements that contribute to neighborhood character. See the response to Comment 26.

NEIGHBORHOOD CHARACTER

Comment 26: The building would be the same height as the 102-story Empire State Building—currently the tallest building in New York City. It would be grossly out of scale with the other buildings in the area, including several individual landmarks on West 54th Street. (Bortoluzzi, V. Conant, E. Hoogenboom, Krueger, Mills, Reville, Rockefeller, Schneiderman, Shea, Godowsky) The building's design is unattractive and out of character with the existing neighborhood character, which is defined by residential apartments and old world charm. (Schneiderman)

Response: As stated in the Draft Scope of Work, neighborhood character is determined by a number of factors, including land use patterns, the characteristics of its population and economic activities, the scale of its development, the design of its buildings, the presence of notable landmarks, and a variety of other physical features that include noise levels, traffic, and pedestrian patterns. The neighborhood character chapter will consider whether the proposed project could have moderate effects on several of the elements that contribute to neighborhood character or that in combination could have an effect on neighborhood character, and will assess the potential impact of the proposed project on the character of the study area. The neighborhood character analysis will consider the proposed project's relationship with surrounding land uses, including the historic and visual character of the surrounding area.

INFRASTRUCTURE, SOLID WASTE AND SANITATION SERVICES, AND ENERGY

Comment 27: The baseline for assessing the impact of the proposed development on solid waste and sanitation services should include the other planned developments in the area. (V. Conant, Shea)

Response: The infrastructure analysis will follow the *CEQR Technical Manual's* guidelines. As described in the Manual, the solid waste analysis will describe the project's waste management features and quantify the incremental quantity of waste that the action would generate. As such, the analysis will quantify the incremental change in waste generated by the proposed project as compared to the Previously Approved Project and the Expanded Development Scenario.

Comment 28: A building of this size will overwhelm the area's infrastructure. (Butler, Harrison, Krueger, Rosen, Rubin, Sirota) The sewer system and existing infrastructure is not adequate to handle a project of this size. (Bullock, V. Conant, Hemery, Schneiderman)

Response: The EIS analysis will follow the *CEQR Technical Manual* (pages 3L-5, 3L-6, 3M-3, 3M-4, and 3N-1) in determining the need for a detailed infrastructure analysis. As stated in the Draft Scope of Work, the EIS will describe the existing sewer system serving the development site. The analysis will describe existing flows to the Water Pollution Control Plant (WPCP) serving the study area as well as the average annual monthly flow to the WPCP. The analysis will estimate the sanitary sewage generation for the proposed project. The effect of this incremental demand will be assessed to determine if the proposed project would result in any impacts on operation of the WPCP.

Comment 29: The EIS should analyze a trash compactor as part of the waste management plan. This would reduce the amount of trash on the streets. (Garodnick) What will the trash collection schedule be and where will it take place? (Chan, Shea) All the waste from MoMA, Museum Tower, and other buildings is picked up on West 54th Street, with six existing loading docks. How much more garbage can you collect and pile on the street? (Lembo)

Response: As stated in the Draft Scope of Work, the solid waste and sanitation services analysis will follow *CEQR Technical Manual* guidelines. This analysis will assess the project's generation of solid waste and demand for sanitation services. The analysis will describe existing and expected future solid waste disposal practices, including any future waste management techniques utilized by the proposed project to reduce waste generation. Finally, the analysis will assess the impacts of the proposed project's incremental solid waste generation on the public and private solid waste collection disposal systems.

Comment 30: It is necessary to evaluate the adequacy and safety of the electric grid and access to steam. (V. Conant, Shea)

Response: The energy chapter's analysis will estimate the proposed project's energy demand as compared to the demand expected by the Previously Approved Project and the Expanded Development Scenario.

Comment 31: Consideration should be made for the project's effects on cable and coaxial cable, telephone and fiber optic lines. (Shea)

Response: The proposed project's effects on cable, coaxial cable, telephone, fiber optic lines, or internet services are beyond the scope of CEQR.

TRAFFIC AND PARKING

Comment 32: West 53rd and 54th Streets are designated as Midtown THRU streets due to their high traffic volumes, and both streets are already severely congested by existing development and institutions. Therefore, the evaluation of the likely traffic and parking impacts must be as conservative as possible. The EIS must study existing and projected river-to-river traffic flows on both week and weekend days at multiple time-periods. (V. Conant, Krueger, Shea) The traffic analysis should look beyond a ¼-mile radius and consider a study area extending to Third Avenue, if not a river to river study area. (V. Conant, Garodnick, H. Hoogenboom, Mills, Rockefeller, Rubin, Shea) The study area should be expanded to include all of Community Boards 4, 5, and 6. (Gottfried) The traffic study area should look at pedestrian and traffic hot spots. (Peyser)

Response: In accordance with the *CEQR Technical Manual*, the evaluation of potential transportation-related impacts begins with a projection of incremental vehicular, transit, and pedestrian trips attributable to the proposed actions. If these incremental trips are expected to exceed the CEQR analysis thresholds, appropriate study areas, considering background conditions, would be defined for analysis of the relevant transportation facilities. As stated in the Draft Scope of Work and as will be demonstrated in the DEIS, in comparison to the two as-of-right development projects, incremental trips resulting from the proposed actions are not expected to exceed the CEQR analysis thresholds to warrant further detailed operational analyses.

Comment 33: The EIS must evaluate existing and projected traffic patterns during major events (many of which attract thousands of visitors) at MoMA and other large neighborhood institutions. (Krueger)

Response: Absent the proposed actions, the applicant has stated that it will develop the development site with one of two scenarios—the Previously Approved Project or the Expanded Development Scenario. In both these scenarios, the same

amount of additional gallery and storage space for MoMA will be provided as in the proposed project. Hence, background conditions associated with MoMA are not relevant in determining analysis needs for this EIS if the CEQR trip estimate screening described above in the response to Comment 32 demonstrates that detailed operational analyses would not be required.

Comment 34: West 54th Street currently has six loading docks, with a seventh proposed to accommodate the new building. This street is already heavily taxed with delivery and through traffic and with the associated noise and congestion from these deliveries. Therefore, an innovative loading dock solution must be incorporated into the project, and the EIS must examine loading dock issues. As part of this, overall figures about loading dock use, including pick up and delivery, should be included. (V. Conant, Gottfried) In addition, the EIS should study alternatives to adding a seventh curb cut, such as: a drive through, below ground loading dock (LeBlanc, Krueger, Rosen); a head-in/head-out loading dock option that could connect to an existing loading dock (Chan, Garodnick, Tsighis); a below-grade loading dock (Siegel); the combined use of the existing loading docks since MoMA does not use all its existing loading docks (Siegel); a loading area integrated with the existing MoMA loading docks and opened as through truck passageway between 53rd and 54th Streets (Reville); or a loading dock on West 53rd Street (Siegel). An equal allocation of loading dock space between West 53rd and West 54th Street should be provided. (LeBlanc)

Response: The project's loading dock is required by zoning, and evaluation of loading dock operations is part of the building design process. If a detailed traffic analysis is not warranted, loading, standing, and parking practices are not examined under CEQR. Nonetheless, the project's loading operations will be described in the EIS for informational purposes. With regard to integrating the proposed building's loading dock with MoMA's existing loading docks (one for artwork and the other for trash disposal and other museum operations), the proposed building's different delivery practices (i.e., types and schedule of deliveries) and security requirements would make such shared operation infeasible.

If any significant adverse impacts associated with loading dock activities are identified, other loading dock alternatives, including a through-block loading dock, may be considered in the EIS. However, the addition of a curb cut on West 53rd Street is not permitted by the NYC Zoning Resolution, and NYCDOT prohibits driveways over subway vaults and ConEd vaults, which occupy almost the entire frontage of the development site along 53rd Street.

Comment 35: The EIS should take into account the impact of loading, standing, and parking practices on these streets, including the effects of delivery trucks, buses dropping off students at MoMA, private cars and limousines during MoMA

corporate functions. A plan must be developed to handle the street traffic and the multitude of deliveries and pickups so that West 54th Street does not continue to be negatively impacted. (V. Conant)

Response: The EIS will evaluate the potential traffic and parking impacts associated with the proposed project. Most of the conditions described in the comment and those related to MoMA are part of background conditions that are not subject to the CEQR-required impact analyses. If a detailed traffic analysis is not warranted, loading, standing, and parking practices are not examined under CEQR. Nonetheless, the project's loading operations will be described in the EIS for informational purposes.

Comment 36: The project will increase vehicular and pedestrian traffic congestion. (Bullock, Rubin, Godowsky) Traffic going east on West 54th Street already blocks traffic on Avenue of the Americas, and the project will exacerbate congestion. (F. Conant, Harrison)

Response: The EIS will provide estimates of incremental traffic attributed to the proposed actions. As stated in the response to Comment 32, it is expected that the proposed project would not generate enough vehicular trips to warrant a detailed analysis or result in the potential for significant adverse traffic impacts.

Comment 37: Current traffic and pedestrian conditions need to be evaluated to create a baseline condition. (Rosen)

Response: The baseline for the environmental review in this EIS is the future condition without the proposed project, which will be either the Expanded Development Scenario or the Previously Approved Project. If the incremental trips attributed to the proposed project do not warrant the need for a detailed analysis, in accordance with the *CEQR Technical Manual*, no further evaluation of baseline or future operating conditions is warranted.

Comment 38: The analysis should take into account the number of curb feet that will be needed for the hotel for all forms of delivery, idling, and drop-off. (V. Conant, Shea)

Response: The specific analysis described in the comment is beyond the scope of this EIS and is not required under CEQR. Similar to other hotels that operate in New York City, the proposed hotel's curbside patron loading/unloading requirements will be evaluated and discussed with the New York City Department of Buildings (NYCDOB) and NYCDOT during building permit approvals to ensure proper accommodations. Other deliveries would be made to the building's proposed loading dock and along curbsides similar to current practices used by other hotels and buildings nearby.

TRANSIT AND PEDESTRIANS

Comment 39: Though the development site may currently be a vacant lot, it does play an important role as a queuing area for museum visitors. Therefore, the applicant should study how the loss of this space as a visitors' queuing area would affect pedestrian conditions and then develop a plan to adequately address any overflow. (Krueger, Stringer) The museum's queue strains existing sidewalk capacity. (Stringer) The EIS should include a quantified pedestrian analysis. Lines extend around the block. The EIS should analyze a public through block lobby or a public plaza to accommodate patrons. (Garodnick, Siegel) The queue must not be allowed on West 54th Street where it would bar access to apartments and restaurants. (Lembo)

Response: Absent approval of the proposed project, the applicant has stated that it will develop the development site with one of two as-of-right projects that can be built without any additional discretionary approvals (either the Previously Approved Project or the Expanded Development Scenario). These as-of-right projects will include the same amount of additional gallery and storage space for MoMA as the proposed project. Therefore, the development site will be unavailable for use for queuing regardless of whether the project is approved. The EIS will project the amount of incremental pedestrian trips resulting from the proposed project. If peak hour increments and adjacent pedestrian elements exceed the CEQR analysis threshold of 200 pedestrian trips, a quantified pedestrian analysis will be prepared.

Comment 40: The EIS must take into account increased traffic to and from the museum as a result of the increase in gallery space. (Garodnick, Krueger) The next expansion will add another 40,000 square feet, and it seems reasonable to assume that attendance would increase by the same amount. (V. Conant, Shea)

Response: See response to Comment 3.

Comment 41: The EIS needs to evaluate the increase in pedestrian traffic. (Krueger) The EIS must evaluate measures that could be taken to mitigate the increase pedestrian traffic, such as widening the sidewalks and removing any existing sidewalk barriers. (Krueger) Mobs of people are on the surrounding streets and there is barely room for pedestrians to walk. (Gordon) The EIS should focus on the effect to pedestrians, including those with canes. It becomes very difficult to walk on sidewalks and very difficult to cross the streets because of people and cars. (F. Conant) The proposed building will more than double the masses of people on the already overcrowded streets. (Godowsky)

Response: Similar to vehicular traffic, the EIS will evaluate incremental pedestrian trips associated with proposed actions and compare them to CEQR thresholds to determine if a detailed pedestrian analysis is warranted.

Comment 42: Most of the trucks use the streets as a staging area, and this blocks the sidewalks. There needs to be additional sidewalk widening or a public plaza. (Peyser)

Response: Observations of the roadway and sidewalks surrounding the project site were made but the conditions stated in the comment (i.e., trucks using the streets as a staging area) were not observed.

Comment 43: The EIS needs to evaluate the increased demand on the area's transit systems. (Krueger) The public transit system will not be able to handle the influx of people and visitors to the expanded museum. (Schneiderman) No public transportation provisions are being made for the influx of many thousands of new office workers, visitors and residents who would inhabit or visit this gigantic building. (Schneiderman)

Response: As stated in the response to Comment 3, a significant increase in visitation associated with the planned expansion of museum space is not anticipated, and the expansion would occur whether or not the proposed actions are approved. Similar to vehicular and pedestrian traffic, the EIS will evaluate incremental transit trips associated with proposed actions and compare them to CEQR thresholds to determine if a detailed transit analysis is warranted.

AIR QUALITY

Comment 44: Traffic congestion, truck, and bus idling already compromise air quality in the area. The EIS must establish a baseline for air quality by monitoring air quality at multiple locations, especially midblock along West 54th and West 53rd Streets during heavy traffic congestion when traffic is at a standstill. The EIS should add projections to this baseline estimating the pollution that will result from other planned developments in the area. Then it must make realistic projections of the impact of the MoMA expansion (based on an additional 700,000 visitors a year) and of the impact of the residential and hotel portions of the project. (V. Conant, Shea)

Response: As described in the Draft Scope of Work, the project trip generation estimates are expected to be below the CEQR threshold (75 or more peak hour vehicle trips for air quality) for a mobile source air quality analysis. Therefore, it is expected that a detailed analysis of mobile source air is not warranted.

Comment 45: An inventory of emergency generators for the area is needed, since they contribute to pollution. Will the new development have an emergency generator, and if so, where will it be located? (V. Conant, Shea)

Response: Emergency generators are not significant stationary sources of air pollutants due to their infrequent use. As such, the air quality analysis will not include an

inventory of emergency generators within the surrounding area. As required by code, it is anticipated that the proposed building will have an emergency generator.

NOISE

Comment 46: The EIS must examine the project's effects on noise, particularly as the new loading docks will exacerbate noise impacts on West 54th Street. (Mills)

Response: As described in the Draft Scope of Work, the EIS will include a noise analysis. The noise analysis will measure existing noise levels at the development site at two adjacent receptor locations. At each receptor site, 20-minute measurements will be made during a typical weekday AM, midday, and PM peak period to determine conformance with CEQR guideline levels. The level of building attenuation necessary to satisfy CEQR requirements is a function of the exterior noise levels, and will be determined. Measured values will be compared to appropriate standards and guideline levels. As necessary, noise attenuation measures will be recommended for the proposed project, including the new loading docks, to achieve compliance with standards and guideline levels.

Comment 47: An inventory of emergency generators for the area is needed, since they contribute to elevated noise levels. Will the new development have an emergency generator, and if so, where will it be located? (V. Conant, Shea)

Response: The analysis will include measurements of existing noise levels. These measurements will account for the presence of emergency generators and their contribution to total ambient noise levels. Please see response to Comment 45, above, regarding the location of an emergency generator within the proposed building.

Comment 48: Noise has been a major problem on West 54th Street. The EIS should address noise with real time measurements made midblock at peak noise hours day and night to establish the baseline in the area around the proposed development to which should be added the projected impact of other planned development in the area. Then it must make realistic projections of the impact of the MoMA expansion (based on an additional 700,000 visitors a year) and of the impact of the residential and hotel portions of the project. (V. Conant, Shea)

Response: The noise analysis will consider the effect of the proposed project on noise levels in the adjacent community. As described in response to Comment 45, the noise analysis will include measurements at two receptor locations adjacent to the development site, including one on West 54th Street. At each of these receptor sites, 20 minute measurements will be taken during AM, midday, and PM peak periods.

CONSTRUCTION

Comment 49: Where will construction staging, including the loading and unloading of material, take place? Will there be an off-site construction staging location? (Chan, Horinek) An on-site staging area, including areas for parking, should be provided away from the West 54th Street property line. (LeBlanc)

Response: The EIS will provide a description of construction staging and a projection of anticipated construction activities. Approvals for site construction activities will be coordinated with NYCDOT.

Comment 50: The EIS should address whether and under what circumstances weekend and after-hours work would be undertaken. The community opposes any extension of construction hours as construction activity will disrupt hotel guests and employees, as well as other businesses, residents, and pedestrians on West 54th Street. The EIS should also detail how and at what times construction debris will be removed. (V. Conant, Horinek, LeBlanc, Shea)

Response: The EIS will assess potential project construction-related impacts. The likely construction schedule for development at the development site and an estimate of activity on-site will be described. Construction impacts will be quantified and evaluated according to the *CEQR Technical Manual* guidelines.

Comment 51: A construction staging plan must be provided that details the use of cranes during construction and the safety measures that will be in place to protect pedestrians and neighboring buildings (including adjacent historic and landmarked buildings) from falling debris. (Bortoluzzi, Chiu, F. Conant, Gottfried, LeBlanc, Lembo, Rosen) In addition, what steps will be taken (and at whose cost) to protect adjacent buildings, including the Warwick Hotel, from damage caused by construction activities (vibration, de-watering, excavation, and blasting) and the underground structures needed for such a tall building? (Horinek, LeBlanc, Lembo, Shea) Continuous monitoring of the structural stability of the Warwick Hotel must be undertaken by the applicant to ensure that no physical damage to the Warwick's Hotel structure and foundation results from project construction. (LeBlanc) In addition, information on what would happen in the event of a fire during construction must be provided. (Montgomery)

Response: The DEIS will discuss plans for construction staging and activities, based on *CEQR Technical Manual* guidelines.

Comment 52: The EIS needs to include a thorough traffic study during the construction phase to determine how construction traffic and potential lane closures will affect traffic conditions on West 54th Street. (Chan, F. Conant, V. Conant) Lane

closures on West 54th Street cannot be permitted because this street is already too congested. (Bortoluzzi, F. Conant) If such lane closures are allowed, they must be strictly limited in duration and consideration given to closing a lane on West 53rd Street instead. (LeBlanc)

Response: The EIS will provide a discussion of worker and truck delivery requirements for various stages of the construction project. Any necessary lane closures would be coordinated with NYCDOT.

Comment 53: The EIS should state what provisions and the developer must submit a plan that details how the applicant intends to mitigate construction traffic, air quality, and noise impacts and what provisions will be made for controlling dust and dirt from trucks, excavation, including at off-site staging areas. (V. Conant, Gottfried, Horinek, Shea) A construction noise mitigation plan must be developed prior to project approval. (V. Conant, Horinkek, LeBlanc, Shea) Noise and dust from construction will materially diminish the quality of life. (LeBlanc)

Response: As stated above, the EIS will provide an assessment of the potential for construction-period impacts. If any impacts are identified, mitigation measures to reduce or avoid such impacts will also be identified.

Comment 54: Provisions must be made to monitor both air quality and noise during construction. (Horinek, LeBlanc)

Response: The construction analysis will include an air quality impact section and a noise impact section. The air quality section will contain a qualitative discussion of both mobile source emissions from construction equipment and worker and delivery vehicles, and fugitive dust emissions. The noise impact section will contain a qualitative discussion of noise from each phase of construction activity.

Comment 55: A geotechnical report must be provided to the community. (Chiu, Horinek, LeBlanc) The geotechnical report must address the following:

1. Potential structural damage due to movements of surface soils attributable to the selected method of support of excavation;
2. Potential structural damage due to vibrations incident to rock blasting;
3. Weakening of the rock mass that participates in supporting the foundations of the Warwick Hotel;
4. Potential structural damage due to settlements induced by the load of the neighboring structure;

5. Overloading of the Warwick Hotel basement wall by a new foundation placed above the basement wall; and
6. Potential dewatering issues (e.g., lowering the water table for the new construction increases the effective load of the Warwick Hotel on its own foundations). (LeBlanc)

Construction of the building will affect the underground water flow (F. Conant) Is Hines aware of any underground streams? (Horinek) City maps show a stream running north roughly along what is presently the Avenue of Americas and into the lake in Central Park, beginning at 59th Street. The building mid-block on 55th Street is subject to water seepage in the lower basement and occasional sewer backup after heavy rain. (V. Conant)

Response: Construction of the proposed project will follow all applicable building codes and will take into consideration site conditions, including the water table and other appropriate conditions that might influence construction.

Comment 56: The on-going disruption during the construction phase of this project will extract a constant and unremitting toll on the residents in this neighborhood. (Sirota) Construction of the project will have a detrimental effect on the Warwick Hotel because of increased traffic congestion, which will adversely affect deliveries to the hotel. Furthermore, guests to the hotel will be affected, thereby affecting the hotel's business. (LeBlanc)

Response: The construction analysis will describe potential temporary losses in lanes, sidewalks, and off-street parking at the development site, and effects on other transportation services during the construction period. A Construction Protection Plan will be developed to avoid impacts to historic structures within 90 feet of the proposed building. Other structures are protected by the New York City Building Code.

Comment 57: Is it anticipated that a point of contact will be appointed to address day-to-day concerns raised by nearby property owners and businesses during the construction phase? (Chiu)

Response: Although the presence of a day-to-day point of contact is not within the scope of CEQR, the applicant has stated that it intends to designate a liaison to the community during construction.

PUBLIC HEALTH

Comment 58: Effects of pollution, excessive noise, especially night noise and loss of access to sunlight and air and open space all have effects on public health. (V. Conant, Shea, Godowsky) An assessment of the potential health hazards from dust,

noise, and toxic materials during the construction period should be undertaken. (LeBlanc)

Response: The EIS will include a public health assessment, which will follow the *CEQR Technical Manual* guidelines. This analysis will examine the proposed project's potential to significantly impact public health concerns related to the construction and operation of the proposed project. This task will draw on other EIS technical analyses, such as Air Quality, Hazardous Materials, Infrastructure, and Noise.

MITIGATION

Comment 59: The EIS must propose mitigation to minimize the damage from the project. (Rockefeller) Hines/MoMA will gain a tremendous amount from this development. Have they offered anything to the community to alleviate the project's burdens? (H. Hoogenboom)

Response: The *CEQR Technical Manual* will serve as the general guide on the methodologies and impact criteria for evaluating the proposed project's potential effects on the various environmental areas of analysis. The environmental analysis will identify any significant adverse environmental impacts that cannot be avoided if the project is implemented. Where significant adverse impacts are identified, measures to mitigate those impacts will be identified and described. Mitigation measures reduce or eliminate the significant adverse impact to the fullest extent practicable. As described in the Draft Scope of Work, any significant impacts for which no mitigation can be implemented will be presented as unavoidable adverse impacts.

Comment 60: How do you mitigate impacts to people? How do you mitigate the damages to people? (Shea)

Response: As discussed above, mitigation measures will be considered, where feasible, for any identified significant adverse impacts. The EIS will assess potential impacts to human health and, if necessary, mitigation measures to address these impacts will be identified.

Comment 61: Neither of the approved preservation plans for the landmarked properties from which the air rights will be transferred would alleviate the public burden of the proposed development. In the end, these restorations would do little to compensate the community of New York City for the strain on infrastructure, traffic flow, public safety, or restriction of light and air that the 100-plus floor midblock building would impose. (Krueger)

Response: As described in the Draft Scope of Work, as a condition of the Zoning Resolution Section 74-711 special permit, St. Thomas Church and the

University Club would be renovated to a sound, first-class condition, and each property would be subject to an LPC-approved Continuing Maintenance Plan. The work at St. Thomas includes the largest stained glass restoration project ever undertaken in the United States, and is also, in dollar terms, one of the largest restoration program ever associated with a 74-711 application.

The owners of St. Thomas Church and the University Club would enter into a restrictive declaration that would run with the deed on the property in perpetuity. As part of the restrictive declaration, each building owner has agreed to put aside 5 percent of the proceeds from the sale of its development rights in a dedicated account to provide for the future maintenance of the buildings. Each owner would be required to conduct a facade inspection at least once every five years, and any work necessary to maintain the exterior elements of the building in a sound first-class condition would be required to be undertaken at the expense of the owner.

The potential impacts of the proposed project on infrastructure, traffic, and public health will be assessed in the EIS, as will impacts from shadows.

Comment 62: Hines and MoMA will be placing a heavy burden on the community and the city and are giving nothing back both during the four-year construction phase of the project and during the life of the building. The EIS should state what mitigation may be offered. (Shea)

Response: Comment noted. Please see response to Comment 59, above, regarding the mitigation analysis that will be included in the EIS.

ALTERNATIVES

Comment 63: The EIS needs to make a good faith effort to study the Expanded Development Scenario and look at how a lower bulk alternative would meet developers' needs and the community's needs. (Rockefeller)

Response: The Alternatives chapter of the EIS will provide a summary comparison between the Expanded Development Scenario and the proposed project. In addition, the Alternatives chapter will provide a summary comparison between the Previously Approved Project and the proposed project. Depending on the conclusion of the impact analyses, additional alternatives may be identified to mitigate significant adverse impacts.

MISCELLANEOUS

Comment 64: A building of this size could be a terrorist target. The EIS should study safety issues associated with the building. (Bullock, V. Conant, Butler, Harrison, Mills, Montgomery, Siegel) The EIS should look at whether or not the MoMA

buildings will withstand a bomb or a plane running into the proposed building. Calculating if the tower can withstand earthquakes, high winds, bombs, and planes should also include the implications on its closest neighbors, MoMA and the Museum of Folk Art. (Siegel)

Response: As described above the analysis of the proposed project will rely on the *CEQR Technical Manual* guidelines. Security issues related to terrorism and natural disasters are beyond the scope of CEQR. The EIS will, as indicated in the Draft Scope of Work, describe the existing Fire and Police Departments' facilities that serve the development site. Furthermore, the proposed building would comply with all New York City Building Code requirements as well as New York City Fire Code requirements.

Comment 65: The potential for a wind vortex is cause for concern. What if the glass is sheared off of the building? It will hit the surrounding houses and sidewalks. (F. Conant, V. Conant, Montgomery)

Response: The proposed building will be constructed according to all applicable New York City Building Code requirements, including those regarding window installation and wind shear.

Comment 66: A wind tunnel analysis must be undertaken to determine the effects on surrounding properties, including the 82-year old Warwick Hotel. (LeBlanc) What measures will be included in the building design to ensure that winds are not intensified at the street level? (F. Conant)

Response: The EIS will consider pedestrian wind conditions.

Comment 67: Tremors have been recorded in the City generally and in Manhattan since 1677. They cause shifts in below grade water levels and this seriously threatens the stability of foundations. Even a slight shake becomes an enormous force at the top of a skyscraper, thus threatening the occupants, and the integrity of cladding and windows. Where does it fall? Pedestrians beware. (F. Conant)

Response: As described above in the response to Comment 64 and 65, the proposed building would comply with all New York City Building Code requirements for new building construction.

Comment 68: The need for tax revenues has clouded the city's judgment. (Rubin)

Response: Comment noted.

Comment 69: The building is an environmental disaster because it is just too big. (Peyser)

Response: Comment noted.

D. LIST OF OFFICIALS AND INDIVIDUALS WHO COMMENTED ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

ELECTED OFFICIALS

1. Honorable Scott Stringer, Manhattan Borough President, oral testimony delivered July 22, 2009 by Anthony Borelli (Stringer)
2. Honorable Liz Krueger, New York State Senate, 26th Senate District written submission dated July 22, 2009 (Krueger)
3. Honorable Richard N. Gottfried, Member of Assembly, 75th District, oral testimony delivered July 22, 2009 and written submission dated July 22, 2009 (Gottfried)
4. Honorable Daniel R. Garodnick, New York City Council, 4th District, oral testimony delivered by Dan Pasquini, July 22, 2009 and written submission dated July 22, 2009 (Garodnick)

COMMUNITY BOARDS

5. Meile Rockefeller, resident of West 53rd Street and CB5 member, oral testimony delivered July 22, 2009 and undated written submission (Rockefeller)

INDIVIDUAL COMMENTORS

6. David Achelis, West 54-55 Street Block Association and resident of 38 West 56th Street, oral testimony delivered July 22, 2009 (Achelis)
7. Anthony G. Ambrosio, Executive Vice President, Human Resources and Administration, CBS Corporation, written submission dated July 31, 2009 (Ambrosio)
8. Richard T. Anderson, on behalf of the New York Building Congress, written comments dated July 17, 2009 (Anderson)
9. John Beckmann, Axis Mundi Design, oral testimony delivered July 22, 2009 (Beckmann)
10. Rick Bell on behalf of the New York State Chapter of the American Institute of Architects, oral testimony delivered July 22, 2009 (Bell)
11. Elena Lesser Bruun, undated written submission (Bruun)
12. Michael Burns, resident of 57th Street and 6th Avenue, oral testimony delivered July 22, 2009 (Burns)
13. Al Butzel, Counsel for West 54-55 Street Block Association and Coalition for Residential Midtown Development, oral testimony delivered July 22, 2009 and written comments dated July 22, 2009 (Butzel)
14. Helen Chirivas, oral testimony delivered July 22, 2009 (Chirivas)
15. Veronika Conant, President West 54-55 Street Block Association and resident of 45 West 54th Street, oral testimony delivered July 22, 2009 and written submissions dated July 22, 2009 and July 29, 2009(Conant)
16. Maria Ann Connelli, oral testimony delivered July 22, 2009 (Connelli)

17. Gail Cornell, oral testimony delivered July 22, 2009 (Cornell)
18. Alexander Coxe, resident of 45 West 54th Street, oral testimony delivered July 22, 2009 (Coxe)
19. Peter Davies, oral testimony delivered July 22, 2009 (Davies)
20. John Dorman, General Manager of the University Club of New York City, oral testimony delivered July 22, 2009 (Dorman)
21. Ian Dunford, New York Hotel Trades Council Union, oral testimony delivered July 22, 2009 (Dunford)
22. Eileen Ensig-Brodsky, oral testimony delivered July 22, 2009 (Ensig-Brodsky)
23. Myrna Ezersky, oral testimony delivered July 22, 2009 (Ezersky)
24. Jane Garmey, resident of 24 West 55th Street, written submission dated July 20, 2009 (J. Garmey)
25. Reverend Stephen Garmey, resident of 24 West 55th Street, written submission dated July 20, 2009 (Garmey)
26. Lawrence Goeghegan, building superintendent of 45 West 54th Street, oral testimony delivered July 22, 2009 (Goeghegan)
27. Leah Gordon, resident of 45 West 54th Street, undated written submission (Gordon)
28. Melvyn H. Halper, written submission dated June 5, 2009 (Halper)
29. Lynn Harrison, oral testimony delivered July 22, 2009 (Harrison)
30. Myra Heller, oral testimony delivered July 22, 2009 (Heller)
31. Marilyn C. Hemery written submission dated June 3, 2000 (Hemery)
32. Holly Hendrix, President, Board of Trustees, The Fifth Avenue Presbyterian Church, written comments dated July 21, 2009 (Hendrix)
33. Hugo Hoogenboom, resident of 45 West 54th Street and member of West 54-55 Street Block Association, two written submissions dated July 22, 2009 (H. Hoogenboom)
34. Charles Issacs, resident of 25 West 54th Street, oral testimony delivered July 22, 2009 and written submission dated July 21, 2009 (Issacs)
35. Carole Lazio, resident, oral testimony delivered July 22, 2009 and written submission dated July 22, 2009 (Lazio)
36. Francine Lembo, resident of 35 West 54th Street, undated written submission (Lembo)
37. Glen Lowry, Director of MoMA, oral testimony delivered July 22, 2009 (Lowry)
38. Diane Borst Manning and Norman E. Berg, written submission dated June 3, 2009 (Manning/Berg)
39. Marlene Markoff, West 54-55 Street Block Association, oral testimony delivered July 22, 2009 (Markoff)
40. Tony Martone, Warwick Hotel, oral testimony delivered July 22, 2009 (Martone)
41. Kathleen Murray, oral testimony delivered July 22, 2009 (Murray)

42. Helen Nguyen, resident of 55 West 55th Street, written submission dated July 27, 2009 (Nguyen)
43. Ruth Nordenbook, oral testimony delivered July 22, 2009 (Nordenbook)
44. Jean Nouvel, Project Architect, Ateliers Jean Nouvel, oral testimony delivered July 22, 2009 (Nouvel)
45. Dan Pasquini, on behalf of City Councilman Dan Garodnick, oral testimony delivered July 22, 2009 (Pasquini)
46. Ann Pasternak, President and Artistic Director, Creative Time, written comments dated July 20, 2009 (Pasternak)
47. Justin Peyser, West 54-55 Street Block Association, Coalition for Responsible Midtown Development and resident of 45 West 54th Street, oral testimony delivered July 22, 2009 and written submission dated July 22, 2009 (Peyser)
48. Michael Reichman, oral testimony delivered July 22, 2009 (Reichman)
49. Daly Reville resident of 38 West 56th Street, oral testimony delivered July 22, 2009 (Reville)
50. Dolores Rosenthal, West 54-55 Street Block Association and 55th Street resident, oral testimony delivered July 22, 2009 on behalf of her and Bruce Wippel (Rosenthal)
51. Anita Rubin, West 54-55 Street Block Association and resident of 15 West 55th Street, oral testimony delivered July 22, 2009 and written submissions dated June 3, 2009 and July 22, 2009 (Rubin)
52. David Schneiderman, resident of 15 West 55th Street, oral testimony delivered July 22, 2009 (Schneiderman)
53. Vivian Schwimmer, oral testimony delivered July 22, 2009 (Schwimmer)
54. RitaSue Siegal, Vice President of West 54-55 Street Block Association, oral testimony delivered July 22, 2009 and written submission dated July 22, 2009 (Siegal)
55. Michael Sillerman, Lawyer at Kramer Levin Naftalis & Frankel, LLP oral testimony delivered July 22, 2009 (Sillerman)
56. Adele Z. Silver, written submission dated June 3, 2009 (Silver)
57. Julie Sloan, Stained-glass Consultant to St. Thomas Church, oral testimony delivered July 22, 2009 (Sloan)
58. Joan Stuart, West 54-55 Street Block Association, oral testimony delivered July 22, 2009 (Stuart)
59. Jacqueline Thompson, written submission dated July 21, 2009 (Thompson)
60. Alex Toplansky, oral testimony delivered July 22, 2009 (Toplansky)
61. Bruce Williams Whipple, undated written submission. (Whipple)
62. Rev. William Wright, Senior Warden of St. Thomas Church, oral testimony delivered July 22, 2009 (Wright)

63. Carol Willis, Architectural Historian and Founder and Director, Skyscraper Museum, written submission dated July 22, 2009 (Willis)
64. Kate Wood, Executive Director, Landmark West, written submission dated July 21, 2009 (Wood)
65. Carol Van Guilder of the Real Estate Board of New York, oral testimony delivered July 22, 2009, and written comments dated July 22, 2009 (REBNY)

E. RESPONSE TO DRAFT ENVIRONMENTAL IMPACT STATEMENT COMMENTS

PROJECT DESCRIPTION

BUILDING DESIGN

Comment 1: At 1,250 feet, the building is akin to the Chrysler Building and is too tall for its midtown location. (Beckmann, Garmey, J. Garmey, Thompson)

The building is out of scale for the site and a disaster for the neighborhood. (Rosenthal, Conant, Coxe, Schneiderman, Peyser, Rubin, Bruun, Whipple, H. Hoogenboom)

The developer wants to build an Empire State Building on a smaller lot. Fifty-third and 54th Streets are cross-town streets with residents, not like the Fifth Avenue location of the Empire State Building. (Schneiderman, Markoff, Achelis, Halper, Gordon) The Empire State Building and others are on wide avenues and a narrow, mid-block site is not feasible. The building should be on a 90-foot avenue, not a 60-foot-wide street. (Rockefeller, Gottfried, Rubin, Gordon)

The size of this proposed building, which will be as tall as the Empire State Building, and it's location, without direct access to an avenue or wide street, warrant caution about any action that could overwhelm this neighborhood or create a destructive planning precedent. (Garodnick, Rockefeller, Lembo)

The building should be redesigned to be appropriate for the neighborhood—a smaller building that adds to the visual and cultural landscape, provides enough space for additional MoMA galleries, a small hotel, some residences, and is appropriate for the residential neighborhood on West 53rd and 54th Streets and the adjacent block. (Siegal)

The project is oversized. (Stuart, Isaacs, Harrison, Rockefeller, Ambrosio)

Putting skyscrapers on the midblock next to townhouses is poor planning. There is no reason why the developers can't commission a smaller scale building that will be architecturally as well as environmentally superior to the Nouvel proposal. (Thompson)

The DEIS doesn't mention the excessive height, or impacts on light and air. (Butzel, Rubin)

Response: The EIS discloses the height and bulk of the proposed project and evaluates, in accordance with SEQRA and CEQR, the potential for the proposed project to result in significant adverse impacts on urban design and neighborhood character in Chapter 8, "Urban Design and Visual Resources" and Chapter 9, "Neighborhood Character."

Chapter 8 of the DEIS concludes that the proposed project would not result in any significant adverse impacts to urban design and visual resources. The proposed uses of the development site would be consistent with building uses that are prevalent in the surrounding area. The proposed project would fully utilize the development site, reinforce the existing streetwalls of West 53rd and 54th Streets, and is expected to enliven those streets with additional pedestrian activity. The proposed project would not alter other urban design characteristics including topography of the study area, street pattern and hierarchy, block shapes, or natural features. The proposed project would join a number of other tall buildings in the immediate area and in Midtown Manhattan in general. The proposed project would be taller than most of these other buildings.

However, with regard to the comparisons to other tall buildings identified in the comment, it should be noted that the proposed project at 786,562 gross square feet (gsf) is less bulky than both the Empire State Building at 2,768,591 gsf and the Chrysler Building at 1,195,000 gsf. In regard to the comment on the midblock location, as shown on Figure S-3 "Proposed Site Plan," much of the project site is in a high-density (15 FAR) C6-6 zoning district mapped within 150 feet of Avenue of the Americas. As stated on page 2-12 of the DEIS, "[t]he proposed actions would continue the long-standing approach for development on the block by underbuilding in the C5-P district."

The EIS also includes an evaluation of smaller alternatives to the proposed project, which may not fully satisfy the design and other goals of the proposed project.

Chapter 9, "Neighborhood Character" states that the proposed project would not result in any significant adverse impacts to historic resources, urban design and visual resources, socioeconomics, traffic, air quality, or noise [the components of neighborhood character]. As with either of the scenarios in the future without the proposed project, the proposed project would be compatible with surrounding uses, which include museums, residential uses, commercial office buildings, and retail uses. Therefore, the proposed project would not result in significant adverse impacts to neighborhood character.

TRANSFER OF AIR RIGHTS

Comment 2: The concept of selling air rights is immoral and absurd and the church should not sell air rights to fund stained-glass windows. (Stuart)

The church should look to its members for funding, instead of selling air rights, as should the University Club. (Gottfried)

The transfer of air rights is occurring without heed to the greater effects on the public good. (Gottfried)

The University Club is in good shape and doesn't need money from the sale of air rights. There is a veiled appearance of helpfulness to the University Club and St. Thomas. (Rosenthal, Whipple)

The University Club and St. Thomas are using their tax-free status to sell air rights to the highest bidders. (Burns)

The appropriateness of vast air rights transfers being made possible through zoning lot mergers, and whether they should be limited in any way to preserve contextual development, should be studied. (Garodnick)

Can the money that is to be paid for the air rights and to pay MoMA for its further expansion ever possibly be enough to balance the cost of the environmental stress on midtown? (Silver)

The issue of compatibility is a critical legal factor under Sections 74-79 and 74-711. It is not possible to square the immense size of the Tower with the surrounding area, which, while it already includes some high-rise structures, has nothing that even begins to approach the 1,250 feet of the Hines/MoMA proposal. (Butzel)

The community is made up of commercial towers, 40 and 50 stories, a residential tower, and residential buildings varying from townhouses to 15, 16 stories. It seems that the very scale of this building in that fabric, which you cannot get away from, means it really cannot meet the standards of 74-79, 74-711. (Rockefeller)

The proposed tower's design represents a shrewd accumulation of air rights and development waivers that by themselves do not seem to present grave impacts. However, the project would place the tallest building in New York City on a plot that lies partially in the low-rise Special Midtown Preservation Subdistrict. How can this contradictory scenario be justified? (Garodnick, Whipple, H. Hoogenboom)

The proposed building is an outlier, made possible only by a zoning resolution that freely allows zoning lot mergers and the transfer of full development rights from landmark structures. But the project is not as-of-right—the transfers cannot be approved if the disadvantages to the surrounding area offset the claimed

advantages to historic preservation or if the proposed building adversely affects structures or open space in the vicinity. (Butzel)

Response: As noted in the response to Comment 1, above, the DEIS concluded that there would be no significant adverse impacts on urban design or neighborhood character. In addition Chapter 7, "Historic Resources," concludes that compared with either the Previously Approved Project or the Expanded Development Scenario, the proposed project would result in renovations to and continuing maintenance programs for both St. Thomas Church and the University Club, and would not have any adverse physical, contextual, or visual impacts on these two historic resources or other architectural resources within the study area.

As explained on page 7-1 of the DEIS, "[b]ecause the proposed project would require special permits pursuant to ZR Sections 74-79, 74-711, and 81-212, it is subject to the review and approval of the New York City Landmarks Preservation Commission (LPC). In order for the project sponsor to meet the requirements of the special permits, LPC must issue a report to the New York City Planning Commission (CPC) supporting the project's application. LPC must find that the proposed bulk and use modifications would relate harmoniously to St. Thomas Church and the University Club, and that the proposed transfer of air rights would not adversely affect these designated New York City Landmarks (NYCLs). In addition, the special permits require that a Continuing Maintenance Plan be established for the University Club and St. Thomas Church that will be legally enforceable by LPC under the provisions of a restrictive declaration.

Comments regarding the appropriateness of selling air rights are not relevant to the EIS and are outside the scope of CEQR. However, Chapter 2, "Land Use, Zoning and Public Policy," has been updated to describe Sections 74-79 and 74-711.

As a basis of comparison, the DEIS analyzes the "Expanded Development Scenario," which is an as-of-right building built without the transfer of University Club's development rights, without the floor area from St. Thomas Church and from the C5-P zoning district that cannot be utilized on an as-of-right basis, and without the proposed bulk waivers. This as-of-right building would be 1,089' in height, 161' shorter than the proposed building, but achieved through the use of a simple slab.

Comment 3: I support Community Board 5's resolution urging the LPC and DCP to deny the transfer of development rights from St. Thomas Church and the University Club. (Krueger)

Response: Comment noted.

REVIEW PROCESS

Comment 4: MoMA/Hines should revise the EIS to reflect the concerns and comments of the community. (Halper)

Response: This FEIS has been prepared in accordance with CEQR and SEQRA (NYCRR Section 617), incorporates comments made by the public during the public review period, and has been revised in response to public comments where necessary. Substantive comments made at the public hearing on the DEIS, as well as written comments received during the comment period, are summarized and responses are provided in this chapter. Changes to other chapters in response to comments are also reflected in the FEIS. The Foreword to this FEIS identifies the chapters where changes to the text have been made.

Comment 5: The project is an abuse of the community and of the law. (Gottfried)

The developer is ignoring the laws that are in place to preserve the area, including the height of the building, the lack of setbacks, pedestrian circulation, and the ability to allow greater floor space based on the sale of air rights from two landmark buildings at the other end of the block. (Rubin, Nguyen, H. Hoogenboom)

Hines/MoMA is abusing their privilege. (Rosenthal, Whipple)

Zoning law exists to ensure appropriate development. The project is an attempt to subvert zoning laws and regulations. (Chirivas, H. Hoogenboom)

Response: The Section 74-79 and Section 74-711 special permits require a consideration of the proposed project building for compatibility with the surrounding neighborhood in terms of scale, location, and bulk as explained in the response to Comment 2, above. Figures S-5 and 1-5 of the DEIS clearly show the requested exceedance of the zoning envelope. The approach to underbuild the C5-P zoning district and move floor area south and west, toward the higher density C6-6 and C5-2.5 zoning districts and away from the Preservation Subdistrict and from the two landmarks was explained on pages 2-11 and 2-12 of the DEIS.

Comment 6: The DEIS is so lacking in its disclosure as to make it impossible for the CPC to act on an informed basis. (Butzel)

Response: The DEIS and FEIS have been prepared to meet the requirements of the State Environmental Quality Review Act (SEQRA) and New York City Environmental Quality Review (CEQR). Each technical area of the EIS follows the guidance and methodologies of the *CEQR Technical Manual*. As discussed in the EIS, the environmental review process provides a means for decision-makers to systematically consider environmental effects along with other

aspects of project planning and design, to propose reasonable alternatives, and to identify, and when practicable, mitigate significant adverse environmental effects.

Comment 7: The "as-of-right" expanded development scenario has no bearing on the issues that the CPC is required to address under the Zoning Resolution; and, equally importantly, it violates SEQRA. (Butzel)

In terms of the Zoning Resolution, the standards set forth in it do not ask or permit CPC to compare the proposed project to a theoretical as-of-right scenario. (Butzel)

With respect to SEQRA, the analysis in the DEIS stands the statute—and its command to consider alternatives—on its head. Thus, instead of identifying and evaluating reasonable alternatives that could minimize environmental impacts, the DEIS devotes most of its attention to the Expanded Development Scenario, which it seems to view as a "worst case" option, and uses it to justify the proposed Tower because the latter's impacts are no worse. This is completely contrary to SEQRA's mandate. (Butzel)

Response: As described on page 1-12, "In each of the technical areas of this EIS, the proposed project is compared to both of the No Build scenarios." Accordingly, the DEIS compares the proposed new building at 53 West 53rd Street to two separate as-of-right scenarios: the "Previously Approved Project," which could be built using just the floor area permitted on the development site, without any discretionary or as-of-right transfers of floor area; and the "Expanded Development Scenario," which could be built today without the proposed actions, by means of a zoning lot merger to include development rights from St. Thomas Church and the American Folk Art Museum (AFAM). Neither of the scenarios is "theoretical," in that the applicant has stated that it will build either absent the requested discretionary approvals. However, they do not fully meet the goals and objectives of the proposed project.

The EIS also includes in its analysis of alternatives a "No Unmitigated Impact Alternative," with which there would be no significant adverse impacts, namely the shadow impact on the Fifth Avenue Presbyterian Church that would result from the proposed project in comparison with the Previously Approved Project.

ANALYSIS FRAMEWORK

Comment 8: How can the DEIS say that the proposed project won't have larger impacts than a 25-story building? (Lazio)

How can the expansion not increase visitors? (Peyser)

Response: Assuming the comment about the 25-story building refers to the 285-foot-tall building described in the DEIS as the Previously Approved Project, that

scenario will contain 180,000 square feet of office space, 10,000 square feet of retail space, and 68,097 square feet of space for MoMA's expansion. The proposed project is compared to this building throughout the technical analyses presented in the DEIS, and the DEIS shows that the proposed project does have different larger impacts than the 285-foot-tall building. The significant adverse impact identified from the increased shadows on the Fifth Avenue Presbyterian Church is made in comparing these two buildings.

As shown on Tables 1-2, 1-3, and 1-4 of the DEIS, the proposed project would have exactly the same space for MoMA expansion as was previously approved and therefore, it will not increase the number of visitors coming to MoMA as compared to the Previously Approved Project. See also response to Comment 3 on the Draft Scope of Work.

Comment 9: The ¼-mile study area is too small. (Conant)

Response: Study areas for the environmental analyses are identified chapter by chapter in the EIS and defined to represent the areas in which the proposed project has the potential to result in significant impacts. For example, the study area for Chapter 2, "Land Use, Zoning, and Public Policy," extends ¼-mile, which roughly encompasses the area from Broadway to east of Park Avenue and from 48th Street to Central Park. Chapter 3, "Socioeconomic Conditions," considers both ¼-mile and ½-mile study areas. Chapter 6, "Shadows," considers the full length of the shadows, as shown in Figure 6-2 of the DEIS. The study area for Chapter 8, "Urban Design and Visual Resources," was expanded from 400 feet to a quarter-mile based on comments received at the Scoping Meeting for the DEIS. That study area was extended further to take in more distant locations from which the proposed project would likely be visible. Other analyses have a 400-foot study area, including Chapter 7, "Historic Resources," and Chapter 17, "Noise."

GENERAL

Comment 10: In assessing negative impacts, the DEIS uses the Expanded Development Scenario as the principal basis for comparison. As a result, it is able to dismiss the most significant adverse impacts, including the excessive height and bulk of the proposed Tower, because the differences are small. (Butzel)

Response: As described in the DEIS, the proposed project is compared to both of the No Build scenarios (to the Previously Approved Project and to the Expanded Development Scenario) and, in order to provide a conservative assessment, the impacts are defined on the basis of the larger difference. For example, the significant adverse shadow impact on the windows of the Fifth Avenue Presbyterian Church is based on a comparison of the proposed project to the Previously Approved Project.

Comment 11: The project should consider public space, setbacks, and underground parking. (Rubin)

Response: The DEIS did not identify any significant adverse impacts in terms of open space or parking. Therefore, there is no requirement that public space or parking be considered for inclusion in the project. In terms of setbacks, no significant adverse impact on urban design or visual resources was identified. However, in response to a significant adverse shadow impact, Chapter 20, "Mitigation," did consider alternate configurations of the building.

Comment 12: The developer and MoMA need to honor their commitment to restrict the development in certain meaningful ways in order to minimize the intense active use, namely, restrict the number of residential units and the number of hotel units far below what is allowed as-of-right. (Stringer)

Response: As described in the EIS, the applicant will enter into a Restrictive Declaration which, among other things, limits the number of units on the development site to no more than 300 residential units and 167 hotel rooms. No office use will be permitted. A Restrictive Declaration is legally enforceable.

Comment 13: There needs to be a clear explanation of the project's planning principles, and for thoughtful solutions that will mitigate any negative effects. (Garodnick)

Response: Section D, "Project Program and Design," of Chapter 1, "Project Description," of the EIS explains the programming and design rationale behind the development of the proposed project. Chapter 20, "Mitigation," includes a discussion of mitigation measures that would reduce or eliminate the significant adverse shadow impact on the Fifth Avenue Presbyterian Church that would occur on the summer analysis day, June 21, from 3:50 PM to 5:10 PM.

Comment 14: The design is too privately oriented with too many private uses and not enough public uses. (Markoff)

Response: The project is a privately sponsored project. While the proposed project does include a through-block lobby, it is primarily a private development containing MoMA, hotel, and residential uses. The site is relatively small and, as shown on Figure 1-6, the ground level of the proposed building is thoroughly programmed with hotel and residential lobbies, a restaurant, truck docks, and elevators. The DEIS did not identify any significant adverse impact that would require the provision of public space on site.

Comment 15: If this project is to go forward, it should: be cut back so that it is no taller than other buildings in the area, approximately 40 stories; have considerable, open to the public, park-like setbacks on both West 53rd and West 54th Streets; provide

for indoor deliveries with internal drive-in and drive-out underground loading docks; and contain extensive indoor parking facilities. (Rubin)

Response: The DEIS did not identify any significant adverse impacts on urban design and visual resources, open space, or traffic and parking. Therefore, there is no requirement to consider providing open space, drive-in drive-out loading or parking. However, since a significant adverse shadow impact on the First Avenue Presbyterian Church was identified, alternative configurations of the building were considered in Chapter 20, "Mitigation."

Although not a requirement for CEQR, the DEIS did provide a discussion of loading dock operations on pages 14-5 and 14-6. As shown in Table 14-4, delivery activity for the proposed project is expected to be relatively insubstantial with a total of 6 delivery trips in the AM peak hour, 6 delivery trips in the midday hour, and no trips in the PM peak hour.

Comment 16: The proposed building does not consider the environment, the aesthetics of the neighborhood, or the safety of the pedestrians, residents, or emergency vehicles. (Gordon, Issacs, Ambrosio)

Response: The DEIS considered all the required technical areas under CEQR, including urban design and visual resources, neighborhood character, and traffic and transportation. No significant adverse impacts were identified in those areas.

Comment 17: The project would have long term effects on all areas of impact studied in the EIS. These impacts are in effect a tax imposed on the neighborhood for the benefit of the developers and the institutions that stand to profit from the development. (H. Hoogenboom)

The DEIS doesn't go far enough to measure the impacts of the structure on the city. In the end, the restorations would do little to compensate the community or New York City for the strain on infrastructure, traffic flow, public safety, or restriction of light and air that an 85-story mid-block building would impose. (Krueger)

Response: The EIS assesses the potential impacts of the proposed project in accordance with CEQR and SEQRA, using the *CEQR Technical Manual* for guidance. For each of the applicable technical areas identified for analysis, the full effects of the proposed project are disclosed. For specific responses regarding infrastructure, traffic flow, etc., see the responses in those respective sections of this chapter.

Comment 18: We support the proposed project. (Anderson, Bell, Connelli, Cornell, Davies, Dorman, Ezersky, Harrison, Heller, Hendrix, Lowry, Murray, Nordenbook, Nouvel, Pasquini, Pasternak, Reichman, Schwimmer, Sillerman, Sloan, Toplansky, REBNY, Wright, Willis)

Response: Comment noted.

LAND USE, ZONING, AND PUBLIC POLICY

Comment 19: The zoning board was created to prevent this and should prevent this type of building. (Markoff)

Putting this building in midblock violates good planning and zoning. (Gottfried, Issacs)

This project mustn't sacrifice the careful planning that went into the city of New York. (Ensig-Brodsky)

CPC should think of this in the context of the city as a whole, and of the precedent that would be set for other developers to push for approval to construct mid-block high-rise buildings in other parts of the city. (Rosenthal)

Approval of this project, which runs so strongly counter to the stated planning vision for this neighborhood, would send a clear message that zoning and other land use regulations are groundless and that the standards for waivers from these laws are negotiable, a message with dire implications for neighborhoods throughout New York City. (Wood)

Response: Chapter 1 of the EIS, "Project Description," describes the proposed actions and the approvals process. As described in the EIS, the discretionary actions necessary for the proposed project are being sought in accordance with the provisions of the Zoning Resolution, which provide for due consideration of the bulk of the proposed project and its impact on the character of the surrounding neighborhood. As described on page 2-12, the proposed actions are intended to under build the C5-P district on the project block. Further, as seen in Figure 1-5, the proposed design requires relatively minor deviations from Special Midtown District height and setback regulations.

As noted above, the development site is located close to Sixth Avenue, with much of its total lot area in a high-density (15 FAR) C6-6 zoning district. Along West 53rd Street, 52 feet of the site's 87 feet of frontage is in the C6-6 zoning district, and along West 54th Street 32.5 feet out of 108 feet of frontage lies in the C6-6 zoning district. As noted in Chapter 8, "Urban Design," there are many tall midblock buildings in the vicinity, including, notably, 30 Rockefeller Center (850'), Carnegie Hall Tower (858'), Citispire Center at 150 W. 56th Street (814'), and 9 West 57th Street (687'), as well as the Museum Tower and the Deutsche Bank Building, which are on the same portion of West 53rd Street.

Comment 20: In 2007, MoMA received approval for a design that didn't compromise the 1979 Midtown Special Preservation Subdistrict (subdistrict). That has since changed. (Lazio)

MoMA/Hines need to comply with the spirit of the subdistrict. (Siegal)

The project does not conform with the existing scale and character of the subdistrict. (Wood)

Although the subdistrict no longer includes 53rd Street or the south side of 54th Street, where the Hines/MoMA tower will be located, it is important to understand that a significant portion of the bulk of the Tower will be on 54th Street, directly across from the subdistrict and in a zoning category that itself is C5-P. Equally important, the height and bulk of the new building will not respect zoning boundaries. It will tower over the preservation district and impact it just as severely as if it were located in the district itself. (Butzel)

The proposed Hines/MoMA development is the very antithesis of the kind of development that the zoning and preservation regulations for this site were intended to produce. (Wood)

Response: As described on page 1-3 of the EIS, the requested zoning modifications would facilitate the movement of development rights away from the C5-P zoning district St. Thomas Church and toward the higher density zoning districts—C6-6 and C5-2.5—to the south and west. As described on page 1-7 of the EIS, this design strategy is intended to continue concentrating development on the southern portion of the block, which in the past has included placement of Museum Tower flush with 53rd Street, the demolition of the overbuilt 19-story Dorset Hotel, and the expansion of the MoMA Garden.

The EIS considers the impact of the proposed project on the surrounding area and evaluates the bulk of the project compared to other structures, including the low-scale buildings on West 54th Street that exist in a mixed urban environment with a variety of building types and scales, as well as a number of high-rise buildings.

Comment 21: Special permits are requested for a project that:

1) Does not continue the historic patterns of relatively low building bulk in midblock locations.

2) Does not conform with the existing scale and character of the Preservation Subdistrict.

3) Does not preserve the midblock area north of MoMA for its special contributions to the historic continuity, function and ambience of Midtown.

4) Does not have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location, and access to light and air.

5) Does not meet the standard that Special Permits will not unduly increase the bulk of any new development, density of population or intensity of use in any block to the detriment of the occupants of buildings on the block or nearby

blocks, and that any disadvantages to the surrounding area caused by reduced access of light and air will be more than offset by the advantages of the landmark's preservation to the local community and the city as a whole. (Wood, Conant)

Response: As described above, and in Chapter 1 of the EIS, "Project Description," the proposed project would concentrate floor area to the south and west end of the zoning lot, away from the Preservation Subdistrict and the two landmark buildings. As discussed in Chapter 8 of the EIS, "Urban Design and Visual Resources," the requested special permit would allow for design that tapers to a spire, opening up the sky to street much more dramatically than would a typical, rectilinear building. In the applicant's opinion, this design would protect the MoMA Garden, and would step away from the lower scale buildings on the north side of West 54th Street. The applicant has developed the project to promote consistency with the underlying planning objectives embodied in the prior 1977 and 2000 approvals for this site, which involved massing MoMA's tall elements along 53rd Street (largely characterized by commercial and institutional uses) and away from the MoMA Garden and the more residential character of West 54th Street.

In terms of shadow impacts, the EIS finds that the proposed project would have significant adverse shadow impacts on the Fifth Avenue Presbyterian Church, during the summer. Incremental shadows on other sun-sensitive resources and open spaces in the surrounding area would not be of long duration due to the slender shape of the building and varying heights at its peak.

As described in Chapter 8 of the EIS, "Urban Design and Visual Resources," both the Expanded Development Scenario building and the proposed project would be visible from more distant points; however, only the towers of the buildings would be visible in these locations, and they would be part of the overall skyline of high-rise buildings in Midtown Manhattan. As also discussed in Chapter 8 of the EIS, there are a number of tall tower structures in the vicinity of the development site, including the Museum Tower directly to the east (approximately 588 feet tall), the 40-story building at 1330 Avenue of the Americas, directly to the west (approximately 496 feet tall), the landmarked CBS Building across West 53rd Street (approximately 491 feet tall), and the New York Hilton Hotel across Avenue of the Americas (approximately 487 feet tall). Certain elements of the building design, including the proposed glass and metal cladding materials, are specified on the ULURP drawings (which will also be referenced in the Restrictive Declaration) and would be consistent with those of other modern structures in the area.

In terms of intensity of use, the EIS concludes that the proposed project would not unduly increase the density of population or intensity of use in the area. The EIS analyzes the potential for traffic and pedestrian congestion from the proposed project, and concludes that the proposed project would have no

significant impacts in these areas, as compared to either the Previously Approved project or the Expanded Development Scenario. These impacts would be lessened further by the relatively small number of hotel and residential units in the proposed project, given the amount of floor area in the building. In that regard, the applicant will enter into a legally enforceable Restrictive Declaration limiting the number of hotel rooms to 167 and residential units to 300. The building's irregular floorplates and elevatoring requirements, given the building's height and mix of uses, results in relatively large unit sizes and a relative few residential and hotel units. As noted in the DEIS, the projected vehicle trip and pedestrian trip increments would not warrant a detailed quantitative analysis or result in a potential for significant adverse traffic or pedestrian impacts. There would also be an adequate parking supply near the development site to accommodate the projected parking demand, such that the project would not result in a potential for significant adverse parking impacts. A loading dock, which is required in connection with the hotel use in the proposed project, would be added to the building's West 54th Street frontage; the DEIS concludes that the proposed residential and hotel uses in the building are expected to generate only minimal loading activity on West 54th Street. In addition, an assessment of existing curbside loading and unloading activities was conducted by the applicant, as described below, under "Traffic and Parking."

As described above, the proposed transfer of development rights from the University Club for the proposed building would enable an extensive restoration program and a Continuing Maintenance Program.

Comment 22: A goal explicitly stipulated in paragraph (c) of Section 81-00 of the 1979 Special Preservation Subdistrict survey is to control how buildings' impact access to light and air on streets and avenues. Other goals set out in paragraphs (b), (e), and (f) are: stabilizing development in Midtown; continuing the historic pattern of relatively low building bulk in midblock locations compared to avenue frontages; and preserving the historic architectural character of development along streets and avenues.

Given these goals, how can the developer's DEIS justifiably claim that the proposed project, now 1,250 feet high, would have no greater impact on the district and its purposes than a 256-foot as-of-right building? (Lazio)

Response: As described in the EIS and in the ULURP application materials, the applicant has designed the proposed project with the purpose of meeting these goals of the Special Preservation Subdistrict by moving development away from the Subdistrict and the two landmark buildings, and concentrating floor area to the south and west end of the zoning lot. That the design of the proposed project, which tapers to a narrow point, would lessen the tower's perceived height and bulk, particularly at the east and west elevations. In terms of shadow impacts,

the DEIS finds that the proposed project would have significant adverse shadow impacts on the Fifth Avenue Presbyterian Church, during the summer months. Incremental shadows on other sun-sensitive resources and open spaces in the surrounding area would not be of long duration due to the slender shape of the building and varying heights at its peak.

Chapter 1 of the EIS, "Project Description," describes a framework for analysis in the EIS, which evaluates the potential impacts of the proposed project compared to not only the smaller building referenced (Previously Approved Project), but also to a 1,089-foot Expanded Development Scenario.

Comment 23: With respect to the University Club, the zoning text is clear. There must be a preservation plan that benefits the landmark without adding burden on the community. Fifty-Third Street is characterized by low-rise mixed-use development. The MoMA/Hines plan is inconsistent with and degrades this character. (Gottfried)

Response: As described in Chapter 1 of the EIS, "Project Description," the special permit pursuant to ZR Sections 74-79 and 81-212 would allow the transfer of 136,000 square feet of floor area from the zoning lot containing the University Club to the project site for use on the development site. As a condition of the ZR Section 74-79 special permit, the landmark building would be required to be renovated to a sound, first-class condition, and would be required to establish a Continuing Maintenance Plan for the landmark. The EIS concludes that the proposed project would not have significant adverse impacts to historic resources, neighborhood character, or urban design and visual resources.

Comment 24: The developer used the entire merged lot, including Museum Garden, for calculating the Floor Area Ratio (FAR) of the new building and came up with around 11 FAR instead of the unprecedented true FAR of 38.6 for the tiny development site. Yet, when discussing location for an additional loading dock, they did not look at the entire merged lot, only the small development site, and did not come up with appropriate recommendations for location and use. (Conant)

Response: The suggested approach to calculating FAR is incorrect. FAR is calculated according to the entire zoning lot, in accordance with the procedures for regulating floor area under the Zoning Resolution. The location of the loading dock needs to be proximate to the uses it serves.

Comment 25: The study area should be increased to ½ mile for Land Use and the proper FAR for the development site should be used. (Conant)

Response: A half-mile study area for land use is not warranted. The land use study area for the EIS was determined using the guidelines of the *CEQR Technical Manual*.

The study area represents the area in which the proposed project has the potential to result in significant impacts. It includes a large portion of Midtown Manhattan, extending from Broadway to east of Park Avenue and from 48th Street to Central Park. The FAR used in the EIS follows the procedures for calculating floor area according to the Zoning Regulation and represents the amount of development that would occur as a result of the proposed actions (see also the response to preceding comment).

SOCIOECONOMIC CONDITIONS

Comment 26: There is concern that the developer will get tax abatements to subsidize luxury housing and hotel uses, which would affect residents. (Isaacs)

Response: Comment noted. According to CEQR, tax abatements are not a consideration for inclusion in a project's environmental review.

Comment 27: The issues of impact relative to economic development have not been fully addressed by the applicant. (Dunford)

Response: The project's potential impacts to socioeconomic conditions are disclosed in Chapter 3 of the EIS. Following the guidelines of the *CEQR Technical Manual*, the analysis assesses whether the proposed project would result in significant impacts due to: direct residential displacement; direct business and institutional displacement; indirect residential displacement; indirect business and institutional displacement; and adverse effects on a specific industry. The analysis concludes that the proposed project would not have a significant adverse socioeconomic impact.

Comment 28: There has been little effort to ensure that the jobs created will be quality jobs with living wages and benefits. (Dunford)

Response: An assessment of economic benefits, including job creation, is not required under CEQR. As described in the response to Comment 27, the socioeconomic analysis evaluates the proposed project's potential to result in significant adverse impacts using the guidelines of the *CEQR Technical Manual*.

Comment 29: The timing of the project from an economic perspective with regard to the intended use and current credit crisis is no longer appropriate. There is not sufficient demand for condominiums or hotel rooms. There is not sufficient need for this scale of development. (Whipple)

Response: An assessment of market demand or market feasibility is not appropriate in an environmental review document prepared under CEQR. As described above, the socioeconomic analysis evaluates the proposed project's potential to result in

significant adverse impacts using the guidelines of the *CEQR Technical Manual*.

COMMUNITY FACILITIES

Comment 30: The analysis should take a cumulative look at the impacts of the new building on local schools and emergency services. (Rockefeller)

Response: As outlined in the Scope of Work, in accordance with methodology presented in the *CEQR Technical Manual*, an analysis of the project's demand on community facilities was included in the DEIS. As discussed in Chapter 4 of the EIS, "Community Facilities and Services," the project's proposed residential use is estimated to result in fewer than 50 new elementary/middle school and fewer than 150 high school students, the CEQR thresholds requiring further analysis of the project's effects on schools. Therefore, additional analyses are not required, and it is expected that school capacity would be sufficient to accommodate project-generated demand. The project would not result in any significant adverse impacts on public schools.

With respect to emergency services, as described in the Scope of Work and the EIS, in accordance with CEQR, detailed analyses of police and fire protection services are not warranted because the proposed project would not directly displace either a fire house or a precinct house. The EIS describes existing fire and police facilities that serve the development site. While a detailed analysis is not required, information on the location of the existing fire and police facilities that serve the development site are identified in the EIS.

SHADOWS

Comment 31: The sliver of glass is too tall for midtown and will cast shadows at the edge of Central Park. (Beckmann)

Response: The analysis presented in Chapter 6, "Shadows" found that project shadow would be too short to reach Central Park on the days representing the spring, summer, and fall seasons (March 21, May 6, June 21, August 6, and September 21). Shadows from the proposed building would only reach into Central Park in the late fall and winter, and are not expected to affect the health of vegetation because this is not the growing season. On the December 21 analysis day incremental shadow would fall on areas of Central Park for approximately 4 hours, 11:00 AM to the end of the analysis day at 2:53 PM (see Figures 6-18 and 6-19 in Chapter 6, "Shadows"). At times, the extent of new shadow would be marginal; at other times, particularly in the early afternoon, the top 161 feet of the proposed project would cast a more substantial area of new shadow. However, winter shadows move quickly, and the incremental shadow would not affect particular areas of the park for very long. The area affected by

incremental shadow at any given time would be small relative to the entire park area, and there would continue to be sunlit areas of the park nearby available to users. The DEIS concludes that the limited extent and duration of incremental shadow would not cause a significant adverse impact to Central Park.

Comment 32: The DEIS claim of no significant shadow impacts on other buildings is preposterous. (Gottfried)

Response: CEQR methodology requires an assessment of project-generated shadows on sun-sensitive resources, which are defined as publicly accessible open spaces, historic resources with sunlight-dependent architectural features such as stained-glass windows, and important natural features. CEQR methodology states that "shadows on City streets and sidewalks or on other buildings [other than historic resources with sunlight-dependent natural features] are not considered significant" and are therefore not analyzed. The DEIS disclosed a significant adverse shadow impact on the Fifth Avenue Presbyterian Church in the summer.

Comment 33: The applicant's experts agree that at a certain time of day a shadow will hit the Fifth Avenue Presbyterian Church. They also say that in summer, shadows will also fall on the landmark Rockefeller Apartments so they will lose light on the façade and garden for approximately an hour in the late afternoon. (Lazio)

Figures in the DEIS show shadows on other important buildings including Rockefeller Apartments and also on vegetation, but only shadows cast on the stained glass windows of the Fifth Avenue Presbyterian Church are called out as a negative impact. (Conant)

Response: See Response to Comment 32. The shadow study in the DEIS presented the extent and duration of project-generated shadows on all sun-sensitive resources that were affected. The criteria for determining the significance of adverse shadow impacts are described in the CEQR Technical Manual and explicitly re-stated in the DEIS. The analysis concluded that there were no cases where sunlight was reduced enough to threaten the health of vegetation in a publicly-accessible park or plaza. Nor was there a case where the reduction in sunlight substantially impaired the usability of a park or plaza.

The DEIS specifically considered shadows on the Rockefeller Apartments, concluding that incremental shadow would move across portions of the south façade of the West 54th Street building for an hour and 15 minutes on June 21 and for 25 minutes on May 6/August 6. No project shadow would fall on the Rockefeller Apartments on March 21/September 21 or December 21. Shadows on the façade would not compromise the historic significance of the building as viewed from the street. In addition these private interior spaces are illuminated by interior electrical lighting. Regarding the facades' turreted window bays, the north-facing West 55th Street façade generally receives little sunlight during the day, and this regular lack of sunlight does not impair the public enjoyment of

the windows and the visual interest they bring to this historic building. Therefore, given these considerations as well as the limited extent and duration of incremental shadow, there would not be a significant adverse impact.

Comment 34: Studies done on behalf of local residents show that the area between West 53rd Street and Central Park South from Fifth Avenue to Seventh Avenue will often be in shadow. (Lazio, Rubin)

Residents living on 54th, 55th, and 56th Streets between Fifth and Avenue of the Americas, including those in the Rockefeller Apartments and Museum Tower will lose sunlight when the shadow of the building is cast across their windows, something that will be a frequent occurrence. (Butzel, Conant)

Allowing construction of such a tall building will rob residents of sunlight, particular in winter. (Hemery, Garmey, J. Garmey)

Response: Shadow diagrams presented in Chapter 6, "Shadows," show the proposed project's incremental shadow in the midst of existing shadow. In conformance with CEQR methodology, the incremental shadow is the focus of the analysis. It should also be noted that CEQR methodology does not consider shadows on streets, sidewalks, and private residences in general. The analysis is only concerned with publicly accessible open spaces, historic and architectural resources with sunlight-dependent features, and important natural features.

Comment 35: Even though the model of the proposed building was transparent, the real 1,250-feet-tall building between West 53rd and West 54th Street will dwarf the buildings around it and block access to sunlight and air from the blocks around it which the zoning laws were enacted to preserve, casting a deep shadow north over the low scale buildings in the Preservation Subdistrict and beyond, including well into Central Park. Shadows will also fall on the public plazas in the area along the avenue, and the Central Park component is significant, at times almost four hours, deep into the park, even when the developers try to minimize it by saying that compared to the entire park area it is small and "there would continue to be sunlit areas of the park nearby available to users." Claiming no impact is not credible. (Conant)

Response: The shadows analysis assumed a solid structure, not a transparent structure. The Preservation Subdistrict does not control buildings outside its boundaries which are the midst of Midtown Manhattan where tall buildings are the norm. As noted in previous responses, the project's shadow would move during the day, not affecting any location for very long. During the late spring and summer months, the proposed building's shadow would reach a block or two in length for much of the day, falling to the northwest in late morning, to the northeast in the mid afternoon. The extent and duration of incremental shadow that would fall on the nearby plazas along Avenue of the Americas is described in text and figures in Chapter 6, "Shadows." A detailed description of the project's shadow on Central

Park is provided in the chapter and in the Response to Comment 31, above. The DEIS concluded that the shadow impact to Central Park would not be significant, because it would not substantially affect the health of vegetation, since it would occur in the winter, and it would not substantially reduce the usability of the Park.

Comment 36: Claiming only the stained glass windows of the Fifth Avenue Presbyterian Church are negatively impacted by the proposed building and ignoring not only Central Park but shadows on Museum Garden, the Rockefeller Apartments, and its garden between the twin buildings on West 54th and 55th Streets is incorrect. One hour and 15 minutes of shadows is significant. Even south of the site shadows will be experienced over a large area, including the landmark CBS plaza and building. (Conant)

Response: As noted in previous responses, the DEIS calculated the extent and duration of incremental shadow on Central Park, described it in text and figures and concluded that the impact was not significant. Previous responses have also described the DEIS' treatment of the shadows on the Rockefeller Apartments. Neither the Museum Garden nor the garden between the buildings of the Rockefeller apartments qualifies as publicly accessible open spaces according to CEQR methodology. The CBS building plaza would not experience any incremental shadow from the project. The plaza at 1301 Avenue of the Americas, southwest of the project site, would experience brief incremental shadow on May 6/August 6 and two and a half hours of new shadow on June 21. Both periods of new shadow would occur in the morning, would be small in area and would not fall on any sun-sensitive features of this office plaza that are highly used. The DEIS concluded that this shadow impact would not be significant. No new shadow would occur on this or any other area southwest, south or southeast of the project site in the fall, winter or early spring.

HISTORIC RESOURCES

Comment 37: Neither landmark is in bad enough shape to justify selling air rights. There is no Landmark Preservation purpose to be served by the air rights sale. (Gottfried)

The advantages for historic preservation are minimal. The two institutions transferring their development rights are a prominent church and a prominent social club that are in no danger of falling into disrepair. The fund the developer will provide to maintain the landmarks is very small—and need not be otherwise—because of this reality. The benefits that the maintenance fund will provide are marginal at best and in no way an offset to the burdens that will fall on those who live in the area, as well as the thousands of New Yorkers who pass through it every day. (Butzel, Rockefeller, Conant)

Whatever small historic preservation benefits may accrue under the Hines/MoMA proposal, they are more than offset by the adverse impacts of that Tower with regard to already landmarked structures in the area, including the CBS Building and Rockefeller Apartments. Moreover, there can be no doubt that the Hines/MoMA project would adversely affect those historic structures in terms of scale, location, light, and air—the applicable standard under Section 74-79. (Butzel, Conant)

The proposed building will result in a significant change to the character of the area in which the Rockefeller Apartments are located by inserting into the neighborhood a non-contextual outlier of a building. These negative impacts on existing landmark structures must be weighed in the balance under Sections 74-79 and 74-711 of the Zoning Resolution. (Butzel, Peyser)

Neither of the preservation plans for the landmarked properties alleviates the public burden of the proposed development. (Krueger)

Response: Comment noted. As shown on page 7-13 of the EIS, in a letter dated November 28, 2008, LPC noted that in reaching its decision to issue a favorable report to CPC regarding the continuing maintenance program for St. Thomas Church and the University Club and regarding the relationship between the landmarks and the proposed project, the Commission found that the proposed restorative work would bring St. Thomas Church and the University Club up to sound first-class condition, would aid in the buildings' long-term preservation, and that the implementation of a cyclical maintenance plan will ensure the continued maintenance of the buildings in a sound first-class condition. The historic resources chapter of the EIS includes a discussion of LPC's determination regarding the proposed project, including how it meets the requirements of the Section 74-79 and Section 74-711 special permits that are being requested.

Comment 38: The 74-711 Special Permit requires the building to relate harmoniously with the transferring landmark. Some argue that because of the distance between the development site and the landmark, the harmoniousness standard would be met. But the harmful impact that the tower will have on St. Thomas Church and the surrounding area is substantial, despite that distance. The impact of the tower on St. Thomas Church and surrounding area is huge. (Gottfried)

Response: The proposed project is subject to the review and approval of LPC. In order for the project to meet the requirements of the special permits that are being requested, LPC must issue a report to CPC supporting the project's application. On May 13, 2008, LPC voted to issue a favorable report regarding the relationship between St. Thomas Church and the proposed project. In a letter dated October 22, 2008, LPC noted that the Commission found that due to the distance between the development site and St. Thomas Church, the proposed bulk waiver would have no effect on the relationship between the proposed building and the Church. Therefore, the proposed project would not adversely

affect the context of St. Thomas Church. The historic resources chapter of the EIS reflects LPC's determination regarding the proposed project and St. Thomas Church.

Comment 39: Historic resources are only studied within 400 feet which minimizes impacts. The numerous lot transfers which will allow the transfer of the 275,000 square feet of air rights from St. Thomas Church to the development site will create an enormous lot, almost the size of an entire block. Yet, the rich surrounding historic resources are only studied using 400 feet, while the harmonious condition between the landmarks and new building is considered not applicable because the distance between them is over 400 feet. The defined study area should be increased from 400 feet to at least 1,000 feet from the site. (Conant)

The DEIS limits its consideration of impacts on landmarks to St. Thomas Church and the University Club, asserting that there would be none because those landmarks are more than 400 feet from the Tower site. (Butzel, Conant)

Response: In its review of the proposed project, LPC has determined that there is no visual relationship between St. Thomas Church and the proposed project or between the University Club and the proposed project since these resources are approximately 470 to 670 feet away. Given that it has been determined that there is no visual relationship between the proposed project and these resources more than 400 feet away, the proposed study area of 400 feet is appropriate. The historic resources chapter of the EIS considers all known and potential resources within the 400-foot study area.

Comment 40: Nobody has discussed the impact on the CBS building. (Peyser)

The proposed architecture doesn't relate to the CBS building. (Butzel, Krueger, Conant)

The Hines/MoMA Tower would rise 1,250 feet directly to the north of the 425-foot high CBS Building, designed by Eero Saarinen. Impacts on the CBS Building are never addressed even though it lies within 150 feet of the site of the Tower. The DEIS barely mentions the CBS Building and makes no effort to analyze the impact of the proposed Tower on the landmark structure. Nor have any renderings been provided to illustrate the impact from any angle. Indeed the only serious mention of the CBS Building is the statement that it is more than 90 feet from the site and thus construction impacts do not have to be addressed under the *CEQR Technical Manual*.

Aside from its overwhelming height, which will make any other structure, including CBS, seem small, the proposed Tower will also be the exact opposite of Saarinen's. It will be all about frills and sharp edges and jagged planes in total contrast to the quiet beauty of the CBS Building. If the two structures bore some equality in height, they might be an interesting contrast. But that is not the

case. Three times higher than CBS, the Hines/MoMA tower will not only dwarf the Saarinen building, the 800-feet of glass and frills that rise above and behind it will distract from, and confuse and diminish, the qualities that make CBS a landmark and a "great work of modern architecture." (Butzel, Conant)

Response: In response to public comments on the DEIS, the historic resources chapter of the FEIS has been revised to further address the proposed project's relationship to the CBS building. The analysis concludes that the project would not have a significant adverse effect on this historic resource.

Comment 41: The Rockefeller Apartments, located back-to-back on 54th and 55th Streets between Fifth Avenue and Avenue of the Americas, are individually designated City landmarks. They stand less than 300 feet from the site of the Hines/MoMA Tower and a number of them have views that face the site. While the sight lines are partially obscured by MoMA, the proposed tower will rise at least 900 feet above the MoMA structures on 54th Street, overhanging the residences and casting shadows across many of them.

The existing Museum Tower has already had a negative effect on the historic quality of the Rockefeller Apartments, yet it is only half as high as the proposed Hines structure and nowhere near as garish or self-promoting.

The new Tower will impair the historic character of the Rockefeller Apartments. (Butzel)

Response: The historic resources chapter of the FEIS has been revised to further address the proposed project's relationship with the Rockefeller Apartments. The analysis concludes that the project would not have a significant adverse effect on this historic resource.

Comment 42: There are eight landmarked townhouses on the project block, which makes it a unique block, particularly on the north side. (Butzel)

Response: Comment noted. The townhouses on West 54th Street are identified in the EIS and are considered in its evaluation of the proposed project's potential effects on historic resources.

Comment 43: The EIS fails to assess the impacts on other landmarked buildings. (Peyser, Butzel)

Historic resources are scarce in Manhattan, especially in Midtown, so it is important to save them and also, in this case to preserve the context in which they exist. The 1979 Midtown West Survey found 200 buildings that merited consideration for landmark designation. 33 of these buildings were on the three blocks of West 54, 55 and 56 Street. West 54th Street has many of these buildings, some of which are not designated landmarks: 1 (the University Club),

5, 7 (the Lehman Mansion), 9-11, 13, 15, 17 (the Rockefeller Apartments), 35, and 41. 65 West 54th Street (The Warwick Hotel), while not a landmark, is on the national register of historic sites Other landmarked or historic buildings in the area that would be affected include the Peninsula Hotel (700 Fifth Avenue at West 55th Street), 12, 14, 16, 18 and 23 West 55th Street, 24 West 55th Street (the Rockefeller Apts.), 46 West 55th Street, the Fifth Avenue Presbyterian Church, 17, 10 (Frederick C & Birdsall Otis Edey Residence), 12-14, 26, 28, 30 West 56th Street (Henry Seligman Residence), 36, 39 and 46 West 56 Street. There are also several historic buildings on the West 57 Street block: 29 (Chickering Hall) 31 (Sohmer building), 33, 35 (Samuel W. Bowne House), 57 West 57 Street, 109-113 West 57 Street (Steinway Building) and many more. (Conant)

On 54th Street between Fifth Avenue and Avenue of the Americas, six other buildings—Nos. 5, 7 (Lehman Mansion), 9, 11, 13, and 15—have been designated under the City's Landmarks Preservation Law, as is the case with the Peninsula Hotel on 55th Street. In addition, there are many other buildings in the area that are clearly eligible for listing on the National and State Registers of Historic Places. These include: On 54th Street, Nos. 1, 35, 41, and the Warwick Hotel at 65 West 54th Street; and on 56th Street, the First Presbyterian Church and Nos. 10, 12-14, 17, 26, 28, 30, 36, and 46. These structures—and particularly those on West 54th Street—will be adversely affected by the Hines/MoMA Tower in the same ways as the Rockefeller Apartments. (Butzel)

Response: Chapter 7, "Historic Resources," considers the proposed project's potential effects on all designated and potential resources within 400 feet of the project site, including most of the buildings noted above. In addition, Chapter 6, "Shadows," considers all historic resources within the shadow sweep of the proposed project. The buildings at 12-18 West 55th Street are under scaffolding and appear to be in process of removal as part of a proposed new development. The Warwick Hotel is not listed on the National Register of Historic Places. The buildings on 56th and 57th Streets are outside of the study area for historic resources. As described in the EIS, the proposed project would not have a significant adverse historic resources impact. However, as described in Chapter 6, there would be a significant adverse shadow impact on the Fifth Avenue Presbyterian Church during the summer months.

Comment 44: For deep foundation digging, NYCDOB needs to provide a construction protection plan for historic resources within 90 feet of the construction site and get special permission from LPC. These include the landmark CBS building south, the historic Warwick Hotel north, several smaller townhouses nearby and also 45 West 54th Street, a 13-stories-high co-op 60 feet from the site which is also eligible for listing on the National and State Register of Historic Places according to Professor Andrew Dolkart.

The developer claims that the Warwick Hotel is the only building within 90 feet of the construction site eligible for protection but not the landmark CBS building, falsely claiming "Although the plaza of the CBS building is located within 90 feet of the development site, the tower itself is not. Therefore construction of the Previously Approved Project, Expanded Development Scenario, or the proposed project is not anticipated to have any adverse physical impacts on this resource." However, the CBS building is clearly within 90 feet and therefore eligible. Several other older buildings (not landmarks) are also ignored. As a result, the developer should pay for a survey of the foundations of buildings within 90 feet and protection should be extended to all the older buildings. (Conant)

Response: The building at 45 West 54th Street has not been identified as a potential architectural resource; nor has it been determined eligible for the State/National Register of Historic Places by LPC or OPRHP. Figure 7-1 of the FEIS has been revised to show a 90-foot radius from the project site and to show potential as well as known historic resources. Any designated New York City Landmarks or properties listed on the National Register of Historic Places or determined eligible for such designation or listing within 90 feet of the proposed project would be protected by construction protection plans.

URBAN DESIGN AND VISUAL RESOURCES

Comment 45: It is a spectacular building and I will be very proud to live just a few blocks away from it. (Heller) In order for New York City to remain a premier city to visit, it's very important to encourage worthwhile projects like the proposed project to be built. (Schwimmer) This tower will be one of the most significant skyscrapers in the Manhattan skyline. (Cornell) The design materials are light enough that the height is not oppressive, and the tower culminates in an elegantly shaped spire, important to the project. (Bell) The proposed project is harmonious and will be an exciting and stunning addition to the area; it's exciting that the city is attracting this king of architecture and important design. The proposed project meets the findings of the zoning special permits, and has already been approved by the Landmarks Preservation Commission, which found it harmonious with no negative impacts on landmarks—in fact, it's a high benefit to the maintenance of the landmarks. (Van Guilder)

Response: Comments noted.

Comment 46: The proposed project will dwarf surrounding buildings and will destroy the old world quiet charm of the neighborhood. (Schneiderman)

The project is out of proportion to the neighborhood and will cut off air and light. (Isaacs)

The building is an intruder in the neighborhood. (Markoff)

The project has been transformed from a modest building to a sliver building. (Burns)

What about the architectural character of the neighborhood? (Lazio, Rubin, Rockefeller)

The proposed building would not relate harmoniously with the neighborhood, as required by the zoning regulations. Furthermore, the materials, design, scale and location of bulk in the proposed building would not relate to the adjacent landmark buildings. The proposed building would be grossly out of scale with the other buildings in the area, including the landmarked Rockefeller Apartments on West 54th Street as well as the landmarked Eero Saarinen designed CBS building on 53rd Street. (Krueger)

The lot on which MoMA and the Hines Interests plan to construct the 53 West 53rd Street project is directly across from the mostly residential north side of West 54th Street. The West 54-55 Street Block Association is deeply concerned about the negative impact this gargantuan building would have on the mixed residential/commercial low-scale blocks of West 54, 55, and 56 Street, north of MoMA, in the Preservation Subdistrict of the Special Midtown District. With the introduction of a new 82-story building, in fact twice the height of the towering 40-story FT Building to its west, little West 54th Street will become further isolated and hemmed in. The EIS should carefully study the impact of this project on the environment of the street. It is architecturally distinctive and intimate in scale. (Conant)

The building is discordant with the late 19th and early 20th century low story buildings on West 54th Street and others located on the surrounding blocks. Its oblique lines and asymmetrical outline are disturbing to the eye and will blight our neighborhood. (Rubin)

Response: Chapter 8 of the EIS, "Urban Design and Visual Resources," considers the impact of the proposed project on the streetscape as well as its materials, design, scale and location of bulk in comparison to the urban design of the surrounding area, in accordance with CEQR. As described in the Chapter 8, the project site is located within a mixed urban environment with a variety of building types and scales, including a number of high-rise buildings. Tower structures in the immediate area include the Museum Tower directly to the east (approximately 592 feet tall), the 40-story building directly to the west (approximately 496 feet tall), the landmarked CBS Building across West 53rd Street (approximately 498 feet tall), and the New York Hilton Hotel across Avenue of the Americas (approximately 492 feet tall). In addition, there are approximately 59 buildings taller than 400 feet in the ¼-mile study area, many of which are iconic skyscrapers. While the proposed building would be taller than the Previously Approved Project and the Expanded Development Scenario building, the EIS concludes that this difference in height would not adversely affect the urban design of the surrounding area. As described in Chapter 2, "Land Use, Zoning,

and Public Policy," the proposed project is intended to shift bulk to the higher density zoning districts and away from the C5-P Preservation Subdistrict. The EIS also concludes that the building's design, while modern, would be consistent with the diverse mix of architectural styles represented in this area of the city. As described in the shadows chapter of the DEIS, the project's shadows impact would be on the stained glass windows on the south façade of the Fifth Avenue Presbyterian Church. Similar to conditions in the future without the proposed project, the proposed project is expected to enliven the streetscape with active uses at the ground level and pedestrians coming to the hotel and residential uses.

Comment 47: The south side of the block is a solid wall; there is no setback and the garden is walled off. It ignores the residential character of the neighborhood. (Butzel, Reville, Coxe)

The south side of the block is dominated by one long wall resembling corrugated tin. This corrugated metal wall hides from view three loading bays and the sculpture garden of MoMA. Hiding the sculpture garden from public view is a rude affront to the neighborhood and to the city, which supports MoMA. Pedestrian life is already sorely challenged by the loading docks for the avenue buildings to the north and south in addition to the loading bays of MoMA. (Conant)

MoMA should rethink the garden and open it up. (Reville)

Some of the weaknesses of the most recent expansion include the unattractive and unpopular fence that hides the sculpture garden from the neighborhood. The bland banal face on the south side of the block destroyed some icons of the street: the Jewish Athletic Club, the Dorset Hotel, and Connolly's. Part of the impact that the Modern had when it was first constructed was its contrast in style whereby simplistic modern form was juxtaposed against some of the best examples of Beaux Arts Townhouses in New York. That gave it impact. Today, the south side of West 54th Street resembles a block that could be anywhere. (Whipple)

Response: These comments do not relate to the proposed project because the MoMA Garden is outside the development site and is not a subject of the current proposed actions. No changes to the existing MoMA Garden wall are included in the proposed project. As described in Chapter 8 of the EIS, "Urban Design and Visual Resources," along West 54th Street there are several truck loading docks within the western portion of the MoMA complex on West 54th Street. The sculpture garden is enclosed by a corrugated fence bookended by two metal gates with narrow horizontal slats, which provide breaks in the wall and allow for views into the garden from the sidewalks of West 54th Street. The sculpture garden is an outdoor gallery containing large sculptures, tall trees, tables and chairs, and is partially sunken below street level. For MoMA's

"Summergarden" concert series, visitors are permitted to enter and leave the concerts in the sculpture garden from the two gates.

Comment 48: The developer should be challenged to devise a scheme that opens the street wall. Glass is not enough. (Peyser)

Response: Comment noted. Chapter 8 of the EIS, "Urban Design and Visual Resources," analyzes the potential urban design and visual resources impacts of the proposed building, and concludes that similar to the Previously Approved Project and the Expanded Development Scenario, the proposed project would alter the streetscape by replacing a flat, paved, fenced lot with a new modern building that would have active new uses at ground level on both West 53rd and 54th Streets. The Previously Approved Project, the Expanded Development Scenario, and the proposed project would reinforce the existing streetwalls of West 53rd and 54th Streets, and are expected to enliven those streets with additional pedestrian activity. The building's structural frame would be expressed on the exterior of the building at street level, creating a strong visual presence on West 53rd and 54th Streets.

Comment 49: Three of the existing loading bays should be consolidated into one, and then MoMA could make the area more street-friendly. (Reville)

54th Street should be enlivened for pedestrians. (Garodnick)

Response: As noted above, MoMA's existing building complex is outside of the development site and is not a subject of the current proposed actions.

Figures 1-6, 1-17, and 1-18 show the ground floor and pedestrian circulation space for the proposed project, Previously Approved Project, and Expanded Development Scenario, respectively. Both of the no action scenarios will provide the required pedestrian circulation space. While the proposed project would provide approximately 438 square feet of pedestrian circulation space, the Previously Approved Project will provide approximately 521 square feet and the Expanded Development Scenario will provide approximately 1,000 square feet. All three buildings are expected to enliven the streetscape by providing active ground floor uses and pedestrian activity. Similar to the proposed project, neither the Previously Approved Project or the Expanded Development Scenario would alter the existing MoMA and Museum Tower loading docks.

Comment 50: The Tower sticks up like a sore finger and is explicitly designed to draw attention to itself, without concern for context or its neighbors. It is a building that pays not the slightest attention to the residents who live in the area, including many who have lived there for years; and as a massive structure in the midblock (rather than on the avenue), it represents the opposite of the planning policies the City has generally followed. In terms of light and air, the heaviest

impact will fall on the residents living on 54th, 55th, and 56th Streets between Fifth Avenue and Avenue of the Americas. For many of these residents, including those in the Rockefeller Apartments and Museum Tower, their views to the west and south will be significantly impaired by the 600 feet of the proposed structure that towers above the existing high-rise buildings on Avenue of the Americas. The continuous presence of an out-of-place, out-of-scale, immensely tall tower blocking their views will make residents feel hemmed in. (Butzel)

Response: Comment noted. Views from private residences are not a consideration for urban design and visual resources analysis under CEQR. Therefore the analysis focuses on views from publicly accessible areas, such as sidewalks and Central Park. The basis for consideration of the project's potential impacts is the comparison of the proposed building to the Previously Approved Project and the Expanded Development Scenario, which would also create a new, tall building on the development site. The EIS concludes that the proposed building would not have a significant adverse effect on urban design and visual resources, including the building's visual context. The EIS also concludes that the project would not have a significant adverse impact on neighborhood character.

Comment 51: The impact of the proposed project would not be limited to its neighbors and would be widely visible from many of the surrounding Midtown streets. At 1,250 feet, it will rise far above the existing high-rise streetscape, change visual relationships, and dwarf other important buildings. Calling attention to itself, it will also stand in the way, interrupting both views and expectations. (Butzel)

Response: The DEIS did consider views from beyond the ¼-mile study area. The visibility of the proposed project is considered in the urban design and visual resources analysis from Central Park as well as 32nd Street (Figure 8-41 has been added to the FEIS to show a section view from 32nd Street).

Comment 52: The special permit applications meet the requirements only if the developer and MoMA follow through on the commitments they have made in writing to the Borough President. Specifically they have committed to active frontages on both West 53rd Street and West 54th Street. (Stringer)

Response: Comment noted. As described in Chapter 8 of the EIS, "Urban Design and Visual Resources," the proposed project—similar to the Previously Approved Project and the Expanded Development Scenario—would alter the streetscape by replacing a flat, paved, fenced lot with a new modern building that would have active new uses at ground level on both West 53rd and 54th Streets. The Previously Approved Project, the Expanded Development Scenario, and the proposed project would reinforce the existing streetwalls of West 53rd and 54th Streets, and are expected to enliven those streets with additional pedestrian

activity. As described above, there would be some differences in the pedestrian circulation space of the three designs.

Comment 53: Comparing the proposed tower with the height of the Empire State Building and the Bank of America Building is invalid for two basic reasons—the Empire State Building is on a wide avenue and wide cross-town street, and the footprint occupies half to two-thirds of the block, with extensive set-backs. The Bank of America building is built on Avenue of the Americas and extends way down 42nd Street and has sight lines for pedestrians at the ground level extending from the back of the New York Public Library in Bryant Park for a good three quarters of the distance between Fifth Avenue and Avenue of the Americas. That building also has distinctive surfaces angled away from the street, permitting more light and air to the streets below. The MoMA/Hines tower rises flush from the streets and so pedestrians at best may be able to take in the lower part of the building by craning their necks. The sightlines along the narrow cross-town 53rd and 54th Streets will not afford any good views of the profile of the building, which was purported to add architectural distinction to MoMA. (Harrison)

Response: Comment noted. The discussion of the differences in siting and massing between these buildings and the proposed building has been expanded in Chapter 8 of the FEIS, "Urban Design and Visual Resources."

NEIGHBORHOOD CHARACTER

Comment 54: Constructing this building would compromise the integrity of the neighborhood. (Markoff)

Response: Under CEQR, neighborhood character is an amalgam of the many components that give an area its distinctive personality. These components can include land use; street layout; scale, type, and style of development; historic features; patterns and volumes of traffic; noise levels; and other physical or social characteristics that help define a community. This comment is not correct because most of the aspects of neighborhood character, identified above, are not affected in comparison to conditions with the Previously Approved Project and the Expanded Development Scenario. Chapter 9 of the EIS, "Neighborhood Character," concludes that the proposed project would not result in significant adverse impacts to neighborhood character.

INFRASTRUCTURE

Comment 55: The sewer system is currently inadequate and the project will overtax the system and bring the possibility of roaches, mosquitoes, and vermin. (Schneiderman)

A new enormous building will burden the existing infrastructure of sanitation, sewage, water supply and electricity. (Hemery, Rubin)

The impact on the already strained water supply system and the sewer system is not really put in perspective. The developer does not look at the impact of other planned developments such as a 40-story new hotel at the Donnell Library site across West 53rd Street or the 22-story building planned for West 55th Street. (Conant)

Response: In accordance with CEQR, the analysis presented in the EIS discloses the proposed project's water demands and wastewater generation. As described in Chapter 11 of the EIS, "Infrastructure," compared with the Previously Approved Project, the proposed project would create an incremental water demand for 86,812 gallons per day, and would generate approximately 67,394 gallons per day of wastewater. Compared with the Expanded Development Scenario, the proposed project would create an incremental water demand for 28,222 gallons per day, and would generate approximately 19,600 gallons per day of wastewater. The EIS concludes that this very small incremental demand would not overburden the City's existing water supply or the local conveyance system, nor would it cause the North River and Wards Island Water Pollution Control Plants to exceed their design capacities or stormwater flow permits. Therefore, the project would not result in any significant adverse impacts to infrastructure.

SOLID WASTE AND SANITATION SERVICES

Comment 56: The issue of garbage collection at night is an immediate concern; private carters for commercial properties usually compact late at night, causing pollution and noise. (Garmey, J. Garmey, Conant)

The developer should incorporate standing compactors into the restaurant kitchen and to the loading areas. In combination with a shared loading dock this would reduce noise, pollution, and costs. (Conant)

Response: The project sponsor for the hotel and residential units has stated that it expects to have interior compactors in the completed building wherever possible to alleviate noise and pollution and a below-grade trash compactor for the residential component. The timing of solid waste services is outside the scope of CEQR.

Comment 57: Since the proposed project will generate over 10,000 pounds of solid waste per week (18,928 pounds, 9.5 tons per week), it is not insignificant as claimed. Therefore, the total solid waste generated by MoMA will be 56.5 tons per week, an enormous amount. The developer failed to look beyond the development site to address the cumulative effect of the last MoMA expansion pursuant to a rezoning with this expansion. (Conant)

Response: The EIS presents an analysis performed in accordance with the *CEQR Technical Manual*, and discloses the project's solid waste generation. The project would comply with the City's recycling program, and would be designed to accommodate source separation of recyclables in conformance with City regulations. Consistent with the analysis framework used throughout the DEIS, compared to the Previously Approved Project, the proposed project is estimated to result in 5,500 pounds per week. In comparison to the Expanded Development Scenario, the proposed project is estimated to result in 6,114 pounds per week. These estimates represent a minimal increase in New York City's waste stream, and the project is not expected to result in any significant adverse impacts to solid waste streams or recycling in the City.

ENERGY

Comment 58: The problem with this chapter is that the developer talks about the energy needs (electricity, gas, and steam) of the entire city and not our neighborhood. We regularly have problems with ConEd, particularly this summer. (Conant)

Response: In accordance with CEQR, the DEIS describes the proposed project's energy consumption. The proposed building's heating and cooling system will conform to New York State Energy Conservation Code, which reflects state and City energy policy. Further, the project would not significantly affect the transmission or generation of energy, and therefore, would not result in any significant adverse impacts on energy. Con Edison and other energy providers are expected to continue to deliver energy to the neighborhood and throughout New York City.

Comment 59: MoMA leaves its light on in the office building all night as well as in parts of the museum. (Conant)

Response: MoMA has stated that when it was informed of this concern by the community, operational changes were immediately made. Lights in all office areas where staff do not work in the evenings are now turned off. It should be noted that interior lights will remain on during the evening in office locations where staff are working and also inside the galleries when work, cleaning, and testing are being conducted.

Comment 60: The applicant should be required to be LEED certified. (Conant)

Response: Comment noted.

TRAFFIC AND PARKING

Comment 61: The DEIS says the project does not need a detailed traffic study because it is below the threshold. The project will include 120 hotel rooms, which are

notorious generators of taxis and other vehicles and congestion at the entrances will often block already overtaxed streets. The 40,000 square feet of expanded gallery space will result in added trucks and buses lining the street, added taxis delivering visitors and added pedestrian waiting lines. The most recent expansion resulted in attendance increasing from 1.8 million to 2.5 million visitors a year. The DEIS projects no increase whatsoever and, as a result does not include any analysis of the negative impacts. The area is already choked with traffic and the EIS is wrong to say it wouldn't be increased. A substantial plan for significant mitigation for this increased traffic is needed. (Butzel, Conant, Garodnick, Issacs, Gottfried)

Response: Travel demand estimates for the proposed hotel, residential, commercial office, and retail uses are summarized in the DEIS. The DEIS analyzed a reasonable worst-case scenario of 167 hotel rooms and 300 residential units, the maximum that would be allowed under the Restrictive Declaration for the proposed project. Based on the analysis, the project would not result in the potential for significant transportation impacts and therefore would not require mitigation. Furthermore, the additional gallery space could occur as-of-right and would not yield incremental museum visitation. In fact, visitor demand analyses prepared in connection with the 2007 minor modification of the MoMA special permit concluded that the approximately 68,000 square feet of MoMA addition would serve to alleviate existing crowding and not result in incremental visitation over what has been achieved with the existing MoMA space. Therefore, there is no need for additional transportation analyses.

Comment 62: The EIS should study traffic, including for existing conditions, on West 53rd and West 54th Streets, including river to river, where traffic congestion is a major problem which has to be formally acknowledged and addressed. The DEIS just provides the usual numerical exercise to "prove" that at the peak hour, traffic will not grind to a complete halt. Whether this is true or not, the analysis takes no account of the real situation in the area. The project will add to congestion on already overtaxed streets. The multi-use building will further exacerbate traffic conditions. (Butzel, Garmey, Thompson, Conant, Rockefeller, Manning/Berg)

The EIS should study street traffic, deliveries and pick-ups for these events, and create a plan to regulate their frequency, and minimize the negative impact on West 54th Street. (Conant)

While both 53rd and 54th Streets are designated through street by DOT, 54th Street bears the vast majority of the deliveries and bus traffic that serves MoMA, to the detriment of residents. (Garodnick)

The traffic impacts of the project would be huge and should be taken into account under SEQRA and the City regulations implementing that statute. (Gottfried)

Response: As noted above in Response 32 of Section C, "Response to Draft Scope Comments," the evaluation of potential transportation-related impacts begins with a projection of incremental vehicular, transit, and pedestrian trips attributable to the proposed actions, in accordance with the *CEQR Technical Manual*. If these incremental trips are expected to exceed the CEQR analysis thresholds, appropriate study areas, considering background conditions, would be determined for analysis of the relevant transportation facilities. As demonstrated in the EIS, in comparison to the two as-of-right development projects, incremental trips resulting from the proposed actions are not expected to exceed the CEQR analysis thresholds to warrant further detailed operational analyses.

Comment 63: The proposed building with its increased number of visitors, pedestrian traffic and increased vehicular traffic will undeniably congest the area in the short run during the eight-year construction period.(Manning/Berg)

Response: As noted above in Response to Comment 61, the project would result in a modest increase above the traffic and pedestrian volumes associated with the as-of-right development. These increases fall well below the *CEQR Technical Manual* thresholds requiring quantified analyses of traffic and pedestrians, and would not result in any significant adverse impacts.

The current schedule of construction shows a duration of less than four years (rather than the eight years indicated in the comment). Further, the applicant has stated that it intends to designate a liaison to the community during construction.

Comment 64: Traffic counts were undercounted for both streets, are two years old, and did not consider the recent closing of Broadway between 47th and 42nd Streets to car traffic which has caused more cross-town traffic to avoid street closures. (Conant, Peyser, Garmey, J. Garmey, Issacs)

Response: Since the project screened out of providing a quantified traffic analysis because the number of project-generated vehicle trips was below the CEQR threshold,, there is no need to consider the future without the proposed project in the EIS. The counts referred to in the comment were used for illustrative purposes in a summary of representative peak hour traffic volumes prepared by the applicant for presentation to Community Board 5, and were not part of any traffic study included in the DEIS.

In accordance with the *CEQR Technical Manual (page 3O-7)*, "available volume data are usually most appropriate for an active part of the City if they are not more than three years old." The recent closure of Broadway between 42nd and 47th Streets is part of a NYCDOT pilot program. Any temporary and/or permanent changes in background condition resulting from it are not relevant to the discussions made at Community Board 5.

Comment 65: The project contradicts the idea of alleviating congestion. (Rubin)

Response: It is not the goal or obligation of the project to alleviate congestion. Furthermore, as mentioned above in Response to Comment 62, the DEIS analysis concluded that a quantified analysis is not required under CEQR, and there would not be a potential for significant adverse impacts associated with the project. The proposed program does not require any further traffic analysis under CEQR. Since no potential traffic impacts were identified, no mitigation measures are necessary.

Comment 66: Emergency vehicle access would be impaired because traffic on the avenues is so congested north and southbound. (Ensig-Brodsky)

Emergency services will have impeded response times as a result of the project. (Schneiderman, Hemery, Rubin, Gordon, Isaacs)

Response: As mentioned above in Response to Comment 61, the DEIS analysis concluded that a quantified analysis is not required under CEQR, and there would not be a potential for significant adverse impacts associated with the project, resulting in little to no effects on vehicular travel. Emergency vehicles have the ability to maneuver past typical congestion.

Comment 67: The project will generate additional parking problems. (Rubin)

The project makes no provision for on-site parking, and many of the visitors, guests and residents will certainly have cars. Spaces in nearby parking garages are already hard to find. (Isaacs)

Response: An inventory of on-street parking regulations within ¼-mile of the project site and surveys of off-street public parking facilities within a ¼-mile of the project site were conducted and summarized in the DEIS. As summarized in Chapter 14, "Traffic and Parking" of the DEIS, on-street parking in the study area is generally prohibited or limited to commercial parking. Also summarized in Chapter 14, the overall proposed project, without netting out the demand from the Previously Approved Project or the Expanded Development Scenario, would result in an estimated daily parking demand of up to 150 spaces. Based on the off-street parking survey, facilities in the study area have available capacity ranging from 863 spaces during the midday peak to 2,818 spaces during the overnight peak. Therefore, parking demand generated by the project could be accommodated in off-street parking facilities in the study area, and no significant adverse impacts to parking would result from the proposed project.

Comment 68: MoMA is not a good neighbor due to unloading and queuing. The loading docks are rarely used. Trucks unload on the street because it is easier but leads to traffic congestion. Delivery trucks loading and unloading, and school and tour

buses occupy curbside lanes on West 54th Street. (Butzel, Rosenthal, Issacs, Conant, Coxe, Whipple, Rockefeller, Goeghegan)

The project does not include taxi/queuing lanes, which will add to the congestion of the traffic lane. (Isaacs)

Response: MoMA's existing operations are not relevant to the EIS, which focuses on identifying potential significant adverse impacts associated with the proposed project. However, the applicant has provided the information summarized below. The management of pedestrian and vehicular traffic around the MoMA campus is governed by the "Transportation Management Plan" contained in *The Museum of Modern Art Expansion Final Environmental Impact Statement (FEIS)—Appendix G*, CEQR No. 00DCP007M, dated October 2000, and adopted by the City Planning Commission in connection with approval of the MoMA special permit in 2000. MoMA worked closely with the City to develop the plan and continues to coordinate activities with the NYPD and the NYCDOT on a regular basis.

According to MoMA, curbside deliveries are generally small and can be handed from the deliverer to the loading dock staff. Curbside deliveries take approximately 5 minutes or less. Deliveries and pick-ups within the loading docks are usually more substantial, and take between 15 and 30 minutes.

The reasonable worst-case analyzed in the DEIS is estimated to generate up to three deliveries in an hour, while realistically with the planned building (about half the unit/room counts), only one to two deliveries an hour would likely be realized. These deliveries would also occur with the as-of-right buildings. The collected data further support the validity of the projections presented in the DEIS, as only one delivery during the morning peak hour was recorded across from the project site at the Warwick hotel, which has three times as many rooms as what the proposed building would provide.

Because both sides of West 54th Street at the project site have No Standing Anytime regulations, leaving more space for traffic to pass, the duration of traffic disruption due to deliveries and taxi pick-ups and drop-offs would be minimal. Considering that West 54th Street is the more free-flowing street, as compared to West 53rd Street, the anticipated disruptions to street traffic due to deliveries and taxi pick-ups and drop-offs would be minimal, and there are already other similar activities along the block.

MoMA further states that in order to help control bus traffic and prevent idling on West 54th Street, it provides a "Group Confirmation Kit" that includes the rules for group leaders to follow before, during, and after the visit. The kit includes printed flyers informing bus companies and drivers that there is no standing on West 54th Street and providing a list of suggested and approved bus standing/parking locations further to the west. Starting in 2006 MoMA recruited a special team of volunteers to expedite school group arrivals and departures

curbside, working with the school buses and inside the reception lobby of the Cullman Education building. There are currently 36 volunteers who are present for every day that school groups visit MoMA. From the beginning of May through mid-June, which is the busiest time for school group visits, MoMA created a special West 54th Street security post where a MoMA Security Officer is on hand to work with the volunteers to ensure that the school bus operation is as smooth as possible.

In 2008, according to MoMA, its Security, Operations, and Government and Community Relations staff met with Board members of the Rockefeller apartments to discuss bus-related concerns. At that meeting, the group decided that since MoMA staff cannot actually enforce New York City traffic laws by requiring buses to move, all agreed collectively to contact New York City 311 services to file a report.

The discussion of taxi/queuing lanes is not relevant to the EIS. The project does not preclude the inclusion of a hotel loading/unloading zone. Currently, the curb lane immediately in front of the project site on West 53rd Street has 'No Standing Anytime' regulations. Although the curb lane in front of the project site on West 54th Street provides for metered parking, it is prohibited during weekday daytime hours. It is conceivable that some space along one of these curb lanes could be dedicated for taxi/queuing use; however, this will be determined outside of the CEQR process.

Comment 69: The assertion that unloading only takes five minutes is wrong. Party trucks definitely take longer than that. (Peyser)

Response: Curbside loading information prepared by the applicant was presented at meetings with Community Board 5, but was not part of the analysis presented in the DEIS because it is outside the scope of CEQR. As part of the public review process, observations were made at MoMA during November 2008 and May 2009. These observations, made between the hours of 7AM and 7PM on typical weekdays, when traffic conditions are generally at their worst, showed that delivery trucks unloading typically take five minutes or less. Party trucks were not observed, as they typically arrive at MoMA after 7PM. While delivery activities associated with these party trucks do normally take longer than 5 minutes, traffic volumes along West 54th Street during off-peak hours when these deliveries typically occur are lighter, and impacts on through traffic attributable to MoMA deliveries would be relatively minimal.

Comment 70: The traffic flow study assumes after hours deliveries of commercial linen and special deliveries to the hotels in the area. These kinds of deliveries are known to occur only during daytime hours. (Krueger)

Response: As discussed in Chapter 14, "Traffic and Parking," of the DEIS, the majority of pick-ups and deliveries would be expected to be made by small vehicles such as vans or single-unit panel trucks, and the dwell times would be short. For the hotel use, the limited number of deliveries would be scheduled at off-peak times so as to not affect regular hotel operations. Hotel personnel would assist in the scheduling and receipt of deliveries and pick-ups.

Comment 71: A loading dock management study of the six loading docks on West 54th Street should be prepared. (Conant)

Response: As noted in Response 34 of Section C, "Response to Draft Scope Comments," sharing of loading docks between the proposed building and MoMA is infeasible. Similarly, the applicant believes that any sharing among the other loading docks on the block would be unlikely as well due to differences in operational needs, such as types of delivery and services and the security needs and scheduling of these activities, and different ownerships.

Comment 72: The project would result in additional bus trips associated with the expansion. Will the new museum galleries result in additional corporate events? (Garodnick, Conant)

Response: The museum expansion would occur with both as-of-right scenarios and the proposed project, and would not result in an increase in visitors to MoMA. Therefore, no additional bus trips are expected to occur with the proposed project. The museum expansion would not involve expanding any of the spaces currently used for special events and museum functions; therefore, no increases in the number of events or attendance to such events would occur as a result of the proposed project.

Comment 73: Currently only about half of deliveries are handled through MoMA's loading bays. The rest are either done curbside, or outside the bays, blocking sidewalk access. An alternative to a new curb cut and loading bay to accommodate deliveries to the proposed building should be considered. (Garodnick)

The new building should be designed to take advantage of the existing MoMA loading bays and perhaps consider having the three buildings use only two bays with one bay newly reconfigured for a public, pedestrian, street friendly amenity. (Hoogenboom)

An underground, drive-through loading dock between West 53rd and West 54th Street for shared use by MoMA, Museum Tower, and the proposed project should be considered as a replacement for the three existing loading docks which could be used as prime space on street level. (Conant)

The project has no provision for a drive through loading dock, which is already a considerable problem on the block. (Issacs)

There is concern about another loading dock being added on West 54th Street, a block already heavily taxed with delivery and through traffic. (Krueger)

Response: The loading dock is required by zoning for the proposed project. As described in Chapter 14 of the EIS, "Traffic and Parking," the proposed project does not warrant a quantified traffic analysis under CEQR, and does not have the potential to result in significant adverse traffic impacts. A loading dock study is outside the scope of CEQR and this EIS. However, the applicant has provided the information summarized below. Currently, MoMA's two loading docks at 30 and 40 West 54th Street—one is used for art deliveries and one is used for trash pickup and other deliveries—are regularly staffed by a Museum Security Officer, Monday-Friday from 6:00 a.m. to 6:00 p.m., and on Saturday from 7:00 a.m. to 4:00 p.m., although selected deliveries or pick-ups can be made outside that time frame during which time MoMA staff is also available to receive and manage the deliveries. Based on MoMA's delivery logs for West 54th Street, over the 31-day period between November 26, 2008 and December 28, 2008 (not including Thanksgiving Day and Christmas Day), there was an average of 37 deliveries per day, and an average of approximately 22 minutes between each delivery. Of these deliveries, approximately 47 percent were deliveries to MoMA's loading docks along West 54th Street, and approximately 53 percent were deliveries to the curbside along West 54th Street. According to MoMA, curbside deliveries are generally small and can be handed from the deliverer to the loading dock staff. Curbside deliveries take approximately 5 minutes or less. Deliveries and pick-ups within the loading docks are usually more substantial, and take between 15 and 30 minutes. Additional observations performed in May 2009 showed that on average, one MoMA-related delivery along the south curb of West 54th Street during the AM peak hour, and no more than 3 deliveries during any hour. Because both sides of West 54th Street at the project site have No Standing Anytime regulations, there is adequate space for traffic to pass delivery vehicles, and the duration of any traffic disruptions due to deliveries is minimal.

If all MoMA deliveries were to be accommodated within its loading docks, the vehicles currently making deliveries at the curb would be required to wait for a free loading dock while prior deliveries were being completed. As more than half of deliveries now occur at the curb, this would likely cause curbside vehicle queuing, and would result in greater curbside impacts in terms of idling and sustained impacts on traffic moving in the lane adjacent to the West 54th Street curb.

Some deliveries occur using long tractor trailers that cannot be accommodated inside the MoMA's loading docks. MoMA Security reports that activity of this nature usually involves trucks longer than 48 feet and occurs approximately 10 times per year. Regular daily curbside drop-offs and pick-ups, no matter what the size of the truck, are preferred in instances where the activity would take five minutes or less, which creates less of an impact on traffic versus if the truck backed-up into the dock.

One of MoMA's loading docks is also used for trash collection. In response to concerns raised by MoMA's neighbors about trash, the Museum converted its trash collection from a partial schedule of NYC Sanitation to a daily schedule using a private carting company at significant additional expense to the Museum. Trash collection is now conducted entirely inside the loading dock and trash bags are no longer left out on the MoMA sidewalk awaiting pick-up. The trash collection operation now occurs during overnight hours.

A shared loading dock with MoMA is not feasible for the proposed project due to the different security requirements and delivery practices of the two buildings. The proposed project's loading dock and MoMA's docks cannot be connected because the closest MoMA loading dock to the proposed project dock is used for loading and unloading art. Using an operating hotel loading dock for loading and unloading precious works of art would create undue risks to the security of the art. In addition, there will be essential mechanical space located between them in the proposed plan, which cannot feasibly be relocated. Moreover, it should be noted that creating a shared or joint loading dock facility does not mean eliminating a loading dock from the plan, but merely relocating a required dock internally so that it can be accessed through a shared curb cut with another loading dock. The current plan could not physically accommodate the relocation of one of MoMA's loading docks. Moreover, in terms of traffic impacts, a combined loading facility, with the different delivery and loading practices, would operate less efficiently and would likely cause greater queuing of vehicles on the street.

The applicant has stated that a through-block loading dock alternative is not feasible as this option would require significant changes to the building's major structural members, interior columns, and slabs and would drastically reduce the building's required pedestrian circulation and first floor lobby areas. It would also create additional conflicts on 53rd Street, which has significantly more pedestrians than 54th Street.

The addition of a curb cut on West 53rd Street is not allowed by the NYC Zoning Resolution, and NYCDOT prohibits driveways over subway vaults and ConEdison vaults, which occupy almost the entire frontage of the site along 53rd Street.

TRANSIT AND PEDESTRIANS

Comment 74: The pedestrian impacts of the project would be huge and should be taken into account under SEQRA and the City regulations implementing that statute. (Gottfried)

The expected increase in pedestrian traffic, and its effects on pedestrian flow and the transit systems in close proximity to the new building must be further evaluated. (Krueger, Gottfried, Rubin)

An already overcrowded subway system will be overtaxed by the increased population and no improvement measures have been suggested. No public transportation provisions are being made for the influx of office workers, hotel guests, residents, and visitors who would inhabit or visit this gigantic edifice. (Schneiderman, Rosenthal)

The subway at 53rd and Lexington Avenue is already overcrowded from construction. (Rosenthal, Whipple)

Response: As mentioned in the Response to Comment 61, the DEIS analyzed a reasonable worst-case scenario for the proposed project, and concluded that there would not be a potential for significant adverse transportation impacts associated with the worst-case scenario. This worst-case scenario would yield up to a maximum of 12 incremental peak hour subway trips and 86 total incremental peak hour person trips as compared to the previously approved as-of-right projects. These increments are below the CEQR threshold for requiring a quantified transit or pedestrian analysis, and, therefore, would not result in any significant adverse transit and pedestrian impacts.

Comment 75: MoMA does not effectively moderate the long lines of pedestrians queuing to enter the Museum. These pedestrians prevent residents from easily accessing their homes and others from using the street. With an increase in tourist traffic at MoMA, especially Friday evenings when the museum offers free admission, more queuing should take place inside the building. The pedestrian circulation space should not be waived. MoMA must commit to making meaningful efforts to control and shorten lines, and to control bus loading and unloading activities for both students and tourists. (Stringer, Gottfried, Butzel)

Response: Pedestrian queuing information was prepared by the applicant in response to comments during the public review process, but was not part of the analysis presented in the DEIS because it is outside the scope of CEQR. MoMA's existing operations are not relevant to the EIS analysis of identifying potential significant adverse impacts associated with the proposed actions. A waiver of pedestrian circulation requirements is being requested to address the physical and programmatic needs of the building. The primary function of the building's pedestrian circulation space is to provide access to the proposed building and would not be used for MoMA Target Free Friday Nights (TFFN) queuing. Nonetheless, the applicant has provided the queuing information summarized below to describe existing MoMA operations.

As discussed above, in Response to Comment 68, the management of pedestrian and vehicular traffic around the MoMA campus is governed by the "Transportation Management Plan" contained in *The Museum of Modern Art Expansion Final Environmental Impact Statement (FEIS)—Appendix G.* The Museum opens at 10:30 a.m. every day (except Tuesdays) and closes at 5:30 p.m. As a requirement of the 2000 special permit, MoMA's through-block lobby

always opens one hour earlier—at 9:30 a.m.—in order to accommodate visitors indoors at the ticketing and information desks as well as the Checkroom. MoMA experiences peak visitation during summer weekends and holiday periods such as the weeks of Christmas and Thanksgiving. In 2008, for eleven days during the Christmas and New Year's holidays (December 26, 2008 through January 5, 2009), MoMA opened both its lobby at galleries at 9:30 a.m. to accommodate visitors and to minimize sidewalk queuing.

Since reopening in Midtown on November 20, 2004, typical weekday attendance has averaged approximately 6,800 (approximately 971 visitors per hour, based on a 7-hour period of operation for typical weekdays). There is queuing space within the Museum lobby to accommodate just over 1,200 people. As set forth in the Transportation Management Plan (TMP), this internal space is utilized for visitor queues until the lobby is at capacity.

Absent the discretionary approvals sought for the proposed project, the project site could be developed under the two as-of-right scenarios. Both as-of-right scenarios would yield the same amount of museum space and access through the existing MoMA entrances. Therefore, in accordance with CEQR guidelines, this MoMA addition is not a project increment resulting from the proposed project.

On an average weekday, outdoors queues that form before the Museum opens typically reach as far as the currently vacant development parcel, at their longest. During peak visitation periods the visitor queue may reach as far as the 1330 Avenue of the Americas building along West 53rd Street, but usually does not round the corner onto Avenue of the Americas. During observations of the main MoMA entrance on a typical weekday in November 2008, morning queuing to enter the Museum had completely dissipated and had been contained within the MoMA lobby by about 10:30 am. The average attendance during days of peak visitation in 2009 has been approximately 10,700 (approximately 1,338 visitors per hour, based on an extended 8 hour period of operation). Even during peak visitation, days, any ticketing queues are able to move within the lobby in less than an hour. Recent enhancements to the MoMA website include recommendations for alternative arrival time options for visitors with the goal of minimizing visitor wait times and further distributing the arriving visitors to MoMA throughout the day.

Visitation can sometimes be high during TFFN, which is a free admission program which takes place every Friday between 4:00 p.m. and 8:00 p.m. This weekly program resulted in approximately 1.5 million people having visited MoMA for free since 2004. On average, over 330,000 people gain free access to the Museum every year during TFFN.

Visitation patterns and queue efficiency were studied in detail during the TFFN on Friday, July 3, 2009, which was attended by 9,220 people—one of the highest attendance levels ever. The outdoor queue wrapped around the block to Avenue of the Americas and then onto the south side of West 54th Street. The end of the queue at its longest was on the westernmost part of the street, near the

parking garage entrance and the fence of the vacant lot on 54th Street. The queue was completely contained inside the lobby by 5:55 p.m. Most Friday nights, the line begins forming between 3:00 p.m. and 3:15 p.m., and is contained within the building by 6:15 p.m. We are aware that there have been some reports that the queue has reached farther east along West 54th Street on certain Friday nights, such as on August 8, 2008. The long queue on that night can be explained by the presence of the temporary pre-fab architecture show on the vacant lot, which opened in July 2008. In order to manage the queues for both TFFN and the outdoor architecture show, MoMA created two separate lines, with a dedicated queue for the outdoor architecture exhibit. This use of two separate queues was an anomaly, developed only for that exhibit.

Since reopening in 2004, the Museum has offered visitors the ability to purchase general admission tickets online in advance. This online service was upgraded in January 2008 and all fees associated with purchasing a ticket in advance were eliminated. Printing tickets at home is also an option that is encouraged. Over the past year, a number of Museum ticket buyers used this option to purchase their tickets and therefore did not need to wait in any queues when they arrived at MoMA on the day of their visit. The Museum hopes to grow this number over the next 12 months. In addition, as required by the TMP, for "blockbuster" exhibitions, the Museum uses a full timed ticketing plan. For instance, this was employed during the "Van Gogh and the Colors of the Night" exhibition (9/21/08–1/5/09) to even the flow of visitors in and out of the Museum and exhibition and improve the overall experience. The timed ticketing operation for the Van Gogh exhibition was contained entirely indoors, on an upper floor, and through advanced online ticket sales.

There are designated areas inside the Museum where visitors can wait to purchase tickets and Museum memberships, and to request information. These areas, as noted, can accommodate up to 1,200 people, which is the authorized capacity of the public assembly permit for this space. A structured ticketing queue with stanchions and ropes is put in place every morning inside the lobby near the ticketing desk and can accommodate up to 200 visitors waiting to purchase tickets. The area in front of the Member services desk can accommodate 75 people, the area near the Information desk can accommodate approximately 200 visitors in six separate lines, and the area near the ticket scanning stations and audio tour desk can accommodate up to 400 visitors. The balance of the lobby's visitor capacity is accommodated within the general circulation areas, in group assembly and reception areas, and in seating areas. In those circumstances when the designated controlled queuing areas inside the lobby are filled, the visitor queue to purchase tickets moves outdoors onto the sidewalk and west towards Avenue of the Americas. As outlined in the TMP, the outdoor queue is always managed by Museum staff to monitor pedestrian safety and the distribution of useful information to Museum visitors. This

staffing includes an end-of-line greeter and control of entry/exit to the through block lobby on both the north and south sides, as the plan mandates.

As the TMP mandates, the Museum uses specialized outdoor and indoor queue equipment including stanchion poles, ropes, and barricades whenever there is an outdoor queue. As noted above, visitation is typically highest during TFFN.

Comment 76: Some of the trucks accessing MoMA back onto the sidewalk causing safety concerns. (Goeghegan)

Pedestrian flow is interrupted by activity at the six loading docks on the block between Fifth Avenue and Avenue of the Americas. (Garodnick)

Response: As stated in Chapter 15, "Transit and Pedestrians," a detailed pedestrian analysis is not warranted. However, the applicant conducted observations as part of the public review process to address specific comments. These observations show that pedestrian traffic along the south side of West 54th Street is relatively light. The DEIS projected up to three deliveries in an hour for the reasonable worst-case development scenario. These deliveries would also occur with the as-of-right buildings. The data collected in response to community concerns further support the validity of the projections presented in the DEIS, as only one delivery during the morning peak hour was recorded across from the project site at the Warwick hotel, which has three times as many rooms as what the proposed building would provide. Considering the light pedestrian traffic and infrequency and short duration of deliveries projected to occur at the project site, the applicant believes that any conflicts between delivery vehicles and pedestrians would be minimal.

AIR QUALITY

Comment 77: The DEIS falsely claims less than 75 motor vehicles per peak hour for a new, unprecedented size skyscraper with new galleries, a hotel, condos, and a restaurant. And the site wasn't properly studied. Instead ozone was measured at the City College in Harlem. (Conant)

Response: As presented in the Traffic and Parking chapter of the DEIS, the peak number of project-generated vehicles at intersections is estimated to below the *CEQR Technical Manual* threshold of 50 peak hour vehicle trips for requiring a detailed quantitative traffic analysis is not warranted. This is also well below the *CEQR Technical Manual* threshold for requiring an analysis of potential air quality impacts from mobile sources. The number of project-generated trips for the proposed project was determined based on a comparison of the proposed project with the Previously Approved Project, as discussed in the DEIS. Therefore, since the number of projected trips is below the *CEQR Technical Manual* threshold, no significant adverse air quality impacts are predicted, and a detailed analysis of mobile source impacts on air quality is not required. Ozone

is regional pollutant which is influenced primarily by upwind sources located far away from the monitoring site, and meteorological conditions. Therefore, within New York City, ozone levels do not vary significantly. As discussed, the characterization of ambient air quality for a particular project site is generally determined based on long-term data collected by regulatory agencies at monitoring locations in the area, not based on actual monitoring at the site. The NYSDEC ozone monitoring station in Harlem is the nearest site for which data is available; therefore it is considered an appropriate for characterizing ambient air quality at the project site.

Comment 78: Ozone was measured at CCNY in Harlem. Other pollutants, CO, NO_2 particulate matter were measured on 100-feet-wide East 57th Street near Second Avenue in December 2007, under winter conditions without HVAC. Even this way $PM_{2.5}$ and ozone were above NAAQS. (Conant, Peyser)

Response: The monitoring stations referenced in the DEIS are those closest to the project site. Due to their proximity to the project site and similarity in terms of in terms of setting (i.e., dense urban) they are considered the most appropriate for characterizing the general ambient air quality conditions at the project site. December 2007 is the date of the NYS Department of Environmental Conservation (DEC) reference used, rather than the date of the concentration measurements. Ambient air quality monitoring is performed throughout the year, and conservative values were reported in the DEIS, in accordance with the recommended CEQR guidance.

Comment 79: Construction of this new building will contribute to air contamination and elevate air pollution levels. (Hemery, Rubin)

Response: As discussed in the Construction chapter, construction impacts on air quality will be temporary. Not all activities on-site will take place simultaneously, and best practices will be used to minimize emissions from construction activities including fugitive dust and emissions from construction equipment.

Comment 80: There should be a comprehensive air quality study on location, choosing carefully the day and time to establish representative base values. (Conant)

Response: The analysis presented in Chapter 16, "Air Quality," was conducted in accordance with CEQR. The characterization of ambient air quality for a particular project site is generally determined based on long-term data collected by regulatory agencies at monitoring locations in the area, not based on actual monitoring at the site.

Comment 81: There should be an inventory of emergency generators in the area, and their use patterns. (Conant)

Response: Emergency generator use is limited to use during emergencies and for the purposes of equipment testing and maintenance. The air quality impact of short-term emergency generator use is not considered significant and is typically not analyzed under CEQR. Furthermore, the ambient air quality measurements that were reported in the DEIS account for contributions from all sources, including emergency generators.

Comment 82: Air quality comparisons should be made among the three options for the building and not just measure the incremental values but the difference between the base value and each building. (Conant)

Response: The air quality analysis approach is consistent with the approach recommended by the *CEQR Technical Manual* and the framework for analysis of the DEIS.

NOISE

Comment 83: This project will create additional noise problems and more analyses are required. (Conant, Rubin)

Response: As described in the DEIS, the proposed project would not generate sufficient traffic to have the potential to cause a significant noise impact (i.e., it would not result in a doubling of passenger car equivalents [PCEs], which would be necessary to cause a 3 dBA increase in noise levels). In addition, the building mechanical system (i.e., heating, ventilation, and air conditioning systems, which is anticipated to include chillers) would be designed to meet all applicable noise regulations (i.e., Subchapter 5, §24-227 of the New York City Noise Control Code and the NYCDOB code) and to avoid producing levels that would result in any significant increase in ambient noise levels.

Comment 84: The DEIS acknowledges that noise in the area is already intolerably high at times, but disregards the increases that the proposed action would create or contribute to. (Butzel, Conant)

Response: As described in the DEIS, the proposed project would not generate sufficient traffic to have the potential to cause a significant noise impact (i.e., it would not result in a doubling of passenger car equivalents [PCEs], which would be necessary to cause a 3 dBA increase in noise levels). In addition, the building mechanical system (i.e., heating, ventilation, and air conditioning systems, which is anticipated to include chillers) would be designed to meet all applicable noise regulations (i.e., Subchapter 5, §24-227 of the New York City Noise Control Code and the NYCDOB code) and to avoid producing levels that would result in any significant increase in ambient noise levels.

Comment 85: There is no consideration or analysis of noise from garbage removal or idling trucks, school buses, and tour buses. (Butzel, Conant)

Response: Potential noise created by garbage removal is required to comply with the New York City Noise Control Code (i.e., Local Law 113), and vehicle engine idling is required to comply with the New York City Administrative Code §24-163.

Comment 86: There should be a new noise study with carefully planned days and times, including day times with truck deliveries and much vehicular traffic, and night times when private carters collect and compact daily garbage on location. Sound levels for HVAC and generators should be measured. (Conant)

Response: As described in the DEIS, the potential for noise impacts from the proposed 53 West 53rd Street project was examined. The proposed project would not generate sufficient traffic to have the potential to cause a significant noise impact (i.e., it would not result in a doubling of passenger car equivalents [PCEs], which would be necessary to cause a 3 dBA increase in noise levels). However, ambient noise levels adjacent to the development site were considered to address New York City Environmental Quality Review (CEQR) noise abatement requirements for the building. As described in the DEIS, existing noise levels were measured during the three weekday peak periods on January 31 and February 1, 2007. These are typical days and nothing occurred on these days that would make noise levels unusually high. Potential noise created by garbage removal is required to comply with the New York City Noise Control Code (i.e., Local Law 113). In addition, the building mechanical system (i.e., heating, ventilation, and air conditioning systems, which is anticipated to include chillers) would be designed to meet all applicable noise regulations (i.e., Subchapter 5, §24-227 of the New York City Noise Control Code and the NYCDOB code) and to avoid producing levels that would result in any significant increase in ambient noise levels.

Comment 87: The DEIS ignores the true reality of the situation and picked winter days, January 31 and February 1, 2007, to show that values were intolerable, and did nothing more. (Butzel, Conant)

Response: As described in the EIS, existing noise levels were measured for 20-minute periods during the three weekday peak periods—AM (8:00 to 9:00 AM), midday (MD) (noon to 1:00 PM), and PM (4:30 to 5:30 PM) peak periods on January 31 and February 1, 2007, at two receptor sites adjacent to the development site. As shown in Figure 17-1, Site 1 was located on West 53rd Street between Fifth Avenue and Avenue of the Americas, and Site 2 was located on West 54th Street between Fifth Avenue and Avenue of the Americas. These are typical days and nothing occurred on these days that would make noise levels unusually high. The results of the noise monitoring data were used to address CEQR noise abatement requirements for the proposed project building.

Comment 88: Since the noise measurements for existing conditions were taken on two winter days more than two years ago, the base case itself was atypical of the current environment, understating the worst case conditions (which take place in the summer and on free Fridays) and then failing to take account of the additional traffic, vehicular and pedestrian, that will add to the noise levels. (Butzel)

Response: As described in the DEIS, existing noise levels were measured during the three weekday peak periods on January 31 and February 1, 2007. Small changes in traffic volumes would not appreciably change noise levels. For example, a 20% increase in traffic volumes between 2007 and 2009 would be expected to increase ambient noise levels less than 0.8 dBA (i.e., an imperceptible change). Since vehicular traffic is the dominant source of noise levels at the proposed project site, the 2007 noise monitoring data would be expected to be comparable to noise levels in 2009.

CONSTRUCTION

Comment 89: There are construction safety issues attached to this project, including the fact that machinery will be operating on one of the most congested side streets in Manhattan. (Stuart)

Response: As noted on page 18-12 of the EIS, "The New York City Department of Transportation (NYCDOT) would be consulted to determine the appropriate protective measures for ensuring pedestrian safety surrounding the development site." The development will comply with all NYCDOB Site Safety requirements, and will coordinate as necessary with NYCDOT to ensure traffic safety and minimize congestion to the extent practical.

Comment 90: The construction time period of 44 months is far too long versus the previously approved project which would take 24 months. (Garmey)

The impacts of the project would be four years of noise, dirt, and hazard involved in construction. (H. Hoogenboom)

Response: As described in Chapter 18 of the EIS, "Construction," while construction of the proposed project may result in temporary disruptions, the proposed project would not result in significant adverse construction impacts. The estimated construction period for the Previously Approved Project is 26 months, which is 18 months less than the proposed project. The period of "heavy construction" prior to the proposed building being enclosed would be 34 months. For the remainder of the construction period, construction activities would largely take place within the enclosed building envelope.

As stated in Chapter 18, "Construction," the New York City Noise Code, the New York City Department of Environmental Protection (NYCDEP) Notice of Adoption of Rules for Citywide Construction Noise Mitigation, and the

Environmental Protection Agency's (EPA) noise emission standards regulate noise during construction. The New York City (NYC) Air Pollution Control Code regulates construction–related dust, and best practices would be used to reduce the amount of fugitive particulate matter emissions and dust from excavation. The New York City Building Code, NYCDOB, and NYCDOT govern safety considerations during construction.

Comment 91: Care must be taken about the groundwater level. (Conant)

Response: As stated on page 10-1, "based on site topography groundwater is expected to be 65 feet below grade." Further, the applicant has taken borings onsite and groundwater is not expected to be an issue. Additional borings will be taken as site preparation continues, and appropriate measures will be taken should groundwater be encountered.

Comment 92: Dumpsters must be used to cart away debris rather than have it compacted on location, causing additional pollution and noise, and public health hazards. (Conant)

Response: According to the applicant, depending on the stage of construction, some combination of carting and compacting will be utilized onsite.

Comment 93: Claiming that detailed construction traffic analysis is not needed is totally misleading since there will be traffic disruptions on the two through streets due to lane closures, truck deliveries and storage of construction materials. Additionally there will be potential construction at the Donnell Library to demolish it and replace it with a 40-story hotel tower. (Conant)

Response: A detailed screening analysis of traffic during construction of the proposed project is presented in Chapter 18, "Construction" (see pages 18-8 to 18-13). The project involving demolition of the Donnell Library and new construction on that site is speculative and not definite at this point; therefore, it was not considered in the EIS.

Comment 94: Does the DEIS consider the Avenue of the Americas Subway construction in its fifth year on Avenue of the Americas at 52nd and 53rd Streets? (Conant)

Response: According to Metropolitan Transportation Authority/New York City Transit (MTA/NYCT), the current construction project for a fan plant located on Sixth Avenue between West 52nd and 53rd Streets is expected to be completed in the spring of 2010. All construction on sites adjacent to the subway, such as 53 West 53rd Street, must be coordinated with MTA/NYCT Outside Projects Group.

Comment 95: The table showing noise emission levels for construction equipment gives a range of 74 to 101 dBA. Exposure to levels above 85 dBA can cause hearing damage, a public health issue, especially in an area that already has high noise pollution. There should be use of noise barriers, quiet products and a noise mitigation plan and enforcement. (Conant)

Response: Chapter 18, "Construction," discusses that construction noise is regulated by the New York City Noise Control Code, the NYCDEP Notice of Adoption of Rules for Citywide Construction Noise Mitigation, and the EPA noise emission standards. Measures required to meet those standards would be employed during construction of the proposed project.

Comment 96: There will be serious danger to pedestrian safety from falling debris. (Article on falling glass at Galerie Lafayette in Berlin is included in the Appendix.) (Conant)

Response: Both NYCDOB and NYCDOT regulate safety considerations during construction in order to avoid potentially hazardous conditions to pedestrians. As noted on page 18-12 of the EIS, "The New York City Department of Transportation (NYCDOT) would be consulted to determine the appropriate protective measures for ensuring pedestrian safety surrounding the development site."

Comment 97: The length of construction affects small businesses in the block as well as the Warwick Hotel. (Conant)

Response: As stated on page 18-6 of the EIS, as with most development in New York City, construction of the proposed project may be disruptive to the surrounding area for limited periods of time throughout the construction period. As stated on page 18-12 of the EIS, while there could be various parking lane and/or sidewalk closures associated with the project's construction activity, no rerouting of traffic is anticipated. Access to businesses will be maintained in accordance with NYCDOT requirements. Construction of the proposed project is not expected to block access to any other site/business in the vicinity. It should also be noted that construction activity also brings additional potential patrons for small establishments such as delicatessens.

Comment 98: After hours and weekend construction should be banned. (Conant)

Response: The permitted hours of construction are regulated by the NYC Noise Code and NYCDOB. As stated on page 18-15 of the EIS, if weekend or after-hour work is necessary, additional special construction permits would be required to be obtained, as specified in the New York City Noise Control Code. Permit authorization for weekend or after hour construction work may be granted for circumstances such as emergency work, cases of public safety, City construction projects, construction activities with minimal impact, and for a claim of undue

hardship resulting from unique site characteristics, unforeseen conditions, scheduling conflicts and/or financial considerations.

Comment 99: The special permit applications meet the requirements only if the developer and MoMA follow through on the commitments they have made in writing to the Borough President. Specifically they have committed to be an active member of a construction task force that would involve city agencies and the local community board as well as block association members to address construction related impacts. (Stringer)

The construction of such a large building will undoubtedly cause major disruptions to midtown traffic and numerous other noise and pollution problems in the immediate vicinity of the project, even though the applicant has agreed to provide a liaison to the community during construction. (Rockefeller)

Response: Existing regulations including the New York City Building Code, NYCDOB, NYCDOT, the New York City Noise Code, the NYCDEP Notice of Adoption of Rules for Citywide Construction Noise Mitigation, the EPA noise emission standards, and the New York City Air Pollution Control Code regulate construction activities and reduce potential disruptions accompanying construction. In addition, the applicant has stated that it intends to designate a liaison to the community during construction. The EIS construction analysis concludes that the proposed project would not result in substantial construction-related effects with respect to any of the analysis areas of concern. Therefore, no significant adverse impacts are expected to occur as a result of construction.

PUBLIC HEALTH

Comment 100: Environmental effects (air quality, noise, sanitation, congestion) are already at or above allowed levels without additional values by the new building affecting public health. We request an E designation on the zoning map for MoMA's block. (Conant)

Response: The proposed project is not expected to result in significant adverse impacts to air quality, noise, sanitation, traffic, or other areas related to public health. Therefore, an E designation is not warranted.

Comment 101: New York City is one of the most polluted cities with Manhattan failing the PM standards. Our blocks, with loading docks, large truck traffic, and much idling need and deserve a proper environmental study. CO levels were already very high in 2000. This is a public health issue which is of much importance to residents, especially families, small children and the frail elderly. (Conant)

Response: As described on page 16-4 of the EIS, New York City is in attainment with the federal health-based standard for CO. Ambient CO levels have decreased over

the years as cleaner engines and engine maintenance programs have been implemented. Furthermore, the proposed project would not result in a significant increase of CO emissions.

PM emissions result from the use of diesel fuel, such as in trucks and in heating, ventilation, and air conditioning (HVAC) systems. Since the proposed development would use steam for its HVAC system, there would be no significant PM emissions on-site. There would be no significant long-term increases in truck traffic associated with the proposed development. Short-term construction truck traffic volumes would be below the NYCDEP threshold for analysis and would therefore not have the potential for significant air quality impacts. As detailed in Chapter 18, "Construction" measures to reduce construction-related emissions would be implemented.

MITIGATION

Comment 102: We believe that the following five mitigations will successfully address our environmental concerns:

1. Reduce the tower's height. The new building should be closer to the previously approved 25 floors and not taller than the CBS building (38 floors)

2. Open MoMA's garden freely to the public and replace the garden wall with a see-through fence.

3. Eliminate the hotel loading dock from the project design. We already have six docks on the block and MoMA has three of them.

4. Create a thru-block arcade for pedestrians and possible vehicular drop-off to absorb MoMA traffic.

5. A lowered project height will reduce construction time from 44 months to 24 months—MoMA has already inflicted six years of construction noise, traffic, and pollution on the neighborhood in this decade for the last expansion. (Conant)

Response: As described in the EIS, mitigation measures are intended to reduce or eliminate significant adverse impacts resulting from the proposed project. The significant adverse impact identified in the EIS that would result from the proposed project is a shadow impact on the stained glass windows of the Fifth Avenue Presbyterian Church on the June 21st analysis day. Chapter 20 of the EIS, "Mitigation," examines measures that would reduce or eliminate this impact. In addition, the alternatives analysis looks at a shorter building that would not result in an unmitigated significant adverse shadow impact. Other areas mentioned by the commenter are not relevant to the identified impact.

ALTERNATIVES

Comment 103: I have an alternative proposal for this site. It would have the same program, but be half the size of the Hines Tower. It would mirror the height of the Museum Tower. It would have a through-block public arcade with an entry to a community center (possibly library), additional museum entrances, and a residential lobby. It has a wide range of urban spaces forming an urban town or neighborhood. It has a below-grade parking and loading dock that would alleviate congestion. The two tower design would provide mixed-use residential and hotel uses. The museum extension would be on three levels that form an intertwining Mobius strip within the arcade itself. The grand arcade mimics the scale of Taniguchi's elevation on the west side of the MoMA garden, and continues along the MoMA building line and setbacks along 54th Street. It also creates a linkage to the public passageway next to the CBS building. Green spaces are also proposed. (Beckmann)

Response: Under CEQR, alternatives are considered that have the potential to reduce or eliminate significant adverse impacts identified in the EIS and to meet the goals and objectives of the project sponsor. The alternative proposal referenced in the comment reflects an alternative design and program for the site that contains many features unrelated to environmental concerns. While an alternative half as tall as the proposed project would avoid a significant adverse shadow impact on the Fifth Avenue Presbyterian Church during the summer months, the alternative proposal would not meet key goals and objectives of the project for a variety of reasons. Although square footages of program areas are not specified in the commenter's testimony, the website of his design firm indicates that the space allotted to MoMA would be only 32,500 square feet, as compared to approximately 68,000 square feet in the proposed project. This would not meet the goals of MoMA in pursuing the proposed project. This proposal would also not meet one of the applicant's primary goals for the project, to add a new element to the Midtown Manhattan skyline, while complementing the architectural heritage of West 53rd Street (as described on page 1-6 of the EIS, "Project Purpose and Need"). Further, this alternative might not need a transfer of development rights and therefore would not be required to provide for Continuing Maintenance Programs for the University Club or St. Thomas Church, which, as discussed in Chapter 1 of the EIS, is a benefit of the project.

Comment 104: The pedestrian arcade idea is a good one and is something that could relieve the overloaded pedestrian visitation. (Peyser)

Response: Chapter 15 of the EIS, "Transit and Pedestrians," does not identify any significant adverse impacts on pedestrian conditions. Therefore, there is no need for the proposed project to relieve any pedestrian impact.

Comment 105: The previously approved project with modifications meets the requirements of zoning and fits the midblock, narrow street location. A building no bigger than the surrounding buildings like CBS at 28 stories should be built. Such a building should include an open air, through-block pedestrian arcade or plaza to relieve the pedestrian overload from MoMA visitors. This plaza should be public until midnight and permit the neighborhood a relief from the service alley that has become West 54th Street. The requirement for a loading berth for the hotel should be waived, since MoMA already has three, underutilized loading berths and since this block already has six loading berths and curb cuts. (Peyser)

Response: The Previously Approved Project is evaluated in Chapter 21 of the EIS, "Alternatives," as an alternative to the proposed project. This alternative would not substantially meet the goals and objectives of the proposed project, which include adding a new element to the Midtown Manhattan skyline and complementing the architectural heritage represented on West 53rd Street.

Comment 106: The requisite analysis of alternatives is completely skewed, using a straw man to justify the proposed action and thereby standing the alternative requirements of SEQRA on its head, in violation of the law. (Butzel)

Response: Under CEQR, alternatives are considered that have the potential to reduce or eliminate significant adverse impacts identified in the EIS, and to meet the goals and objectives of the project. There is no obligation to study alternatives which do not respond to identified impacts, and which may not meet the goals and objectives of the proposed project.

Comment 107: The Expanded Development Scenario is a red herring and a strawman. There is no engineering analysis that it is feasible to build, no marketing study to demonstrate that the configuration would result in a financially feasible project, no analysis provided relative to the return that would flow from the already approved project, and no commitment from the developer that if the current 1,250 high tower is turned down, it will go forward with the Expanded Development Scenario or something like it. (Butzel)

Response: The Expanded Development Scenario represents a building that the applicant has stated it would construct absent the proposed actions. The Expanded Development Scenario is both permitted as-of-right under zoning and effects a development that is as viable under market conditions in its location as the proposed project. The Expanded Development Scenario therefore forms a future no build condition in the EIS to which the proposed project is compared to determine impacts. There is no requirement under CEQR that the Expanded Development Scenario provide a market analysis, or demonstrate projected financial returns relative to the Previously Approved Project.

Comment 108: If the DEIS were serious about alternatives and the possibility of minimizing adverse impacts, as SEQRA requires, it would have focused on the Previously Approved Project of 250,000 square feet or variations that include some transferred development rights, but less than the 400,000 square feet that makes the Tower possible. (Butzel)

The 250,000 square-foot project which was previously approved is far more suitable than this monstrous proposal. The earlier building preserves the intent of laws intended to protect landmarks, to maintain neighborhood character, to encourage economic growth, to enhance cultural institutions, and to respect all property rights. (Silver)

Response: The DEIS thoroughly considers the 258,000-square-foot Previously Approved Project in the Future without the Proposed Project section in each chapter and in the Alternatives Chapter. As described above and detailed in the EIS, the Previously Approved Project would not meet the project goals of adding a new element to the Midtown Manhattan skyline and complementing the architectural heritage represented on West 53rd Street. It would also not provide the benefit of Continuing Maintenance Programs for the University Club or St. Thomas Church. However, absent the proposed actions, the applicant has stated that it will construct either of the two scenarios considered in the EIS as the future without the proposed actions.

Comment 109: The proposed configuration is more than 50 percent larger than the 424,843-square-foot, so-called "Expanded Development Scenario," which itself is twice the size of the "Previously Approved Project." (Garodnick)

Response: Comment noted.

MISCELLANEOUS

Comment 110: There is concern about security issues; the building would endanger the neighborhood and MoMA. Its unique design makes it a terrorist target. How is it to be protected? The sidewalks are too narrow and there is no space for anti-ram devices or columns to prevent a truck from driving into the building. Please refer to the New York State Department of Homeland Security report from July 2, 2009 on targets of terrorism. (Martone)

Response: The analysis of the proposed project is consistent with *CEQR Technical Manual* guidelines. Security issues related to terrorism and natural disasters are beyond the scope of CEQR and are dealt with by the New York State Office of Homeland Security. The EIS describes the existing Fire and Police Departments' facilities that serve the development site. Furthermore, the proposed building would comply with all New York City Building Code requirements as well as New York City Fire Code requirements.

Comment 111: Security is already lax at MoMA and MoMA has no regard for public safety. (Rubin)

Response: MoMA's provision of security is not germane to the considerations of an environmental review document prepared under CEQR. However, MoMA has stated that it takes its security responsibilities very seriously and is concerned with being a good neighbor and contributing to the safety of the community. MoMA employs a staff of professional security officers and provides 24-hour security services on-site. In addition to security personnel, MoMA also uses technology including security software, cameras, radios, and other equipment. All of the Museum's security officers are certified by the New York State Division of Criminal Justice Services. In addition, MoMA has a Fire Safety Director and Fire Guards among its security staff. MoMA also works closely with local Law Enforcement Agencies to address security issues including the NYPD, U.S. Secret Service, U.S. Federal Marshals, and other agency staff. MoMA regularly reviews and updates its emergency preparedness plan, which addresses major emergencies in the law enforcement community.

Comment 112: A terrorist attack on a building of one mile high is a very real possibility. If attacked, the Hines building would destroy the entire neighborhood—that is what's left of it. The attack could also destroy many of the surrounding buildings. The Hines building would be a possible hazard to the tenants, office workers, tourists, and innocent passersby. (Nguyen, Conant)

Response: At its peak the proposed building would be approximately 1,250 feet tall not a mile high. As noted above, security issues related to terrorism and natural disasters are beyond the scope of CEQR. However, the building's design and construction would meet all the requirements of the New York City Building Code (promulgated after September 11) as well as the New York City Fire Department requirements, as noted above.

Comment 113: Are the parishioners of St. Thomas and the University Club members aware of what's being done with the air rights, and has MoMA reached out to its neighbors? (Achelis)

Response: Representatives of St. Thomas Church and the University Club have stated that the leadership of each organization has provided the distribution of information on the use of the air rights to their congregation and membership, respectively.

MoMA has stated that it is committed to being a good neighbor to every resident, employee, and business within its local community. In recent years, numerous initiatives have been instituted with a view towards enhancing and strengthening its dialogue with the community. During its expansion program in 2003, MoMA implemented an email notification system as a way to better communicate with the community. In order to encourage participation, MoMA

staff recently went door-to-door distributing new flyers about the email service in order to grow the subscription list.

At present, there are 176 subscribers to MoMA Neighbor News including community and communications liaisons from the offices of City Council Speaker Quinn, Councilmember Garodnick, Councilmember Gioia, Borough President Stringer, Mayor Bloomberg, State Assembly Member Gottfried, and State Senator Kruger. MoMA Neighbor News is sent to all Community Board 5 Members and the District Manager, to the staff of 23 local businesses/office buildings, and to over 75 area residents.

On average, MoMA Neighbor News e-mails are sent 40 times per year to community members to advise them of matters including potentially disruptive Museum work or events and special museum community events. MoMA also encourages members of the community to share observations, suggestions, and questions.

MoMA also produces a quarterly community newsletter to inform the community about Museum news. In addition, MoMA Community Open Houses are offered quarterly to the museum's neighbors and include refreshments and private guided tours of special exhibitions.

A recently added feature of MoMA's community outreach program is the Community Issues Forum. The first meeting was held on July 6, 2009 and included neighbors and MoMA staff members who reviewed issues and engaged in an open dialogue about various community matters. The group discussed holding the forum regularly and recent feedback from the community indicates that more neighbors would like to join the forum for future meetings.

Comment 114: Why is the most expensive museum in New York playing at real estate development? (Achelis)

Response: This comment does not pertain to CEQR analyses or the material presented in the EIS.

Comment 115: A cost-benefit analysis should be submitted by the applicant demonstrating why the public purpose is not met by the previously approved building. (Silver)

Response: A cost benefit analysis is not required under CEQR.

Comment 116: Why have the developers asked for eight extra floors? (Beckmann)

Response: The comment does not refer to material presented in the EIS. There is no reference to the number of floors in the EIS. The proposed project would be 161 feet taller that the as-of-right building in the Expanded Development Scenario. The proposed building, as compared to the shorter expanded development scenario, would allow the developers to create a building with a unique, faceted, tapered shape (see "Project Purpose and Need," page 1-7 of the EIS).

Comment 117: The project would have long term effects on all areas of impact studied in the EIS. (H. Hoogenboom)

Response: The statement is incorrect. As described in the EIS, the proposed project would have one significant adverse impact—shadows on the windows of the Fifth Avenue Presbyterian Church on summer afternoons. Additional analyses conducted between the Draft and Final EIS determined that there was no practicable mitigation and that the impact would be unmitigated.

Comment 118: MoMA wants to create a new nuisance for the neighborhood to gain only 40,000 square feet of space (five percent) of the total proposed space. (Whipple)

Response: The EIS does not identify any impacts that would create a nuisance to the community, such as significant adverse impacts to neighborhood character, traffic, noise, air quality, urban design, and most other technical areas.

Comment 119: CB5 recommends denial of air rights transfers; no recommendation on waivers. (Rockefeller)

Response: Comment noted.

Comment 120: Why have there been expedited approvals for this project? (Beckmann)

Response: The land use approvals have followed the standard Uniform Land Use Review Procedure calendar.

Comment 121: There will be a wind tunnel effect on the surrounding buildings. (Conant)

Response: On p. 8-21 the EIS states:

> In regard to pedestrian wind conditions, the proposed building would be located in a densely developed area of midtown Manhattan containing a number of tall buildings. While the proposed building would be taller than surrounding buildings, the additional height is not expected to result in pedestrian wind speeds that would be significantly different than wind speeds experienced in the project area with existing conditions or conditions in the Future Without the Proposed Project. Similarly, the shape of the building (including the faceted tower which would taper to a narrow point) would not be expected to result in pedestrian wind speeds in the project area that would be significantly different from existing conditions or conditions in the Future Without the Proposed Project. From a pedestrian wind perspective, the proposed building would not be expected to create any unusual wind currents at street level that do not currently exist. Overall, the pedestrian wind environment produced by the proposed building would not be expected to differ significantly from the current wind conditions at the project location.

Comment 122: There are several hotels in the area; we do not need another hotel. They include the Hilton, the London, the Warwick, the St. Regis, the Shoreham, the Peninsula, the Blakely, and the Wellington. These are just on two streets from Avenue of the Americas/Seventh Avenue. With maybe as many as 20,000+ guests, this adds to the congestion of the area. (Nguyen)

Response: As discussed in Chapter 2 of the EIS, "Land Use, Zoning, and Public Policy," the development site and the surrounding area is zoned to permit hotel uses. The analysis in that chapter concludes that the proposed uses, including a hotel, would be compatible with the surrounding area and that the project would not result in significant adverse impacts to land use, zoning, or public policy. The Restrictive Declaration for the proposed project will limit the number of hotel rooms to a maximum of 167.

Comment 123: The Land Use chapter lists other developments but fails to analyze the cumulative impact of all these developments on open space, community facilities, air quality, noise, infrastructure, energy, solid waste and sanitation, and other areas. (Conant)

Response: The purpose of this EIS is to analyze the potential significant adverse impacts of the proposed project. The EIS analyses follow the guidelines of the *CEQR Technical Manual.* The detailed analyses consider the effects of other projects expected to occur independent of the proposed project, which are accounted for in conditions in the future without the proposed project.

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