

## **25. Response to Comments on the DEIS**

### **25.1. INTRODUCTION**

This chapter summarizes and responds to all substantive comments on the Draft Environmental Impact Statement (DEIS) for the proposed East Midtown Rezoning and Related Actions project made during the public review period. These consist of comments made at the Public Hearing held by the New York City Planning Commission (CPC) on August 7, 2013, and written comments submitted to the New York City Department of City Planning (DCP). The period for public review remained open until August 19, 2013.

The following section lists the organizations and/or individuals who made oral statements at the Public Hearing and/or submitted written comments, and summarizes and responds to these comments.

### **25.2. DEIS COMMENTS AND RESPONSES**

Comments were accepted on the DEIS for the East Midtown Rezoning and Related Actions project. The CPC held a Public Hearing on August 7, 2013, on the DEIS in the George Gustav Heye Center, National Museum of the American Indian, Alexander Hamilton U.S. Custom House, One Bowling Green, New York, NY 10004, in conjunction with the CPC's citywide public hearing pursuant to Uniform Land Use Review Procedure (ULURP). The public hearing also considered a modification to the Proposed Action, (ULURP No. 130247(A) ZRM). Written comments were accepted on the DEIS through August 19, 2013. Written comments received on the DEIS are included in Appendix 11.

This section lists and responds to comments on the DEIS. The comments are organized by subject area, following the organization of the DEIS document. Where comments on the same subject matter were made by more than one person, a single comment summarizes those individual comments. The organization and/or individual that made the comment is identified next to each comment, using a numerical reference keyed to the list of commenters below. Comments on the DEIS were received from the following individuals and organizations:

1. Michael Greeley, Manhattan Community Board 5/Multi-Board Task Force on East Midtown (written comments dated 05/13/2013, 05/22/2013, and 08/07/2013; oral statement at Public Hearing)
2. Manhattan Community Board 1 (written comments dated 05/28/2013)
3. Multi-Board Task Force on East Midtown, Manhattan Community Boards 1, 4, 5, and 6 (written comments dated 06/11/2013)
4. Manhattan Borough Board (written comments dated 7/17/2013)

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5. Jerome Haims, Jerome Haims Realty, Inc. (oral statement at Public Hearing and written comments dated 08/07/2013)
6. Judy Gallent, Bryan Cave, on behalf of The Yale Club of New York City (written comments dated 07/30/2013 and oral statement at Public Hearing)
7. Hon. Scott Stringer, Manhattan Borough President (written comments dated 07/31/2013)
8. James Nelson, Massey Knakal Realty Services (written comments dated 08/07/2013)
9. Lola Finkelstein, Manhattan Community Board 5/Multi-Board Task Force on East Midtown (oral statement at Public Hearing and written comments dated 08/07/2013)
10. Nancy Ploeger, Manhattan Chamber of Commerce (written comments dated 08/07/2013)
11. Clayton Smith, Manhattan Community Board 5 (oral statement at Public Hearing and written comments dated 08/07/2013)
12. Michael Gruen, The City Club of New York (oral statement at Public Hearing and written comments dated 08/07/2013 and 08/19/2013)
13. Julie Menin, Candidate for Manhattan Borough President (written comments dated 08/07/2013)
14. Bill Montana (oral statement at Public hearing and written comments dated 08/07/2013)
15. Carol Willis, The Skyscraper Museum, comment submitted as a member of the public (oral statement at Public hearing and written comments dated 08/07/2013)
16. Carl Weisbrod, HR&A Advisors, on behalf of Midtown Trackage Ventures (oral statement at Public hearing and written comments dated 08/07/2013)
17. George Haikalis, Institute for Rational Urban Mobility, Inc. (oral statement at Public hearing and written comments dated 08/07/2013)
18. Terrence O’Neal, Community Board 6 (oral statement at Public hearing and written comments dated 08/07/2013)
19. Hon. Brad Hoylman, New York State Senator, 27th Senate District (written comments dated 08/07/2013)
20. Peter Malkin, Malkin Holdings (oral statement at Public hearing and written comments dated 08/07/2013)
21. Dan Biederman, 34th Street Partnership and Bryant Park Management Corporation (written comments dated 08/07/2013)
22. Douglas Woodward, Edison Properties (written comments dated 08/07/2013)
23. Louis Coletti, Building Traders Employers’ Association (written comments dated 08/07/2013)
24. Steven Spinola, Real Estate Board of New York (oral statement at Public hearing and written comments dated 08/07/2013)
25. David Levinson, L&L Holding Company (oral statement at Public hearing and written comments dated 08/07/2013)
26. Richard Anderson, New York Building Congress (oral statement at Public hearing and written comments dated 08/07/2013)
27. Michael Keane, Community Board 5, comment submitted as a member of the public (written comments dated 08/07/2013)
28. Carla Fine, resident of 477 W. 22nd Street (written comments dated 08/07/2013)

29. Allen Oster, resident of 477 W. 22nd Street (written comments dated 08/07/2013)
30. Kevin Lichten, The Yale Club of New York City (oral statement at Public hearing and written comments dated 08/07/2013)
31. Service Employees International Union Local 32BJ (written comments dated 08/07/2013)
32. Howard Hornstein (written comments dated 08/07/2013)
33. Alan Dutton, The Yale Club of New York City (oral statement at Public hearing and written comments dated 08/07/2013)
34. Bataya Lewton, Coalition for a Livable West Side (written comments dated 08/07/2013)
35. Peter Ward, New York Hotel Trades Council (oral statement at Public hearing and written comments dated 08/07/2013)
36. Kathy Thompson, Manhattan Community Board 6 (oral statement at Public hearing and written comments dated 08/07/2013)
37. Andrea Goldwyn, The New York Landmarks Conservancy (oral statement at Public hearing and written comments dated 08/07/2013)
38. Robert Paley, Metropolitan Transportation Authority (oral statement at Public hearing and written comments dated 08/07/2013)
39. Caroline Angoorly, GreenTao LLC (written comments dated 08/07/2013)
40. Michael Levine, consulting planner for Community Board 1 (oral statement at Public hearing and written comments dated 08/07/2013)
41. Michael Simas, Partnership for New York City (written comments dated 08/07/2013)
42. Bob Fox, COOKFOX Architects and Terrapin Bright Green (oral statement at Public hearing and written comments dated 08/07/2013)
43. Cecil Scheib, Urban Green Council (oral statement at Public hearing and written comments dated 08/07/2013)
44. Hon. Gale Brewer, New York City Council Member, 6th District, Manhattan (oral statement at Public hearing and written comments dated 08/07/2013)
45. Hon. Daniel Garodnick, New York City Council Member, 4th District, Manhattan (written comments dated 08/07/2013)
46. Hon. Liz Krueger, New York State Senator, 28th Senate District (oral statement at Public hearing and written comments dated 08/07/2013)
47. William Henderson, Permanent Citizens Advisory Committee to the MTA (oral statement at Public hearing and written comments dated 08/07/2013)
48. Rachel Levy, Landmark West! (oral statement at Public hearing and written comments dated 08/07/2013)
49. Hon. Jessica Lappin, New York City Council Member, 5th District, Manhattan (oral statement at Public hearing and written comments dated 08/07/2013)
50. Kate Wood, resident of 250 Cabrini Boulevard, Apt. 7C (written comments dated 08/07/2013)
51. Hon. Carolyn Maloney, U.S. Congress, 12th District, New York (written comments dated 08/07/2013)
52. Historic Districts Council (written comments dated 08/07/2013)

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53. Thomas Prendergast, Metropolitan Transportation Authority (written comments dated 08/06/2013)
54. Fredericka Cuenca, Metropolitan Transportation Authority, Corporate Initiatives (oral statement at Public hearing and written comments dated 08/07/2013)
55. Hon. Dan Quart, New York State Assembly Member, 73rd District (written comments dated 08/07/2013)
56. Christopher Jones, Regional Plan Association (oral statement at Public hearing and written comments dated 08/07/2013)
57. Greg Schenker, ABS Partners (written comments dated 08/07/2013)
58. Stephen Lefkowitz, Fried, Frank, Harris, Shriver and Jacobson LLP, on behalf of S.L. Green (written comments dated 08/12/2013)
59. James Korein, Omnispective Management Corp (written comments dated 08/12/2013)
60. Hon. Charles E. Schumer, U.S. Senator (written comments dated 08/13/2013)
61. Andrew S. Berkman, Council to 335 Madison Avenue, LLC (written comments dated 08/14/2013)
62. Michael T. Sillerman, Kramer Levin Naftalis & Frankel LLP, on behalf of The Hotel Benjamin, The Hotel Lexington, and the Marriot East Side Hotel (oral statement at Public hearing and written comments dated 08/07/2013)
63. Brooke Barrett, The Benjamin Hotel (written comments dated 08/07/2013)
64. William Tennis, DiamondRock Hospitality, owner of the Lexington Hotel (written comments dated 08/07/2013)
65. Kramer Levin Naftalis and Frankel LLP, on behalf of Prime Property Fund LLC, owner of the Marriot East Side Hotel (written comments dated 08/07/2013)
66. Andrew Penson, Midtown Trackage Ventures LLC, owner of the land underneath Grand Central Terminal and the unused development right associated with that land (oral statement at Public Hearing and written comments dated 08/07/2013)
67. Municipal Art Society (written comments dated 08/16/2013)
68. Park Avenue Properties Associated LLC, Owner of 445 Park Avenue (written comments dated 08/07/2013)
69. Kevin McEvoy, Lester A. Epstein & Associates LLC/Epstein Family Holdings LLC, owners/managers of 9 and 11 East 47th Street (written comments dated 08/19/2013)
70. Robert K. Steel, New York City Deputy Mayor for Economic Development (oral statement at Public Hearing)
71. Mary Ann Tighe (oral statement at Public Hearing)
72. Stephen Morello, Metropolitan Transportation Authority Counsel (oral statement at Public Hearing)
73. Joyce Matz (oral statement at Public Hearing)
74. Arnis Seurat, representing Carolyn Maloney (oral statement at Public Hearing)
75. Wally Rubin, representing Lola Finkelstein (oral statement at Public Hearing)
76. Alexis Saba (oral statement at Public Hearing)

77. Nadezhda Williams, Historic Districts Council (oral statement at Public Hearing)
78. David Brown, Archdiocese of New York, on behalf of St. Patrick's Cathedral (oral statement at Public Hearing)
79. David Edelson, Central Synagogue (oral statement at Public Hearing)
80. Robert Schiffer, S.L. Green Realty Corp. (oral statement at Public Hearing)
81. Vishaan Chakrabarti (oral statement at Public Hearing)
82. Gene Kohn, KPF (oral statement at Public Hearing)
83. James Von Klemperer, KPF (oral statement at Public Hearing)
84. Ellen Imbimbo, Manhattan Community Board 6 (oral statement at Public Hearing)
85. Lueiisse Mercedes, Hotel Trades Council (oral statement at Public Hearing)
86. Desiree Fraser, Hotel Trades Council (oral statement at Public Hearing)
87. Shavonne Honor (oral statement at Public Hearing)
88. Anne Adams Rabbino, St. Bartholomew's Church and Community House (oral statement at Public Hearing)
89. Robert Salomon, Hotel Trades Council (oral statement at Public Hearing)
90. Tsultrim Sangmo, Hotel Trades Council (oral statement at Public Hearing)
91. Andrea Kluger, Manhattan Community Board 5 (oral statement at Public Hearing)
92. Tommy Craig, Hines (oral statement at Public Hearing)
93. Peter Lempin, Grand Central Partnership (oral statement at Public Hearing)
94. Adam Courteney (oral statement at Public Hearing)
95. James Wacht, Sierra Realty Corp. 45 , Lee Associates (oral statement at Public Hearing)
96. Aditi Sen, Services Employers International Union Local 32 (oral statement at Public Hearing)
97. Mark Diller, Manhattan Community Board 7 (oral statement at Public Hearing)
98. Sal Marciante (oral statement at Public Hearing)
99. Judith Seemungol, Hotel Trades Council (oral statement at Public Hearing)
100. Juanna Velez, Hotel Trades Council (oral statement at Public Hearing)
101. Serle Jeudy, Hotel Trades Council (oral statement at Public Hearing)
102. Angel Ocasio, Hotel Trades Council (oral statement at Public Hearing)
103. Kazi Hossain, Hotel Trades Council (oral statement at Public Hearing)
104. Brian Gaffney, Hotel Trades Council (oral statement at Public Hearing)
105. Charles Montalbano, Hotel Trades Council (oral statement at Public Hearing)
106. Ethan Eldon, Sustainable Management, LLC, on behalf of JPMorgan Chase (oral statement at Public Hearing)
107. Phil Santore, DVS Security, on behalf of JPMorgan Chase (oral statement at Public Hearing)
108. William Viets, JPMorgan Chase (oral statement at Public Hearing)
109. Ken Fisher, Cozen O'Connor, representing JPMorgan Chase (oral statement at Public Hearing)
110. Brian Cook, on behalf of Manhattan Borough President Scott Stringer (oral statement at Public Hearing)
111. Robert Lieber, Urban Land Institute (oral statement at Public Hearing)

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112. Latha Thompson, Manhattan Community Board 8 (oral statement at Public Hearing)
113. Ronda Wist, Municipal Art Society, on behalf of Hugh Hardy (oral statement at Public Hearing)
114. Janet Ross, Municipal Art Society, on behalf of Ronda Wist (oral statement at Public Hearing)
115. Jessica Walker, Partnership for New York City, on behalf of Michael Keane (oral statement at Public Hearing)
116. Paul Selver (oral statement at Public Hearing)
117. Katie Roussos, Hotel Trades Council (oral statement at Public Hearing)
118. Enrique Lopez, on behalf of New York State Senator Brad Hoylman (oral statement at Public Hearing)
119. Eric Stern, Manhattan Community Board 5 (oral statement at Public Hearing)
120. David Golab, Multi-Board Task Force on East Midtown (oral statement at Public Hearing)
121. Roxanne Warren, Institute for Rational Urban Mobility, Inc. (oral statement at Public Hearing)
122. Caroline G. Harris, Goldman Harris LLC, on behalf of The Roosevelt Hotel (written comments dated 08/16/2013)
123. Lori Zabar (written comments dated 08/4/2013)
124. Susanna Margolis (written comments dated 08/4/2013)
125. James W. Farer (written comments dated 08/4/2013)
126. Michael S. Cutler (written comments dated 08/3/2013)
127. John Tweddle (written comments dated 08/3/2013)
128. Sanford Malter (written comments dated 08/2/2013)
129. Anonymous (written comments dated 08/2/2013)
130. Mark Koppel (written comments dated 08/2/2013 and 08/5/2013)
131. Gail Gregg (written comments dated 08/5/2013)
132. Andrea Jeromos (written comments dated 08/5/2013)
133. Jill Gill (written comments dated 08/5/2013)
134. Norma Barbacci (written comments dated 08/5/2013)
135. Vincent Konetsky (written comments dated 08/5/2013)
136. Nancy B. Austin (written comments dated 08/5/2013)
137. Barbara Orlando (written comments dated 08/5/2013)
138. Mosette Broderick (written comments dated 08/5/2013)
139. Ernest Barbieri (written comments dated 08/5/2013)
140. Anonymous (written comments dated 08/5/2013)
141. Zack Winestine (written comments dated 08/5/2013)
142. Betty Lynd (written comments dated 08/5/2013)

### 25.2.1 Project Description

*Comment 1.1 The Proposed Action should be approved. (8) (10) (14) (15) (20) (22) (23) (24) (26) (31) (32) (41) (42) (56) (57) (59) (60) (62) (63) (64) (68) (71) (72) (80) (81) (82) (83) (93) (94) (95) (96) (111) (115) (122)*

**Response:** **Comment noted.**

*Comment 1.2 The City’s proposal complements and enhances MTA’s goals. The MTA welcomes initiatives such as the proposed rezoning, which will help to advance planned improvements. Funding from the rezoning proposal provides an important contribution to meeting the needs of the area and the transit system as a whole. The MTA welcomes the opportunity to accelerate investments to the Grand Central subway station, and the MTA will work with the City to come up with a series of projects from its overall strategic plan that will have a meaningful impact. (38) (53) (54) (73)*

**Response:** **Comment noted.**

*Comment 1.3 The rezoning effort is moving too quickly, and the Community Boards (as well as the Multi-Board Task Force), elected officials, and members of the public did not have ample time to review the Proposed Action. There have not been adequate opportunities for stakeholders to offer input. The political calendar should not drive the time frame for the Proposed Action. There should be a postponement of the rezoning. (3) (9) (11) (12) (13) (17) (18) (19) (36) (37) (44) (45) (46) (48) (49) (51) (52) (69) (74) (75) (76) (77) (118) (123) (131) (135)*

**Response:** **The DEIS has been prepared in accordance with the guidance of the City Environmental Quality Review (CEQR) Technical Manual and includes detailed analyses of the Proposed Action and its potential for significant adverse impacts which provide a meaningful basis for public comment. With regard to the project overall, since announcing the project in June 2012, DCP has attended more than 10 individual Community Board public meetings to describe the proposal and solicit input. In addition, DCP has held numerous meetings with the area’s stakeholder groups for the same purposes.**

*Comment 1.4 The City must think beyond zoning; a comprehensive plan is needed. One suggestion is to use the “Principles for a New East Midtown,” developed by the Multi-Board Task Force, as a framework for any rezoning of East Midtown. (3) (7) (13) (17) (18) (29) (46) (48) (67) (76)*

**Response:** **DCP has identified a number of long-term challenges that affect the East Midtown area and its role as a job center for the City and region, including an aging office stock and pedestrian network challenges. The zoning proposal put forth by the City is intended to ensure the overall health of the East Midtown business district by allowing for limited, new predominantly office development and to generate funding for pedestrian improvements for the area. In conjunction with this**

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project, the City is undertaking a public realm vision process to help identify issues and priorities for future District Improvement Bonus (DIB) investment. In addition, the Metropolitan Transportation Authority (MTA) has undertaken a comprehensive analysis of the stations in the East Midtown area to identify issues and priorities for future DIB investment. The City believes this represents a comprehensive assessment of the issues and an effective policy response to addressing them.

*Comment 1.5*      *A major purpose for the East Midtown rezoning is given as preserving New York City’s competitiveness against such other major cities as Shanghai, London, Tokyo and Chicago. The term “competitor cities” is often used. E.g., pp. DEIS, 1-9. However, no evidence whatsoever is given that there is any competition between New York and these other cities based on the building stock. A map displaying the age of buildings across cities is offered as a piece of analysis. However, a large number of economic, geopolitical, and other factors determine what economic activity occupies major office buildings. No evidence is presented that the nature of the building stock is a cause rather than an effect. Additionally, DCP offers very little solid evidence of pernicious obsolescence or impending decline of older buildings, nor does DCP offer significant evidence that upzoning to increase bulk will solve the supposed problem. (3) (12) (28)*

**Response:**      **As stated in Chapter 1, “Project Description,” Section 1.3 of the DEIS (Purpose and Need), the City looked to other global competitor cities with traditional office cores that have faced similar challenges in needing to upgrade their office stock and meet new market demands. These cities all identified their existing aging office stock as a challenge to the continued success of their traditional office cores. East Midtown faces similar issues, while having an overall average age of office stock far in excess of the stock found in these cities. DCP has identified a number of recent building conversions in the East Midtown area from office use to hotel or residential, resulting from existing buildings being unable to meet their original intended purpose.**

*Comment 1.6*      *Page 3-14 in the DEIS states that the amount of office development that would be allowed by the rezoning “would not be enough to alter or accelerate existing economic trends.” That runs counter to the claim that the rezoning would make New York more competitive with other cities. (3)*

**Response:**      **As stated in Chapter 1, “Project Description,” Section 1.3 of the DEIS (Purpose and Need), East Midtown is currently one of the nation’s premier office districts, and the Proposed Action is necessary to maintain its status in the face of long-term challenges. The statement on page 3-14 that is quoted in the comment is consistent with this perspective.**

*Comment 1.7*      *CPC should adjust the proposed zoning changes such that development in accordance with the new zoning would not result in a net increase of commercial office space in the*



*East Midtown area. The projected 4.4 million square foot net increase in commercial office space in the East Midtown area would place an unsustainable and unmitigatable burden on the transportation infrastructure that serves not only East Midtown, but Lower Manhattan as well. (2) (40)*

**Response:** Such a proposal would not be consistent with the goals of the Proposed Action, which is intended to lead to the development of a limited number of new predominantly office buildings in the East Midtown area over the long term. In addition, the DEIS analyzed the effects of the Proposed Action and found that with implementation of improvements made possible through the District Improvement Fund (DIF), the subway transit infrastructure not only would not experience impacts but that conditions would actually improve in comparison to the No-Action condition.

*Comment 1.8 The RWCDs does not reflect the new special permit for “superior development” (p. 21-1 of the DEIS). (3)*

**Response:** As noted in the DEIS, the reasonable worst-case development scenario (RWCDs) for the Proposed Action is based on several factors and assumptions regarding where new development could reasonably be expected to occur in the With-Action condition, as well as the type and amount of new development. The RWCDs does not include specific development sites that would achieve the higher maximum Floor Area Ratios (FARs) available under the Special Permit, since the number and locations of sites that may utilize the Special Permit cannot be predicted with certainty. The environmental effects of potential use of the Special Permit are analyzed in a conceptual analysis set forth in Chapter 21, “Conceptual Analysis.”

*Comment 1.9 The proposed amendments would give broad and undefined discretion to the Commission to issue special permits for still greater FAR to encourage outstanding design, planning and energy performance. We question whether the guidelines for such “superior developments” are specific enough to satisfy legal requirements for delegation of power to an administrative agency. (12)*

**Response:** The findings for the proposed “Superior Design” special permit are comparable to those for other special permits found in the zoning resolution and provide the CPC with appropriate guidance with regard to the exercise of discretionary review of applications.

*Comment 1.10 The “superior developments” section of the proposed zoning text allows various exceptions to otherwise applicable bulk distribution and use standards without adequate standards. For example, and of special concern, is that exceptions may be made to the requirements for retail density along the street facades. We consider retail presence along streets very important to the safety and enjoyment of street life. It is just as necessary for large buildings as for small. (12)*

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**Response:** Applications for the Superior Development special permit will be required to go through the full ULURP process for approval. Any such proposal to modify retail continuity provisions would be reviewed at the time of the application and the findings of such proposal would be required to specifically address how the building meets the street through its proposed site plan.

*Comment 1.11 DCP and CPC should amend the proposed zoning text to allow existing overbuilt buildings on full blockfront sites of slightly less than 20,000 square feet — 445 Park Avenue's site has an area of 18,000 square feet — to be treated as "qualifying sites" for the purpose of reconstruction and permitted floor area ratio. If this cannot be done during this public review process, it is an appropriate amendment that should be part of a follow-up action. (68)*

**Response:** DCP believes the 20,000-square-foot site size requirement is the minimum needed due to the interaction between typical commercial office building design and the existing Midtown height and setback regulations. At the higher FARs of overbuilt buildings, commercial office buildings with footprints below 20,000 square feet would be unduly constrained by these regulations. To achieve the floorplates desired by tenants, such buildings would be more likely to require height and setback waivers that would have an undesirable effect on light and air to the street. In addition, lowering the site size requirements is outside the scope of the Proposed Action.

*Comment 1.12 The City should re-think lot size requirements that depend upon site assemblage and teardowns to make way for new construction. The proposed rezoning requires a site to be cleared in order for a new building to take advantage of the additional density. This provision encourages the demolition of buildings rather than trying to find architecturally creative solutions to incorporating existing buildings or buildings around them. (67)*

**Response:** The Proposed Action is intended to encourage the development of a limited number of new, large-floorplate predominantly office buildings, which would replace some of the area's aging commercial stock. The Qualifying Site provisions require that the site be cleared of existing buildings in order to help encourage replacement construction consistent with the goals and purposes of the Proposed Action.

*Comment 1.13 CPC should consider adoption of more flexible rules for frontage and lot size requirements for development sites so as not to eliminate otherwise qualifying projects from benefiting from the zoning changes. (93)*

**Response:** The "Modified Zoning Text Amendment" proposal that the CPC is considering provides limited flexibility regarding the Qualifying Site requirements pursuant to a CPC authorization.

*Comment 1.14      The midblock areas within the proposed action area which were downzoned in the 1980's from 15.0 FAR to 12.0 FAR creating an economic disincentive for mid block owners with aging office properties to consider redevelopment are belong largely ignored by the proposal. The result then is a situation inconsistent with the stated intent of the project action with regards to meeting challenges that must be addressed in Midtown East including but not limited to redeveloping aging office stock with contemporary structures to maintain East Midtown as a premier job center and generate tax revenue. While midblock properties would be included for bonus FAR through District Improvement Bonus, this would only affect mid block properties if an avenue property were to be included in a qualifying development site. The City should restore the earlier 1961 15.0 FAR as of right before bonus midblock perhaps with some minimum plot size and other restrictions to avoid sliver building and other inappropriate development potential as this would further the goals of the action. For example, the effects of existing setback requirements by deed restriction within the project area such as exists on East 47th & East 48th Streets Fifth to Madison Avenues could be extended to other blocks to require wider sidewalks for new construction and upper story setbacks for light and air in the event such FAR is restored. (69)*

**Response:**      **The change to the Proposed Action that is suggested in the comment would not be consistent with the goals of the Proposed Action, which, as stated in Chapter 1, "Project Description," Section 1.4.1, "Goals of the Proposed Action," of the DEIS, include to "Seed the area with new modern and sustainable office buildings to maintain its preeminence as a premier office district," while, as noted in Section 1.4, "the areas would remain largely as is."**

**The 1982 Special Midtown District zoning reduced densities in many midblock portions of East Midtown to protect light and air to narrow streets and concentrated the highest densities on the wider north-south avenues. The East Midtown proposal continues this pattern of concentrating the highest densities along the avenues.**

*Comment 1.15      A correction should be made with regards to the proposed and now failed hotel development at Site # 11 which should correctly include the former religious property at 12 E 48 St. (Block 1283, Lot 63), the religious property at 14 E 48 (Block 1283 Lot 62) and 13 East 47 Street (Block 1283 Lot 11) as consistent with documents recorded at the City Register (see ACRIS filings for said lots) and exclude our properties at 9 & 11 East 47 Street (Block 1283 Lots 9 & 10) not part of the site. It appears that this erroneous inclusion within Site 11 resulted in a Notice of "E" Designation under the proposed action to be sent to us which we believe should not have been issued since we are otherwise largely unaffected directly as a proposed development site and are only affected by the action as a stakeholder with regards to impacts created by the City and others regarding other potential or likely developments. (69)*

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**Response:** Development Site 11 is identified in the EIS as a viable development site based on the criteria for identifying possible sites set forth in the Scope of Work for the EIS. As stated in the EIS, in the event of this site being developed, (E) designations are required to avoid a potential for significant hazardous materials, air quality, and noise impacts.

*Comment 1.16* The rezoning should allow for Use Group 4 community facility uses and Use Group 6E on Qualifying Sites. The current proposal's emphasis on commercial development will have a serious negative impact on the Yale Club's ability to thrive in the future. In order to meet the Yale Club's needs for horizontal expansion (and to facilitate the development of the 30FAR building envisioned for Block 1279), the definition of a Qualifying Site should be amended to allow in the Grand Central Subarea Core existing community facility buildings and those containing Use Group 6E uses to remain within the minimum site geometry. The rezoning should permit up to 20 percent of the floor area in a building developed on a Qualifying Site to be allocated to community facility and Use Group 6E uses as-of-right in buildings constructed on such sites where there is an existing community facility or Use Group 6E use located on the Qualifying Site zoning lot or an adjacent zoning lot. Furthermore, in order to facilitate the Yale Club's horizontal expansion, the list of uses in the proposed ZR §81-614 that are permitted to be located on the same story as, or at any story above residential uses, should be modified to include community facility and Use Group 6E uses and related accessory uses including guest rooms. (6) (30) (33)

**Response:** The CPC is considering a proposed modification to the zoning text amendment that would permit up to 20 percent of a new building using the DIB to be developed with Use Group 6E uses. The other suggested changes are not within the scope of the Proposed Action.

*Comment 1.17* The proposed ZR §81-626 allows for use modifications by special permit in the East Midtown Subdistrict to "allow any use permitted by the underlying zoning district regulations on qualifying site" under certain conditions; however, the language in the text suggests that the special permit is intended to allow an increase in hotel floor area or an increase in residential floor area by up to 40 percent in a building developed on a Qualifying Site. It is not clear whether the special permit would allow community facility or Use Group 6E uses to be developed in a building on a Qualifying Site. (6)

**Response:** The proposed ZR §81-626 allows for use modifications by special permit, subject to findings, including community facility or Use Group 6E uses, where such uses are permitted by the underlying zoning district.

*Comment 1.18* The proposed zoning map amendment would rezone a block bounded by East 42nd and 43rd streets and Second and Third avenues on the east side of the rezoning area as part of the Special Midtown District, specifically the Subdistrict. The block has a number of existing office buildings, so its inclusion in a special district aimed at regulating

*commercial districts makes intuitive sense. Incorporating the block into the Subdistrict will allow the area to be regulated by the specific height and setback rules designed for East Midtown. This zoning map amendment is appropriate.(7)*

**Response:** **Comment noted.**

*Comment 1.19 This proposal marginalizes the public’s critical role in the review of land use matters by allowing extremely high FAR as-of-right. It is of great concern that the proposed rezoning eliminates certain special permits and allows for the administrative granting of the right to purchase air rights resulting in an intended dilution of ULURP and an undermining of the zoning code, no matter how idealistic the stated goals. (3) (11) (84)*

**Response:** **To encourage limited replacement office construction in the area over the long term, the proposal includes a new as-of-right zoning mechanism that permits higher FARs for predominantly office buildings on substantial sites up to densities that can be accommodated under Midtown height and setback controls, subject to contribution into a DIF for areawide pedestrian network improvements and through transfers from landmark buildings. This is intended to encourage new predominantly office construction by increasing the as-of-right FAR without the need for individual discretionary review, while still requiring that new high-density development provide improvements to the area’s public realm. With these changes, DCP believes new, limited office construction would occur in the area over the long term and substantial funding for pedestrian realm improvements would be generated, as well as funding for the maintenance of area landmarks.**

**This as-of-right framework—or rather, an “earned” as-of-right framework, as a contribution into DIF is required—is in keeping with the overall framework of the Special Midtown District, established in 1982 to encourage predominantly as-of-right high-density commercial construction. Previous to the creation of the Subdistrict, nearly every building went through public review, a phenomenon criticized at the time as a “regime of negotiated zoning.” While East Midtown has lagged in recent years, the District overall has been extremely successful, leading to the development of around 100 as-of-right buildings in the overall area in the past 30 years. By contrast, only one major building has been built in recent years in the area pursuant to special permit. DCP therefore believes the East Midtown Subdistrict and its as-of-right zoning mechanism, intended to maintain the area as a job center for the City and region, is in keeping with and will enhance the original Midtown framework.**

*Comment 1.20 The DEIS does not appear to have studied the effect of City issued FAR available through the DIB/DIF proposal on the market for unused development rights especially those of landmarked properties. The use of DIB first, and air rights from individual landmarks only after that bonus is used up, could hurt individual landmarks by taking away a possible source for preservation funding. (52) (69) (77) (97)*

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**Response:** The DIB/DIF proposal creates new opportunities for the transfer of unused landmark development rights by allowing for their transfer to “qualified sites” on an as-of-right basis without need for special permit approval and irrespective of whether a “qualified site” meets the definition of an “adjacent site” under Section 74-79, the provision which today governs transfers from landmarks other than Grand Central Terminal. In the case of Grand Central Terminal, the proposal preserves the existing mechanisms for transfer under the Subdistrict’s special permit, expands the area to which 1 FAR transfer may be made by certification, and allows for transfers to be made to “qualified sites” on an as-of-right basis. The requirement for use of DIB before use of transferred landmark floor area is appropriate in order to ensure that all developments contribute to areawide pedestrian and transit improvements.

*Comment 1.21* Improvements to the public realm meant to be part of this proposal are exceptionally vague with no detailed plan for how, what, and when improvements will be made, in addition to the unknown cost and source of funding for the improvements. The Multi-Board Task Force and others have repeatedly asked for a comprehensive public realm strategy. The commissioning of such a plan has only just been announced and is not included in the ULURP application, preventing Community Boards and the Borough President from having the opportunity to comment on it, or to provide meaningful input as a part of their recommendations. There needs to be ways to activate the public realm plan before the City Council votes on the rezoning proposal. The text amendment as written in the ULURP documents addresses public realm improvements very specifically for “qualifying sites,” while the remainder of the public realm is either unaddressed or vaguely identified as a possible improvement utilizing the DIF. Transparency and consultation for the public realm study needs to be a critical priority of the work otherwise it will not enjoy the support of community members and will therefore be very difficult to implement. A clear strategy for implementation and maintenance of the public realm improvements needs to be described. The public realm plan needs to include a strategy for connecting the new East Side Access Concourse to the new developments, as well as sidewalks and subway levels. The public realm strategy should also take advantage of and seek to improve the privately owned public spaces in East Midtown. We urge Vanderbilt Avenue, both above and below grade, to be included in the scope of the pedestrian network that would benefit from this treatment. (3) (11) (18) (19) (45) (46) (49) (50) (67) (76) (118) (122)

**Response:** The East Midtown rezoning creates a zoning mechanism that incentivizes private development to help pay for improvements to the pedestrian network through the district improvement bonus mechanism. The rezoning also establishes a framework for the prioritization and implementation of public-realm improvements over time through a DIF committee.

In response to community requests, the City, led by the Department of Transportation (DOT) and DCP, engaged an urban design consultant team to work with the broad array of area stakeholders on an East Midtown Public Realm Vision Plan. The urban design consultant team is charged with leading a public visioning process to build consensus on community priorities, develop urban design tools and strategies and cost estimates for intervention in key areas, and produce a comprehensive public realm vision plan document that can serve as a guide for future improvements.

While this planning process is taking place during the ULURP timeframe, it is not proposed that specific public-realm improvements be made requirements of the zoning itself. Rather, it is the results of the vision planning process that will provide guidance and direction for the DIF Committee to plan for the most needed improvements in the area. With the plan done in September, stakeholders will have a clear direction regarding priorities, and more detailed design work can begin to move forward focused on the more short-term needs.

*Comment 1.22      The consultant team for the public realm study should include a landscape architect in order to ensure that any planting strategy would be carefully developed, given the extraordinary density and limited sunlight in much of this area. (3)*

**Response:**      In response to community requests, the City, led by DOT and DCP, engaged an urban design consultant team to work with the broad array of area stakeholders on an East Midtown Public Realm Vision Plan. The urban design consultant team is charged with leading a public visioning process to build consensus on community priorities, develop urban design tools and strategies and cost estimates for intervention in key areas, and produce a comprehensive public realm vision plan document that can serve as a guide for future improvements.

The Consultant team engaged by the city includes principals from Jonathan Rose Companies, Jan Gehl Architects, and Skanska. Gehl Architects includes landscape architecture as one of its core expertise. The Public Realm Vision Plan is primarily focused on identifying neighborhood level needs, areas of importance and conceptual visions for improvement. Any specific landscaping strategy would be developed in more detail as detailed design interventions are developed.

*Comment 1.23      A comprehensive strategy for public realm improvements should be the priority, as opposed to focusing on Vanderbilt Avenue. One suggestion is to remove reference to Vanderbilt Avenue from the proposed zoning text. The public realm strategy should include a balance between the creation of discrete places to stop and linger with improved circulation throughout the district. (3) (46) (67)*

**Response:**      The singular reference to Vanderbilt Avenue within the proposed zoning text appropriately applies special bulk controls and active use requirements to the

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corridor, befitting its unique situation as a narrow street adjacent to Grand Central Terminal.

The partial pedestrianization of Vanderbilt Avenue is analyzed within the EIS as a potential element of the plan to provide relevant information regarding the potential effects of its possible implementation.

In response to community requests, the City, led by DOT and DCP, engaged an urban design consultant team to work with the broad array of area stakeholders on an East Midtown Public Realm Vision Plan. The urban design consultant team is charged with leading a public visioning process to build consensus on community priorities, develop urban design tools and strategies and cost estimates for intervention in key areas, and produce a comprehensive public realm vision plan document that can serve as a guide for future improvements.

Improved circulation and the desire to create discrete places to stop and linger have both been identified as key goals in the public realm visioning process.

*Comment 1.24*      *It is important that CPC reiterate that any upzoning does not now include the closure of Vanderbilt Avenue. CPC should make clear that the approval of the zoning actions is not contingent upon the Vanderbilt proposal being installed, and that prior to any action being taken on Vanderbilt, a new environmental and traffic study will be provided to the public based on a clearly defined proposal. CPC should indicate that they are not signing off on the concept for Vanderbilt Avenue that was presented as part of the initial presentation. (61) (106) (109)*

**Response:**      The Proposed Action would create a funding source, through the DIB, that could fund priority pedestrian realm improvements in the East Midtown area. These could include the transformation of Vanderbilt Avenue into a pedestrian space. The EIS analyzed the effects of a possible future closure of Vanderbilt Avenue to give decision makers a better sense of what could occur if the street portions were closed, and the ongoing public realm vision process is looking at the public realm of the entire area including on Vanderbilt Avenue. Any improvement to Vanderbilt Avenue could be done in stages, and would take into account the needs and concerns of adjacent property owners.

*Comment 1.25*      *Should design plans for Vanderbilt Avenue be advanced, there should be a careful balance between the interests of existing building owners and public benefits. One consideration is to establish building setbacks to provide daylight to Vanderbilt Avenue. (7) (67)*

**Response:**      The Proposed Action requires new developments be constructed at the property line to match the existing built context along Vanderbilt Avenue. The nature of any future design process for Vanderbilt Avenue is discussed in the response to Comment 1.24.



- Comment 1.26* DCP should convene a meeting among CPC officials and representatives of all stakeholders owning properties on either side of Vanderbilt Avenue for its entire length. (61)
- Response:** The nature of any future design process for Vanderbilt Avenue is discussed in the response to Comment 1.24.
- Comment 1.27* There are concerns regarding the Vanderbilt Avenue design rules, particularly the requirement for transparency of 70% of the streetwall, a height of 60 feet. It seems unnecessary to require more than the 50% of the ground floor already stipulated elsewhere in this plan. The signage and merchandising which would then become the streetwall would not enliven the public open space envisioned for Vanderbilt Avenue, it would only commercialize it. Attractive, well-designed architecture with interesting bases - not just transparent glass - would be more of a contribution to the streetscape. (52) (77)
- Response:** The Proposed Action contains special height-base and ground-floor regulations for Vanderbilt Avenue intended to create an open and welcoming street presence in new developments. This includes provisions for required retail uses and limited entrance lobbies. The requirement for transparency is consistent with this overall approach.
- Comment 1.28* The City should ensure that infrastructure improvements—including improvements to the transit network described by the MTA in public presentations (10/10/12), as well as other public realm improvements—are funded prior to development occurring under the new zoning, and the City needs to identify a clear and defined timeline and adequate sources of funding—beyond the proposed DIB—for the improvements. The DIB is an inadequate mechanism to fund the infrastructure needs of East Midtown, given its lack of reliability and predictability. The DEIS does not discuss details of how much money the DIB will generate and when, or how the cash flow from the DIB would correspond to the needs for the improvements that are counted toward mitigation. Additionally, the proposed rezoning relies on the speculative possibility of future payments into the DIF to finance infrastructure upgrades that are known and needed today. Other financing mechanisms should complement funds generated through the DIB. The City could advance proactive funding mechanisms, which could include, but are not limited to, direct capital investment, bond financing, a special tax assessment district, PILOT financing, etc. Although the City has stated that it will advance a portion of the funding for infrastructure improvements before development occurs, there are no details about how much funding will be made available, what improvements will be made, the phasing of improvements, the source of funding for any remaining costs, how the commitment will be enforced/institutionalized (since it was introduced outside of the realm of scoping), and what assurances there are that the next mayoral administration will have the ability to enforce the as-yet-unknown package of

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*improvements. (3) (7) (9) (11) (12) (13) (18) (19) (36) (44) (45) (46) (49) (51) (56) (60) (67) (69) (74) (75) (76) (84) (97) (113) (118) (119) (120)*

**Response:** Comment noted. The DIF provides a funding source for capital improvements to the public realm in the East Midtown area. Without a dedicated funding stream, these public realm improvements would compete against many other significant capital needs throughout the City and region, during a period when capital funding is constrained. Since the DIF is dedicated to funding East Midtown district improvements, it provides assurance that such improvements will be implemented, as funds are contributed by East Midtown developments. The CPC is considering amendments to the proposed regulations that provide additional clarification as to the process by which improvement projects will be selected for funding. The amount of funds that the City will advance for East Midtown district improvements, based on the expectation that DIF contributions will be forthcoming, will be determined by the Mayor and the City Council, whose approval would be needed for any such expenditure.

*Comment 1.29 The City should work with the MTA to determine the scope of past mitigation commitments and determine an appropriate budget and timeline for those improvements that is separate from the DIB. The City cannot use this rezoning to fund prior obligations. There need to be assurances that monies raised through the DIF are not used to meet obligations that City has made to mitigate prior projects-such as East Side Access and the 7 Line Extension. (3) (7) (45) (55)*

**Response:** The MTA and DCP have identified all previously identified mitigations and reevaluated them in the context of a more comprehensive overall plan for improvements in the Grand Central subway station complex. Investment in some of these improvements will commence in 2014 with non-DIB funding, and they are anticipated to be in service prior to the opening of the first office building in Hudson Yards (which, together with the opening of the subway, was the projected condition requiring a first set of Hudson Yards mitigation measures). In some instances, including the initial work to commence in 2014, the previously identified mitigations are to be replaced with more comprehensive improvements that address the needs that gave rise to the mitigations within a framework that addresses long-term needs in the station complex.

*Comment 1.30 It is inappropriate for the MTA and the City of New York to rely on a local rezoning to fund critical capital transit improvements that will benefit (and should be paid for by) the whole region. (46)*

**Response:** The DIB is not a replacement or substitute for funding under the MTA's capital program. The DIF provides a funding source for capital improvements to the public realm in the East Midtown area. Without a dedicated funding stream, these public-realm improvements would compete against many other significant

capital needs throughout the City and region, nor is the amount of this general capital funding certain. Since the DIF is dedicated to funding East Midtown district improvements, it provides assurance that such improvements would be implemented once funds are contributed by developments utilizing the DIB.

Reinvestment in transit improvements through zoning mechanisms and development is an established part of New York City zoning, particularly in the Grand Central area. The transit bonus provision requires a transit improvement in order to build a larger building; the transfer of Grand Central Terminal air rights requires a transit improvement in addition to the purchase of air rights. The funds raised through the DIB would be a targeted funding source to improve conditions related to East Midtown's high density, which supports the City and region's economy.

*Comment 1.31 In the proposed zoning text, DCP should include a map much like the existing Map 4 (referenced in the existing ZR §81-635), which diagrams the existing above and below grade circulation network. DCP should elaborate on this map by including a plan that illustrates where these networks could be added to and improved. The existing map should be supplemented with specific improvements, providing predictability for the developer and the public. This work in close coordination with the MTA will ensure that appropriate station ingress and egress is planned for East Side Access. (3) (67)*

**Response:** The Proposed Action requires buildings adjacent to the transit pedestrian network to provide an access easement if requested by MTA. An access point may or may not be required at an individual site, depending on its location and the proximity of other access points. For example, there are four projected or potential sites along Madison Avenue that could provide access to East Side Access and the subway in addition to the existing connection at 383 Madison. It is unlikely that all four access points will be needed and requiring unneeded access points would unnecessarily increase maintenance and security obligations. Pedestrian improvements through these buildings must be designed in conjunction with the overall planning for the ground-floor space, including any onsite public space, retail spaces, the vertical circulation core and off-street loading. For these reasons, it is not practical to specify in advance the specific location and dimensions of each access point. The current proposal, which allows the MTA to plan for the access network over time and to define its needs through close scrutiny of a proposed development, provides a workable approach toward improving the public circulation system over time.

*Comment 1.32 The rezoning should mandate that all new development that sits on top of transit provide connections to the area's underground infrastructure. This will include large and gracious passageways linking the sidewalk to the subways and rail transit. These connections should be appropriately sized with clear visibility from the street and*

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*appropriate materials and signage. While the existing zoning requires “a major improvement of the...pedestrian circulation network” at Grand Central as part of the special zoning permit that allows increased density, the proposed zoning allows substantial increases in density without an on-site circulation improvement. This should continue to be a requirement for those sites which afford opportunities to connect to transit – which include LIRR in addition to the subway network. These additional transit connections can reduce pedestrian overcrowding on sidewalks. (1) (3) (67)*

**Response:** See response to Comment 1.31.

*Comment 1.33 The City should work with building owners that have closed the connections to the transit network to re-open those connections to improve access to the below-grade network. More broadly, the City needs to work with owners of privately owned public space in a far more collaborative way to ensure that improvements can be made to these public spaces in a timely fashion. The City also needs to enforce existing requirements for public accessibility; in some cases, building owners have inappropriately closed off access to spaces which should be public. (3)*

**Response:** Comment noted. As described in the response to Comment 1.31, the Proposed Action creates a mechanism for developing new connections and improvements to existing connections as new construction occurs sufficient to accommodate growth and improve existing conditions. Closed passageways through existing private space that are not subject to an easement or other agreement providing access are not available to the City or MTA. The City works to ensure privately owned public spaces are open and available consistent with their original approvals and encourages owners of such spaces to upgrade their spaces consistent with existing zoning provisions.

*Comment 1.34 The City should create a transparent and regular process for evaluating the DIB price that requires the CPC to reexamine every four years, starting in 2017, based on a new appraisal and a public hearing. Rather than an appraisal for each sale, periodic adjustments to the base DIB price should be mandated to reflect current market realities. To ensure fairness and transparency, the value should be determined by a public process. Specifically, the revaluation should require a CPC public hearing with mandatory community board referral on the required appraisal. This would provide the City the ability to not only evaluate the appraised price, but would also allow the community, elected officials, and relevant stakeholders to challenge any methodological or mathematical differences. This public process should first take place in 2017, just prior to the enactment of the proposed DIB and the first contributions to the DIF. For annual adjustments to the DIB price, the City can use the Midtown Asking Rent as opposed to the consumer price index. (7) (110)*

**Response:** The CPC is considering amendments to the proposed regulations that provide additional clarification as to the process by which the DIB contribution rate will be periodically reappraised.

*Comment 1.35* There should not be a single DIB price for the entire rezoning area, and the DIB should include an appraisal process—with a public comment period—for the pricing of air rights at the time of each transaction. The DIB could include a floor which increases over time. (3) (4) (11) (13) (29) (37) (46) (49) (66) (67) (91) (116)

**Response:** The change proposed in the comment would result in a lack of predictability for both property owners and the public, as to the required DIB contribution per square foot. This lack of predictability would inhibit achievement of the linked goals, as stated in Chapter 1, Project Description, Section 1.4.1, Goals of the Proposed Action, to “seed the area with new modern and sustainable office buildings” and “improve the area’s pedestrian and built environments.”

*Comment 1.36* In its review of the proposed rezoning, with respect to the DIB, the City Council will consider the wisdom of: setting a single price for an entire 73 block area; leaning on an appraisal that will be over 5 years old at the time the first buildings are developed; using the proposed adjustment mechanism (tied to the Midtown Manhattan average asking office rents report) as the best way to create a dynamic price over time; and setting a price using other mechanisms that could allow for a closer approximation to market value. (45)

**Response:** Comment noted. Also see responses to Comments 1.34 and 1.35.

*Comment 1.37* The value of TDR established for the DIB should be recalibrated more frequently to bring it in line with other comparable TDR transactions. An increase in the value over time of air rights transactions is not unlikely in East Midtown, similar to what happened in West Chelsea since the special district was created in 2005. Undervaluing the DIB air rights detracts from the funding available for district improvements. (22)

**Response:** See response to Comment 1.34.

*Comment 1.38* The reasonable and appropriate average contribution rates, or market values, of the proposed East Midtown Rezoning's DIB commercial TDRs to be sold by the City to commercial use developers within the proposed East Midtown Subdistrict should be between a value of \$400 per square foot and \$445 per square foot, rather than the \$250 per square foot proposed by Landauer Valuation & Advisory that has been incorporated in the proposed zoning text. There are three reasons for the different values: the Landauer study does not distinguish between the higher potential value of floating air rights versus non floating air rights relative to underlying land values; the TDR sales included in Landauer’s valuation analysis are too old, transpiring between 1997 and 2008; and no adjustments are made to the TDR sales (except for time) to account for differences in location. (5)

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**Response:**            **The Proposed Action relies on the market study prepared by Landauer Valuation & Advisory, a division of Newmark Grubb Knight Frank. Landauer’s response to the Jerome Haims appraisal, which proposes \$400- and \$445-per-square-foot DIB rates, is set forth in a letter, dated September 18, 2013.**

*Comment 1.39            If a legal rationale is provided which requires DCP to set the DIB price in 2013, the price should be set at the value that is based on the appraisal conducted by Jerome Haims, which uses more recent data than does the City’s appraisal, makes a more careful distinction between floating air rights and land locked air rights, and acknowledges in the analysis that location matters in setting real estate values. (67)*

**Response:**            **See responses to Comments 1.34 and 1.38.**

*Comment 1.40            The Landauer study concluded that TDRs within the proposed district should be valued at 60 percent of the land value within the district or a value of \$250 per square foot. The Landauer conclusion relies almost entirely on examples where TDRs were acquired through zoning lot mergers, where sellers of TDRs had limited options and, thus, limited leverage in their negotiations with receiving sites. However, Landauer’s methodology does not accurately reflect the value of TDRs within the proposed East Midtown Subdistrict. In a true marketplace where TDRs are allowed to float, and where there are numerous potential buyers, the unit value of TDRs approximates the underlying value of the land. Based on a detailed analysis of TDR transactions in both the Special West Chelsea District and the Theater Subdistrict—where TDRs are permitted to float to numerous receiving sites, as is being proposed for the Grand Central Subarea within the East Midtown Subdistrict—the unit value of TDRs approaches 100%, and, in some instances, TDRs trade at values even higher than the price of the underlying land. In order to ensure that the cost of the DIB is fairly determined by market conditions, the City should use a market appraisal methodology that sets the value of DIB and TDRs to, or close to, the market value of the underlying land of the receiving site at the time of the proposed DIB/TDR transaction. (16) (66)*

**Response:**            **See response to Comment 1.38.**

*Comment 1.41            The DIB mechanism violates the law, in addition to being bad policy (in that it undermines the well-earned reputation of CPC for planning and zoning, objectively, for the general public benefit and welfare). The City’s zoning power does not include the power to tax or otherwise raise funds for the City. Zoning authorities may not put zoning rights up for sale. Zoning power is limited to adjusting the relationships among property owners through a sound comprehensive plan that benefits the general public as a whole. A very limited exception allows imposition of development fees or conditions to mitigate damages or burdens that a development project will impose on the community. But that exception is available only where there is a direct causal relationship between development and the purpose of the fees or condition, and where such exactions are fair in the sense of being roughly proportional to the actual cost of*

*mitigation. Those standards are clearly not met here. In fact, the City rather candidly acknowledges that its \$250 price is not based on the unknown cost of the unknown improvement projects, but simply on what the City calculates the market will bear. There is no proportionality whatsoever between the purchase prices to be paid by each developer and the special burdens, if any, that each imposes. We believe that the courts will hold the fee-for-zoning scheme, as presently written, illegal and void, with the result that developers may go ahead and build to the maximum allowable floor area (including bonuses), but will not be required to pay the price that the Planning Department proposes to impose. In order to devise a system which would impose the appropriate portion of costs of pedestrian impacts caused by new development on the developers, one would need substantial information about what those impacts are, how they vary among different locations, what projects are required to mitigate those impacts, and what the cost of those project would be. DCP may or may not have such information. But it has not provided it to the public. (12)*

**Response:** The DIB framework included in the proposed East Midtown rezoning is a form of voluntary incentive zoning. Since 1961, incentive zoning has been utilized throughout the City to allow developers to voluntarily achieve higher densities by providing public benefits. These benefits range from plazas and subway improvements to the creation and preservation of affordable housing, theater rehabilitation, and improvements to the High Line. The East Midtown rezoning proposal does not use zoning as a general revenue-raising measure to fund City expenses. Rather, the DIF is a dedicated fund paid voluntarily by property owners, which would be used solely to fund transit and pedestrian public-realm improvements within the rezoning area as part of an integrated land-use plan for the district. There is no requirement that the amount of these voluntary payments by owners and developers be calculated based on the “impacts” caused by individual developments, and the proposal to base the DIB rate on the market price for floor area in the district is an appropriate method for the funding of improvements.

*Comment 1.42 Mayor Bloomberg recently announced that improvements will happen before the DIF is funded. This calls to question the basic purpose of selling development rights. What and who are they really benefitting? (52)*

**Response:** It is anticipated that the mechanism for the early funding of improvements will be based on the anticipated stream of income to the DIF from the DIB. Establishment of the DIF will therefore be integral to the ability to achieve this result.

*Comment 1.43 The proposed zoning weakens the nexus of proximity and purpose: funds from DIBs sold in one corner of East Midtown could be used in an opposite corner. (3) (12)*

**Response:** The DIF is proposed to be used to support pedestrian- and transit-network improvements that would benefit the East Midtown District as a whole, and form

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**part of an areawide land use plan that integrates development with improvements to the public realm. There is no requirement that DIF funds be used in immediate proximity to the development that generated the funds.**

*Comment 1.44      The DIF Committee should include a more diverse constituency beyond mayoral appointees. Suggested appointments to the DIF committee include representatives from Community Boards 5 and 6, the City Council, the Borough President, the Comptroller, Chair of the City Planning Commission, the Director of the Office of Management and Budget, the Commissioner of Department of Parks and Recreation, Commissioner of the Department of Transportation, Deputy Mayor for Operations, the Deputy Mayor for Economic Development, the President of the MTA, and representatives from the Grand Central Partnership and East Midtown Partnership. The DIF Committee must include robust public participation, and we should also consider more innovative ways to solicit community feedback. (3) (7) (45) (46) (49) (52) (67) (77)*

**Response:      The CPC is considering amendments to the proposed regulations regarding the makeup of the DIF committee and its public participation requirements.**

*Comment 1.45      The City should create more rigorous DIF regulations. This could include requiring a public hearing for the creation or alteration of the priority projects and requiring the publishing of annual reports to the Comptroller, the City Council and CPC on the fund value, current annual capital and programmatic expenditures, status of previously initiated improvement projects and pipeline projects or approved priorities. The procedures referenced in the proposed ZR § 81-681 (c) should be designed now for public review. The City and the MTA need to identify a clearer process for soliciting public input moving forward to ensure the public is well educated and informed of changes being contemplated. The City should identify the cost of each of the DIB projects that DCP has already identified, including the pedestrianization of Vanderbilt Avenue and the sidewalk widening on Lexington and Madison Avenues. (1) (3) (7) (45) (52) (77) (109)*

**Response:      The CPC is considering amendments to the proposed regulations governing the DIF that would enhance public participation and reporting requirements. The specifics of cost are best determined when the full scope of an individual project is determined. The MTA prepared and publicly presented estimates for transit improvements identified in the DEIS. As part of the public-realm visioning process, the City is looking at preparing estimates for potential aboveground improvements.**

*Comment 1.46      A detailed description of the legal instruments and the process through which the DIF will be collected, stored and distributed should be outlined within the proposed zoning text. What will be the cost of administrating the DIF, and will the costs be capped at a fixed amount or at a percentage of the fund? (1) (67)*



**Response:** The CPC is considering amendments to the proposed regulations that provide additional clarity as to the operation of the DIF. It is anticipated that the DIF committee will receive staff assistance from relevant agencies, and that the costs of administering the DIF will be modest.

*Comment 1.47* The current proposal has the potential to undermine the DIB process because in-kind contributions—the result of negotiations between a developer and the DIF Committee—would not be vetted through a public process and prioritized in order of need. It is possible that allowing developers to make their own improvements will detract from the goals of having the district-wide benefits of the DIF. The proposal should not allow in-kind work to be substituted on an as-of-right basis for a DIB contribution. One suggestion is for the City to create an authorization process for in-kind contributions to the DIB rather than allowing them as-of-right with DIF committee approval; a good model for such an authorization is ZR §93-32(b), associated with the Hudson Yards rezoning. Another suggestion is to require all developers to pay into the DIF. (7) (45) (51) (66) (67)

**Response:** The CPC is considering proposed amendments to the proposed regulations governing in-kind contributions.

*Comment 1.48* We urge that the Commission not to prioritize transit improvements so that streetscape and other public realm improvements will be slighted, or that in-kind improvements will not continue- as was the original intent- to be equally eligible for DIB bonus. (58)

**Response:** Under the proposal, the prioritization of improvements would be the responsibility of the DIF committee. The CPC is considering amendments to the proposed regulations regarding the as-of-right usage of the in-kind provision.

*Comment 1.49* The use of “either...or” as opposed to just “or” in the proposed ZR §81-621 precludes the combined use of paying into the DIF and a contribution in-kind for a specific project. ZR §12-01 states that “‘or’ indicates that the connected items, conditions, provisions or events may apply singly or in any combination” while “‘either...or’ indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.” In the proposed §81-621, the inclusive “or” should be used, as opposed to the exclusive “either...or,” and “either” should be stricken from the text so that a development could combine both mechanisms to achieve maximum public benefit within the framework of the proposed new regulations. (3)

**Response:** Comment noted.

*Comment 1.50* The City should incorporate residential uses into the DIB price at a higher value than the commercial uses. (7)

**Response:** The rate for residential use will be determined, like the initial rate for commercial uses, by an appraisal currently being undertaken by the City. The results of this study will determine the appropriate rate for residential use.

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*Comment 1.51      The sunrise provision should be contingent on achieving milestones in infrastructure investment and/or the development programs of Hudson Yards and Lower Manhattan. The DEIS lacks any analysis of how the July 2017 date was chosen or how it fits with the construction sequence, the planning for the other neighborhoods, etc. Instead of setting an arbitrary date after which development can occur, a sunrise mechanism needs to be developed based on a set of milestones. Triggers for any new development could be tied to: development milestones (e.g., a minimum amount of built/occupied commercial floor area) in Hudson Yards and Lower Manhattan; infrastructure milestones such as the completion of Phase 1 of the 2nd Avenue Subway and the generation of the necessary tax revenues to repay the municipal bonds used to fund the #7 Line extension; completion of improvements the MTA has identified in its presentation in October 2012; and completion of improvements to be identified in the public realm plan. The Independent Budget Office or the Office of Management and Budget (OMB) should be charged with certifying that the Hudson Yards and Lower Manhattan developments have hit certain milestones, based on the public sector recapturing the investment it has made in these projects. The City’s Response to Scoping Comments (Comment B1.22 p. 11) states that “the relationships among various city initiatives need to be coordinated,” but the DEIS does not reflect or describe what such coordination includes. (2) (3) (27) (51) (67) (91)*

**Response:**      **As stated in Chapter 1, “Project Description,” of the DEIS, the “sunrise” provision is intended to allow “sequencing of development consistent with planning objectives in the entirety of Midtown, including Hudson Yards.” The desired sequencing is achieved in a manner consistent with the Proposed Action’s objective, as described in Chapter 1, Project Description, Section 1.4.1, “Goals of the Proposed Action,” to “seed the area with new modern and sustainable office buildings.” The CPC is considering amendments to the proposed “sunrise” regulations, which would allow for greater flexibility while continuing to ensure that it facilitates these objectives.**

**The proposed East Midtown “qualifying site” minimum building footprint of 25,000 square feet creates the possibility that new office space can be developed on relatively small sites with relatively small floorplates that are more suited to tenants with space needs limited to a single floor. This is in contrast to the large-floorplate buildings, which are attractive to financial, legal, media, and other types of large firms with a need for large blocks or space that are being developed in Hudson Yards and Lower Manhattan. The small number of sites in East Midtown for large-floorplate buildings limits the extent to which new buildings in East Midtown under the Proposed Action will be providing comparable space to developments in Hudson Yards and Lower Manhattan.**

*Comment 1.52      The rezoning has the potential to adversely affect the ongoing redevelopment of Lower Manhattan and Hudson Yards, as well as development in the outer boroughs. By*

*encouraging new development in East Midtown, the City is putting at risk the significant investments it has made in other office districts that taxpayers are still paying for as developers fail to achieve anticipated occupancy goals. (2) (3) (11) (12) (19) (40)*

**Response:** As stated in Chapter 1, “Project Description,” of the DEIS, the City has relied on a study by the real estate firm Cushman & Wakefield, indicating that sufficient office demand will exist in the future, due to employment growth, to achieve the projected commercial development in both Hudson Yards and in East Midtown. In other areas of the City, including Lower Manhattan, significant economic development incentives are provided that give such areas a cost advantage over East Midtown.

*Comment 1.53 We need to ensure that this rezoning does not draw development away from areas in which the City has heavily invested—like Hudson Yards. However, it is not clear that this rezoning will compete with other developing districts. There may be no rationale to push development into the future, and thereby delay potential DIF infrastructure payments from the limited sites that could be ready before 2017. (45)*

**Response:** See response to Comment 1.51.

*Comment 1.54 It must be acknowledged that new office construction in East Midtown will create some additional competition to locations elsewhere in the city, particularly Hudson Yards and the World Trade Center. But this competition should be minimal. If the city's forecasts are accurate, the rezoning will result in only 4.5 million square feet of net new space. In addition, there is a differentiation among office districts that both mitigates the competition and is healthy for the city and the region. East Midtown will attract a different type of tenant that wants a premium Midtown address and access to Grand Central. (56)*

**Response:** Comment noted. Also see response to Comment 1.51.

*Comment 1.55 The 2011 Cushman & Wakefield bond report for Hudson Yards is a 30-year forecast. How does that fit in with a 5-year sunrise provision for East Midtown? (67)*

**Response:** See responses to Comments 1.51 and 1.52.

*Comment 1.56 The City should make exemptions for the sunrise provision. The City can create an authorization process that allows smaller buildings to utilize the new regulations prior to the sunrise provision to increase contribution to the DIF without creating new office space competition to other commercial districts in the city. Findings for such an authorization could include that the proposed development has floor-plates such that would not compete with other large-scale developments in the City and that the proposed new building is of similar scale to one that could be constructed today under the existing zoning. One suggestion is to exempt sites smaller than 30,000 square feet*

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*(e.g., 425 Park Avenue), as buildings built on such sites would not compete with Hudson Yards or World Trade Center. (7) (25) (80) (92)*

**Response:** The CPC is considering amendments to the proposed regulations governing the sunrise provision, relating to the exemption of sites with small footprints.

*Comment 1.57 The sunrise provision should not be supported because 425 Park Avenue would have to be rebuilt under the old zoning, which would result in the loss of both a valuable site and the much needed funds for the public realm through the proposed rezoning. The date of the sunrise provision could be moved to 2015 or 2016, and no development would happen except for 425 Park Avenue. (72)*

**Response:** See response to Comment 1.56

*Comment 1.58 If there are projects that are shovel-ready, so to speak, they should be allowed to proceed now and not have to wait until 2017. (93)*

**Response:** See response to Comment 1.56

*Comment 1.59 The CPC should provide in the zoning text a mechanism for a discretionary waiver of the sunrise provision for subsurface work in appropriate cases. Where extensive below grade work is required in order to provide connections to the subway system or Grand Central Terminal, or to provide other pedestrian improvements- work that will significantly extend the construction cycle- that work and related foundation work should be permitted to proceed in advance of the Sunrise. (58)*

**Response:** The CPC is considering amendments to the proposed regulations governing the sunrise provision, relating to performance of below-grade work for transit improvements prior to July 2017.

*Comment 1.60 The effect of the MTA marketing their properties at this present time for net lease and redevelopment with media reported terms to include right to demolish their Madison Ave buildings one year after the MTA is said to be vacating at the end of 2014 would be premature under the sunrise provisions in the proposed zoning thereby removing a significant parcel from the proposed rezoning area. This calls into question the sunrise provision. If the MTA, a public agency and an apparent proposed beneficiary of the rezoning action cannot benefit under the proposal, and is going forward without it, we fail to see the public need for the proposal at this time except as legacy zoning for an outgoing administration. (69)*

**Response:** The MTA Request for Proposal addresses the opportunities available to develop under the existing and proposed zoning. The CPC is considering amendments to the proposed regulations governing the sunrise provision, relating to the exemption of sites with small footprints.

*Comment 1.61 This plan should include a map of existing POPS within the area and include specific requirements for upgrading existing POPS with minimum design standards for seating, signage, lighting, and signage. (67)*

**Response:** See response to Comment 1.33.

*Comment 1.62 The rezoning should include a preservation plan for the area's iconic buildings, and strict limits on intrusive development around landmarks like the Chrysler, Chanin, and RCA buildings, as well as Grand Central Station. It should also include a strong preservation component for other important buildings, like the Lincoln Building and the Fred Friendly Building, that distinguish their sites and help define the city. In addition, the plan should require that architects working under the East Midtown rezoning match the quality of these inspired buildings, and ensure that New York's status as the world's greatest modern architectural landscape is not lost to the mediocrity that characterizes some new construction. (44)*

**Response:** The first four buildings noted are already City Landmarks and their preservation is governed by the City's landmark regulations. The Landmarks Preservation Commission (LPC) has identified a number of eligible buildings in the East Midtown area and is currently establishing priorities for future landmarking actions. The City generally does not require architectural design review of private buildings; however, the special permit for superior development considers relevant design features of a proposal as part of the determination of the appropriate FAR for the application.

*Comment 1.63 There should be flexibility in the requirements for bulk and streetwalls for sites located on Park Avenue. The City should create an authorization process to allow for more flexible design and street walls on Park Avenue if the applicant is producing a development that harmoniously relates to the streetscape and does not impact light and air to either the street or surrounding open spaces. (3) (7)*

**Response:** The City believes the street wall regulations included in the Proposed Action along Park Avenue are consistent with the existing built form found there and creates an appropriate comprehensive set of regulations for the street, replacing the three separate streetwall regulations found along portions of the street today. Developments using the special permit for superior development would be able to seek modifications to the streetwall requirements through the full ULURP special permit process. This is consistent with the City's overall approach to height and setback controls in the Special Midtown District, where historical modifications have been permitted only through special permit review. Finally, such an authorization is not within the scope of the Proposed Action.

*Comment 1.64 The rezoning should develop bulk controls to protect important view corridors to important buildings within the rezoning areas such as Grand Central Terminal and the*

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*Chrysler Building. For instance, the rezoning should put in place bulk rules/mandatory building setbacks on 42nd Street to pull buildings back from 42nd Street in order to allow east/west views of Grand Central Terminal and the Chrysler Building. Bulk controls need to be tailored to specific streets — Park Avenue has a very different context and should be a place for architectural boldness. Streetwall requirements discourage innovative and architecturally distinctive building design. (3) (67)*

**Response:**        **The Proposed Action does not modify the streetwall regulations along 42<sup>nd</sup> Street, where new developments are required to be built to the property line, as they are throughout the rest of Midtown. Developments using the special permit for superior development, applicable on the north side of 42<sup>nd</sup> Street between Madison and Lexington Avenues, would be able to seek modifications to the streetwall requirements through the full ULURP special permit process.**

*Comment 1.65        Today's glass and steel towers tend to hit the ground awkwardly, with boring and pretentious lobbies. This zoning legislation, unfortunately, needs to prevent this by veering into design specifications. (21)*

**Response:**        **Comment noted.**

*Comment 1.66        In its review of the proposed rezoning, the City Council will evaluate the appropriateness of 18, 21.6, and 24 FARs in the context of other commercial districts. It is unclear why/whether those values are the right FARs for East Midtown. (45) (49)*

**Response:**        **Comment noted.**

*Comment 1.67        The proposed densities must be reduced in order to better reflect a coherent and contextual urban design strategy. The total maximum FAR in the Grand Central Subarea Core should not exceed 24 FAR; in the non-core, along Park Ave north of Grand Central Terminal to 57th Street, FAR should not exceed 21.6. These densities are consistent with the largest buildings in East Midtown, would still be consistent with many of the goals of the rezoning, and would better tailor the bulk of the buildings to many of the narrow streets on which they would be located. The Department of City Planning has not provided a clear rationale for the densities that have been proposed. 24 FAR and 21.6 FAR represent an increase over what is allowed today but would better align proposed FARs with the largest building in East Midtown rather than seek to create a new urban design context. A reduction in the allowable FAR also reduces potential shadow impacts and limits the impact new buildings may have on the skyline. Additionally, the Department is proposing 30 FAR on sites which are on incredibly narrow streets such as 43rd Street or 44th Street and Madison; this contradicts the underlying urban design rationale of the Zoning Resolution which allows the highest densities on wide streets. (3) (67)*

**Response:**        **The largest buildings in Manhattan in terms of floor area are equal to or exceed the 30 FAR permitted by special permit within the Grand Central Subarea, including 4 Times Square, which is in excess of 32 FAR. The maximum permitted**

FAR in the Special Hudson Yards District is 33 FAR. These sites and virtually every other office-building site in Manhattan have some frontage on narrow streets. Madison Avenue is considered a wide street under the zoning and has been so since 1961. Unlike most avenue-fronting development sites that have adjoining buildings next to them, any site on Madison Avenue seeking the special permit to permit up to a 30 FAR would have an additional open area, Vanderbilt Avenue, adjoining it. The urban design and land-use strategy embodied in the East Midtown proposal calls for the highest permitted densities adjoining the Grand Central Terminal and station transit hub and along the 140-foot-wide Park Avenue corridor.

*Comment 1.68*      *No as-of-right development should be permitted to exceed 18 FAR. There should be a special permit process for all buildings over 18 FAR which allows the public an opportunity to evaluate transit connectivity, its relationship to the public realm strategy, its architectural relationship to Grand Central (if in the Grand Central Subdistrict) and the building's impact on the skyline. (3) (11) (67)*

**Response:**      See response to Comment 1.18. In addition, such a proposal would not be consistent with the goals and purpose of the Proposed Action, which include the development of a handful of new office buildings in the area over the long term, and would make this goal more difficult to achieve. Furthermore, all as-of-right developments in East Midtown would be required to adhere to the height and setback controls found in the Special Midtown District, which are focused on the effect of new development on access to light and air from the pedestrian perspective and have led to the development of over 100 architecturally varied buildings in the last 30 years. Buildings in the Grand Central area adjacent to transit would be required to provide easements for street access to the below-grade transit network, and new developments directly adjacent to Grand Central would require a report concerning the harmonious relationship of the building to Grand Central Terminal.

*Comment 1.69*      *The City should reaffirm the as-of-right nature of the proposed rezoning by rejecting proposals calling for a special permit requirement for 18+ FAR developments. (25)*

**Response:**      **Comment noted.**

*Comment 1.70*      *The proposed ZR §81-621(a)(4) will both help preserve the physical significance of Grand Central Terminal as well as heighten the pedestrian experience on Vanderbilt Avenue. (7)*

**Response:**      **Comment noted.**

*Comment 1.71*      *The rezoning should include a ground-floor retail requirement. One suggestion is that there should be a retail requirement for all avenues that permit building lobbies but*

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*require that a certain percentage (no less than 60%) of a building's street frontage have active retail uses. (3) (67)*

**Response:** The Proposed Action does not modify the ground-floor retail requirements already required along Madison, Lexington, 42<sup>nd</sup> and 57<sup>th</sup> Streets. These requirements, in place for the last 30 years, limit lobby widths to a maximum of 40 feet and require active uses along the remaining frontage. The Proposed Action further requires Qualifying Sites in the Grand Central Subarea to provide such active uses along 50 percent of their side-street frontages.

*Comment 1.72 Why does the rezoning fail to require that a very substantial proportion of street-front space be given over to non-chain stores? (12)*

**Response:** The Proposed Action does not modify the ground-floor uses permitted along streets where active uses are required, consistent with the existing regulations in the Special Midtown District intended to create an active, predominantly commercial high-density streetscape.

*Comment 1.73 The City should modify the energy efficiency requirements so that it is based on energy code in effect at the time of permitting/construction, as opposed to the energy code now in effect. (3) (7) (43) (45) (55) (67) (119)*

**Response:** The CPC is considering modifications to the energy efficiency provisions of the proposed regulations, relating to adjustment of the energy-efficiency requirement percentage in response to amendments to the Energy Code.

*Comment 1.74 The City should require the CPC to set the energy efficiency requirement percentage within 6 months of the new code being enacted provided that it will not represent a net decrease in efficiency from the previous percentage, and allow CPC to adjust the requirement as needed by rule change. (7)*

**Response:** The CPC is considering modifications to the energy-efficiency provisions of the proposed regulations, relating to adjustment of the energy-efficiency requirement percentage in response to amendments to the Energy Code.

*Comment 1.75 The energy requirement should refer to an accepted standard to keep the required energy savings relevant. Since LEED undergoes a national stakeholder process, its updates are reasonable and accepted by the industry. Projects should be required to design for five LEED energy points, an 11 percent savings over code with the new LEED version. By tying the savings to LEED, instead of a fixed percentage based on outdated code, the city will benefit from a regularly evolving peer reviewed standard. The requirement will adapt to the market. (43)*

**Response:** The CPC is considering modifications to the energy-efficiency provisions of the proposed regulations, relating to adjustment of the energy-efficiency



requirement, to ensure that it remains current as Energy Code and industry practices evolve.

*Comment 1.76 The energy efficiency requirement should mandate that new buildings exceed the energy code by 20% at the time of the building's construction. (3) (11)*

**Response:** The standards as proposed would require all new buildings to be designed to an energy-efficiency standard matching the most-efficient green office tower constructed to date in New York City. In addition, see response to Comment 1.75.

*Comment 1.77 A minimum façade energy efficiency performance requirement should also be introduced. This requirement will ensure that the facades of buildings, which over time will account for a more significant piece of a building's energy footprint, will be regulated more tightly. (3)*

**Response:** The proposed energy efficiency standards do not target any one particular aspect or feature of buildings, but rather seek to ensure that buildings are designed to outperform energy-efficiency standards overall.

*Comment 1.78 The City should create a performance-based path for modeling buildings and analyzing the code compliance for energy standards. The CPC can make the design requirements more enforceable by the Department of Buildings by allowing a test referenced in the energy code called the performance rating method, which was specifically designed to rate the performance of new buildings. (7) (43)*

**Response:** DCP is considering modifications to the energy-efficiency provisions of the proposed regulations that would explicitly allow the performance rating method to be used.

*Comment 1.79 Although the proposed rezoning rewards energy efficiency, it supports demolishing pre-war buildings, which have built-in efficiency measures. (37)*

**Response:** While many older buildings may have energy-efficient characteristics, policies to promote energy efficiency and sustainability must account not only for the physical characteristics of buildings but also the use and activity they facilitate, and the effects these have on overall energy consumption and sustainability beyond the scale of an individual building. An older building may have thick, energy-efficient walls but also low ceilings and frequent interior columns, and therefore low levels of occupancy or an inability to meet the needs of Class A office tenants. Such buildings do not support the continued competitiveness and vitality of a business district at a key central location in the regional transit network, which is the core purpose of the Proposed Actions. The vitality of this business district is key to New York City's transit-oriented urban form, which reduces energy consumption and carbon emissions overall, and is therefore critical to the continued sustainability of the City and the region.

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*Comment 1.80      Size is less important than shape in building performance. The CPC may need to reexamine whether traditional building envelopes remain appropriate to encourage efficient buildings over the traditional light and air considerations. (7)*

**Response:**      **The Proposed Action would enable construction of new buildings in a manner that addresses both light and air considerations and design for a higher level of energy efficiency.**

*Comment 1.81      Has DCP considered other non-zoning techniques to achieve the shared goal of an improved and more robust East Midtown? This could be addressed as an alternative to the Proposed Action. One suggestion is for NYCEDC to sue the Marriott Marquis Hotel for breach of contract (for not maintaining its revenue and rent records to the City) and renegotiate for a fair-market-value land sale. The City should use the revenue from the sale of City land in the improved Times Square to fund at least 80-100% of the cost of rehabilitating the Grand Central-42nd Street Subway Station. (1)*

**Response:**      **Zoning changes are critical to incentivize the growth and continued vitality of East Midtown, by removing impediments to the development of new Class A office space in the area. The DIB/DIF mechanism couples this development with significant pedestrian and transit improvements to the area, which would otherwise not be funded in the reasonably foreseeable future under existing capital budget funding mechanisms. The receipt of proceeds from litigation or other “one shot” events is by nature speculative and cannot be relied upon for funding of infrastructure.**

*Comment 1.82      It is unfair to allow as-of-right floor area increases for the DIB but require a landmark property owner to go through a special permit process. This poses an even greater burden on landmark buildings. (3)*

**Response:**      **The modified “Modified Zoning Text Amendment” proposal that the CPC is considering would permit transfers from landmark buildings in the Northern Subarea to Qualifying Sites in a manner similar to the framework included in the Grand Central Subarea. Both of these mechanisms would be permitted as-of-right above a minimum required DIF contribution. In addition, the Northern Subarea would contain provisions for transfers by discretionary review, similar to the Grand Central Subarea landmark transfer special permit for non-Qualifying sites.**

*Comment 1.83      The City should create a new special permit that would allow the integration of landmark buildings on Qualifying Sites. Potential development sites that include a New York City landmark should be able to apply for a special permit that would allow an uncleared site to be considered as a Qualifying Site if the proposed design incorporates the landmark building into a new commercial development. Findings for such a special permit could be modeled after ZR §74-711 which waives bulk regulations on landmark sites, provided that the proposed modifications relate harmoniously with the existing landmark, and that the proposed development does not adversely impact the*

*surrounding neighborhood. Additional findings for a new special permit should ensure a proposed landmark project: produces a viable commercial development; is integrated with the public transit and pedestrian networks; and will not unduly shift bulk towards other parts of the development lot. (7)*

**Response:** The Proposed Action is intended to encourage the development of a handful of new predominantly office buildings, which would replace some of the area's aging commercial stock. The Qualifying Site provisions require the minimum avenue frontage and site size be cleared of existing buildings in order to help ensure the maximum amount of new construction consistent with the goals and purposes of the Proposed Action. In addition, landmark buildings are permitted to remain on a lot where the minimum site requirements are otherwise met, as are other existing buildings. Finally, such a provision is beyond the scope of the Proposed Action.

*Comment 1.84 Hotels should only be allowed by special permit, which would allow the community and the City to guide the type and quality of future hotel development in the area. A special permit required of a hotel is consistent with the City's policies in special districts that have specific goals; the Special Hudson Square, the Tribeca Mixed Use District and ML-6D districts are a few examples. The findings associated with a hotel special permit should reflect the aims of this rezoning, which may include that in addition to the proposed hotel, sufficient Qualifying Sites are available in the area to meet East Midtown's commercial development goal, and that the proposed hotel is so located as not to impair the essential residential and commercial growth, or the future use or development, of the surrounding area. The City should begin the necessary environmental, zoning and planning work needed to create a hotel special permit for all of East Midtown. Hotels should only be allowed by special permit throughout the new East Midtown Subdistrict and not just on qualifying sites. (7) (31) (35) (45) (49) (55) (85) (86) (87) (89) (90) (91) (96) (98) (99) (100) (101) (102) (103) (104) (105) (110) (117)*

**Response:** No land-use rationale has been presented for an areawide special permit for hotels, and because such a proposal would not be consistent with the project goals and purposes it has not been included in the Proposed Action. The statements made at the public hearing that an areawide special permit should be adopted in order to preclude limited-service and non-union hotels do not constitute a land-use rationale for the proposal. Implementation of such a proposal would be beyond the scope of the Proposed Action, and the FEIS does not consider it as an alternative to the Proposed Action.

The comment attempts to supply a rationale for an areawide special permit, based on the need to ensure that sufficient sites exist for Qualifying Site office development, and to encourage future residential development that will support a mixed use neighborhood. However, the proposed zoning text in fact addresses the

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importance of developing Qualifying Sites for office use by limiting the amount of hotel development allowed as-of-right through use of the DIB incentive. Moreover, the Projected and Potential Qualifying Sites are unlikely to be redeveloped for hotel use under the existing as-of-right zoning and diminish opportunities for Qualifying Site office development; in fact, the proposed zoning is a response precisely to the failure of the existing zoning to produce new development. However, the Projected and Potential Qualifying Sites cover only a small percentage of East Midtown, and smaller “soft” sites exist where the as-of-right zoning is more likely to be utilized. The argument that the CPC needs to review every proposed hotel on such sites in order to protect the availability of Qualifying Sites for office development is illogical, and is an undue restriction on existing property owners who are not part of Projected or Potential Qualifying Sites and cannot take advantage of the rezoning. For these non-Qualifying Sites, the other argument put forward by the comment is the need to ensure that sufficient sites exist for future residential growth. Since the East Midtown area is expected to remain overwhelmingly commercial, and since hotels represent an essential component of a predominantly commercial Central Business District, this argument for a special permit is also insupportable. Limited residential conversions on other sites will continue over time in any event and be unimpeded by the ability to also develop sites for hotel use as of right.

*Comment 1.85      The City should require special permits for every new building that would have permanent unmitigatable impacts (i.e., with respect to shadows and the destruction of significant architectural resources). (3)*

**Response:**      The CPC is currently considering a modification to the proposed zoning text amendment, which would require Historic American Buildings Survey (HABS) recordation prior to any demolition of an eligible resource occurring as a result of development under the Proposed Action, as a partial mitigation measure. The CPC is also considering a modification to the proposed zoning text amendment that would require—as a precondition to issuance of a New Building Permit for a building on a Projected or Potential Development Site that could result in shadows impacts—that the Chairperson of the CPC (acting in consultation with the Chair of the LPC) certify whether a plan for indirect lighting of stained-glass windows has been developed and will be implemented, or that such a plan has been determined to be impracticable, or would negatively affect the character of integrity of the resource, or has not been accepted by the owner of the resource.

*Comment 1.86      There should be a broader landmark transfer mechanism to allow landmarks in the non-Grand Central Subdistrict the ability to transfer their air rights within the Park Avenue corridor through a special permit process that would require LPC and CPC approval. (3) (67)*

**Response:**      See response to Comment 1.82.

*Comment 1.87      There should be a retail or public use requirement for the top floors of new buildings. For all buildings over 18 FAR, public access to the skyline should be evaluated. (3) (67)*

**Response:**      While DCP agrees that public use on the top floors of new buildings should be encouraged, it does not believe this should be a requirement for new developments in East Midtown. Today, only a few observation decks and rooftop restaurants continue to operate in all of Manhattan, pointing to a relatively limited market for these uses. Additionally, those buildings that have such uses generally stand above the overall Manhattan skyline (such as the Empire State Building and 1 World Trade Center). In comparison, most of the new buildings in East Midtown would be within the overall Manhattan skyline of buildings, thereby limiting the likely extent of the view from top floors (the as-of-right buildings would top out at around 800 feet).

Buildings around Grand Central that would apply for higher FAR through the Superior Development Special Permit would rise above those heights, and such uses may be considered as part of applications for such additional density.

Given this, DCP believes that requiring such uses on all developments is not warranted. However, the “Modified Zoning Text Amendment” proposal that the CPC is considering would ensure that any mixed-use building that wants to provide such active uses at the top of the building could do so.

*Comment 1.88      The rezoning should permit a mix of uses. One way to achieve this is to remove the requirement that buildings be composed entirely of commercial uses in order to achieve the qualified site designation or to retain non-complying floor area. There should be an allowance for residential use in all new buildings. If the Department continues to be concerned with residential outcompeting commercial space then a cap on the residential percentage of the building could be appropriate. Based on other precedents and buildings (Time Warner & Bloomberg), 25% is an appropriate restriction. In addition, if the Department really believes that residential conversion is a threat to the future of Midtown – a concern that the Task Force does not share – then the Department should include a restriction on the ability to convert to residential. (3) (7) (67)*

**Response:**      The “Modified Zoning Text Amendment” proposal that the CPC is considering would permit sites that utilize the DIB to develop limited amounts of residential use in a new buildings—up to 20 percent as-of-right, with higher amounts permitted through special permit.

*Comment 1.89      This area should remain primarily commercial and not residential. The rezoning should allow this district to cluster office buildings exactly where they should be; near the main transportation hub, allowing people to easily get to work. The rezoning should encourage office buildings to be built in this area rather than letting the current market*

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*dynamics dictate residential development in a district whose highest and best use is commercial. (14)*

**Response:** The CPC is considering modifications to the Proposed Action that would limit the amount of residential use that could be developed through the special permit mechanism to a maximum of 25 percent, thus ensuring that the new development in the area under the proposal would be predominantly commercial use.

**25.2.1.1 Modified Zoning Text Amendment Proposal (“A” Text)**

*Comment 1A.1 The City should pursue the “A” Text option to allow residential use on Qualifying Sites. The adoption of the City’s proposed “A” Text to allow residential up to and restrict hotel uses to 20 percent on Qualifying Sites will, generally, produce an appropriate mix of uses and create a more vibrant and business-friendly East Midtown. It also creates an opportunity to generate greater contributions toward transit and public realm improvements, and therefore, CPC should adopt the “A” Text for those reasons. (7)*

**Response:** Comment noted.

*Comment 1A.2 The text amendments permitting 20% of buildings to be residential gives the district greater flexibility to respond to changing preferences for mixed-use districts, and can enhance the 24-hour character of midtown, but care must be taken in evaluating applications for higher amounts of residential development to maintain the high concentration of jobs and business activity that drives economic growth throughout the city. (56)*

**Response:** See response to Comment 1.89.

*Comment 1A.3 The percentage of residential use that is permitted by the rezoning will be fully developed as residential, which will shrink the office component that exists in East Midtown. The economics are overwhelmingly in favor of residential. (72)*

**Response:** See response to Comment 1.89.

*Comment 1A.4 The City should pursue the proposed “A” Text option that would allow transfer of the air rights in the proposed Northern Subarea. This would help remove conflict between preservation and development, and would provide owners of landmarked properties—unable to develop the full zoning potential of their properties—a more flexible basis to transfer to a broader range of receiving sites. (7) (59) (60) (78) (79)*

**Response:** Comment noted.

*Comment 1A.5 In the proposed ZR §81-633(2)(i) of the “A” Text, the transfer of development rights in the Northern Subarea should be required through special permit rather than authorization, and public review should be required for all developments over 18 FAR. (67).*

**Response:** The authorization permits transfers from landmarks to sites that do not meet the Qualifying Site dimensional requirements of up to 20 percent of the base floor area. Hence, a 15.0 FAR zone is permitted with a maximum 18.0 FAR. Hence, such proposals would not go above 18.0 FAR.

*Comment 1A.6 To close a loophole in the “A” Text and to ensure that the Northern Landmark Transfer Area meets its intent, DCP should establish a mechanism to mandate that property owners who take advantage of it use the proceeds, after their DIF contribution, for the preservation of their properties' historic structures. (19)*

**Response:** Consistent with current zoning requirements governing the transfer of unused landmark development rights, all landmark owners in the Northern Landmark Transfer Area would be required to establish a continuing maintenance plan for the building, with the approval of LPC. The transfer of development rights would provide a source of funding to meet the obligations of the continuing maintenance plan.

*Comment 1A.7 The expansion of the areas and the circumstances in which owners of landmarks will be allowed to transfer development rights is an important step in the right direction; however, the unintended consequence of the current proposal would be sales to developers at bargain prices and inadequate funds to restore and maintain landmarks such as Saint Bart's. The current proposal would effectively put owners of landmarks against one another. There will be a race between landmarks to sell quickly in early transactions driven by immediate needs and by fears about the timing of future demand from developers. The straightforward solution to this problem is for the City to require tax exempt owners of landmarks in the northern subarea to sell their development rights through a consortium in which they all act together. As members of consortium, every landmarked owner would then be able to sell a share in all transactions on the terms set by the consortium with the right to opt out of any specific transactions. The owners of tax-paying landmarks would have the option to participate in the consortium but not be required to join. Each selling owner's share of each transaction would be then the same proportion as the selling owner's share of the total development right held by the participating sellers. Federal antitrust law would prohibit the voluntary creation of such a consortium, but the City has the authority to override the federal antitrust law in this regard. (88)*

**Response:** The proposal to amend the zoning proposal to mandate participation of tax-exempt northern-area landmark owners in a consortium in order to avoid price competition among them in the sale of their development rights, raises serious policy issues concerning the City's role in regulating private transactions. It also raises significant legal issues under the New York State zoning enabling statutes and the Federal Antitrust laws. It is doubtful that the New York State General City Law authorizes a municipality to enact a consortium provision of this nature as

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**part of its zoning framework. The proposal is also unlikely to meet the requirements for municipal antitrust immunity under federal antitrust case law.**

*Comment 1A.8      The specifications in the “A” Text for the Northern Sub-Area seem intended only to address the demands of a few property owners. Without specified site controls on location, height, volume, density, and other key planning factors it is easy to foresee Park, Madison and Lexington Avenues lost to the piecemeal creation of second-rate high-rise corridors like Second and Third Avenues - walls of sterile towers, streets devoid of green public space or any amenity, drowned in traffic and air pollution, and created only to provide sunny aeries for a few high above. In this respect, the threat to Park Avenue in the revised setback proposal is particularly dire. (44)*

**Response:**      **The Northern Subarea is intended to provide opportunity for transfer from the number of iconic landmark buildings found in the northern portion of the Subdistrict, including St. Patrick’s Cathedral, St. Bartholomew’s, Central Synagogue, and Lever House. Buildings developed with such floor-area transfers would be required to comply with the height and setback controls of the Special Midtown District, which have been in place for the last 30 years. Any such transfers to non-Qualifying Sites would require their own environmental analysis to assess their effect on the surrounding area. The proposed limited modification to the height and setback controls along Park Avenue would be applicable only to Qualifying Site developments and would be consistent with the overall approach of the height and setback controls of the District.**

*Comment 1A.9      The Northern Sub-district has limited applicability, and while I agree with the concept that our land-locked landmarked buildings should have the ability to transfer unused air rights, it is worth noting that any landmarked building that transfers unused development rights will be doing so in direct competition with the city’s infrastructure fund. I believe that the small number of landmarks in the Northern Sub-district would benefit from the transfer at very little cost to the future DIF, and the transfer will allow them to make important upgrades to their buildings. (45)*

**Response:**      **Comment noted. The Northern Subarea’s provision for floor-area transfers from landmark buildings to Qualifying Sites is consistent with provisions proposed for the Grand Central Subarea—where such transfers are permitted as an option above a minimum required DIB contribution.**

*Comment 1A.10      The “A” Text includes a variety of welcome changes to the original proposal, including a mixed use residential component, flexibility for rooftop amenities, and the ability for landmarks above 49th Street to more broadly transfer their air rights. It was important that these changes be made at this point, because they are now within the scope of the ULURP process, and will allow the City Council to consider them. (45)*

**Response:**      **Comment noted.**



*Comment 1A.11 The City should pursue the “A” Text Qualifying Sites option that accommodates potential hold-outs. The proposed “A” Text creates a necessary safety valve for reasonable development to occur on sites with hold-outs, but ensures design review to prevent out-of-context development. (7)*

**Response:** **Comment noted.**

*Comment 1A.12 In order to allow publicly accessible uses on the top floors of buildings that have residential components, the “A” Text eliminates rules that prohibit non-residential uses above residential uses on Qualifying Sites. The potential to include these spaces has a benefit to the City as a whole, as they can serve as tourist attractions and open new perspectives on the City. (7)*

**Response:** **Comment noted.**

*Comment 1A.13 Language regarding transit connectivity in the “A” Text (proposed ZR §81-625 (b)(5)) should be strengthened to include generous and specific design requirements for new subway and railroad connections. A comprehensive urban design and infrastructure improvement plan should be created. This plan should include a map, which diagrams the existing above and below grade circulation network and displays where connections could be made to East Side Access and other desirable public and private circulation improvements. (67)*

**Response:** **The special permit for Superior Development (81-625) requires that the proposal include direct and generous connections to the below-grade pedestrian network. Such proposals would be reviewed as part of a full ULURP special permit. In addition, as-of-right developments in the Grand Central Subarea adjacent to the below-grade network are required to provide easements for connections to street level. DCP this approach will facilitate continued improvements to the below-grade network. See also response to Comment 1.31.**

*Comment 1A.14 The street wall requirement along Park Avenue in the “A” Text (proposed ZR§81-651, (d) (1)) should be revised in order to allow flexibility for additions such as plazas, which are a dominant characteristic along this stretch of Park Avenue. (67)*

**Response:** **See response to Comment 1.63. In addition, DCP has analyzed the built context of Park Avenue and found that the great bulk of frontages along the street provide streetwalls at the property line consistent with the proposed regulations, particularly those sites that have been identified as development sites.**

*Comment 1A.15 The proposed Park Avenue height and setback rules in the “A” Text should be applied to all Park Avenue sites, not just qualifying sites. The proposed text is premised on the simple reality that Park Avenue, by reason of its width of 140', is different from all other Midtown East Avenues of 100'. There is no reason to recognize it for only one class of site and not for every site. This is because, in the end, the more flexible zoning envelope*

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*permitted by the proposed rules will promote buildings that are more sustainable and produce superior design. (25)*

**Response:** DCP believes the current regulations applicable on Park Avenue cause developments on the relatively small sites found on the street to be taller, narrower, and less economically viable than would be required if the street's full width were taken into account. In order to more accurately reflect this width, and allow the development of modern office buildings on the street while maintaining the overall Midtown district's standards of access to light and air, the Modified Zoning Text Amendment Proposal includes modifications to the height and setback controls effective along Park Avenue to better reflect the street's overall width, which would allow the tower floorplates of Qualifying Site buildings on Park Avenue to each be slightly larger than under the existing regulations. The Modified Zoning Text Amendment Proposal is intended to be limited to Qualifying Sites where the highest FARs would be permitted as-of-right for predominantly office development.

*Comment 1A.16 There is currently no retail provisions required along Park Avenue in the "A" Text. To increase the vitality along this stretch of the Avenue, retail continuity should be required in ZR § 81-674. (67)*

**Response:** The retail provisions required on certain major streets in the existing Special Midtown District are not applied along Park Avenue, which is consistent with the street's existing character where large iconic office lobbies predominate. Neither the Proposed Action nor the modified proposed modify this.

*Comment 1A.17 Bank street frontage in the "A" Text should be limited along Vanderbilt to encourage a diversity of retail options and promote a more active streetscape for pedestrians (proposed ZR §81-674, (c)). For instance, new and expanding banks could be restricted to no more than 25' of frontage along Vanderbilt. (67)*

**Response:** The retail requirements along Vanderbilt Avenue are consistent with the retail requirements of the underlying Special Midtown District. Such changes would be beyond the scope of the proposed action.

*Comment 1A.18 The mass transit access section of the "A" Text (proposed ZR§81-672) establishes a process for determining transit access improvements rather than describing what the improvements should be. The text should include a more detailed description of the improvements to ensure predictability for both the developer and the public. (67)*

**Response:** Both the Proposed Action and the modified proposal require transit access volumes be provided by developments adjacent to transit in the Grand Central Subarea. These volumes are intended to provide improved access between the below-grade level and the street. See also response to Comment 1.31.

*Comment 1A.19 The proposal with the “A” Text has a variety of levels of public review; in many cases buildings with less density require public review while those buildings with more density do not. Public review, rather than being linked to the lot area, should be linked to density which is an approach consistent with the criteria for public review elsewhere in New York City. One example of this inconsistency is that in the GCT Core, 24 FAR can be attained as-of-right for large development sites but on smaller sites public review is required for sites with 21.6 FAR. Rather than a patchwork quilt to describe where public review is required a far more consistent approach to minimizing project impacts would be to require it for all projects over 18 FAR regardless of lot area or year planned. (67)*

**Response:** The zoning pattern of the Proposed Action appropriately concentrates the greatest densities close to the transportation hub of Grand Central Terminal and along Park Avenue, the area’s widest street. Public review is required where the highest densities would be acceptable only when considered subject to findings; these thresholds vary, based on the location of the site. The uniform threshold for discretionary review proposed in the comment would not recognize the differences in land use conditions in different portions of the proposed East Midtown Subarea and would not be an effective framework to address the long-term challenges of the area. The FEIS, therefore, does not consider the commenter’s suggestion as an alternative because it would not be consistent with the goals of the Proposed Action which, as stated in Chapter 1, “Project Description,” Section 1.4.1, “Goals of the Proposed Action,” of the DEIS, include to “seed the area with new modern and sustainable office buildings to maintain its preeminence as a premier office district.”

*Comment 1A.20 The proposed setback controls along Vanderbilt Avenue in the “A” Text (proposed ZR §81-66(a)(3) and §81-663(b)) unduly shift bulk towards Grand Central Terminal, casting shadows and blocking access to daylight. Maintaining the same setback controls along Vanderbilt as are along Madison Avenue is essential to ensure that the new buildings do not shift their bulk overwhelmingly to Grand Central. The proposal inappropriately relaxes setback controls along Vanderbilt. If the size of the site cannot accommodate the proposed densities within the Midtown envelope without significant waivers then the proposed densities are inappropriate. (67)*

**Response:** Both the Proposed Action and the Modified Zoning Text Amendment Proposal include limited modifications to the height and setback controls applicable to the blocks between Madison and Vanderbilt Avenues. While the height and setback controls of the Special Midtown District were developed consistent with the long-block pattern found in the rest of Midtown, the small, square blocks in this area present a unique configuration that has long presented problems for as-of-right development on these sites and is thus inconsistent with the predominantly as-of-right nature of the Special Midtown District. These modifications require new developments to meet the existing standards of access to light and air along the

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narrower Madison Avenue and the adjacent side streets, while taking advantage of the daylight available from the lower-height Grand Central Terminal. These modifications were analyzed in the Shadows chapter of the EIS, and no significant adverse impacts were identified.

*Comment 1A.21 The proposed ZR §81-625(b)(6) in the “A” Text should require that applications for developments within the Grand Central Subarea Core should also be required to make a finding concerning the harmonious relationship of the development to Grand Central Terminal. (67)*

**Response:** Both the Proposed Action and the modified proposal require buildings adjacent to Grand Central Terminal to obtain a report from LPC concerning the harmonious relationship of the new development to the Terminal.

*Comment 1A.22 Within the “Qualifying Site” section of the “A” Text, there should be an additional exception for landmark buildings similar to that described in point (c) in this section. The additional point should state that any New York City landmark building or structure may remain within the minimum site geometry described in paragraphs (a) and (b) of this definition. Proposed ZR §81-624(2) should include the same provision. (67)*

**Response:** See response to Comment 1.83.

*Comment 1A.23 Originally, one way DCP envisioned to slightly mitigate sidewalk overcrowding was to require qualifying sites to have full-avenue frontage, in order for just that one block, the pedestrians would get some breathing space. This would mean Lexington & Madison would get wider sidewalk very, very slowly—one block at a time. However with the “A” Text Amendment, the proposal now would allow only 75% of a block to have a wider sidewalk. Although 75% of the block is better than nothing, it is a far cry from what the City's main business district needs now and what should be required for East Midtown to support even more density. (1)*

**Response:** Proposals applying for the authorization for sites that do not meet the Qualifying Site requirements would be required to undergo an environmental analysis at the time of their application to study the effects of their development proposal, including on pedestrian conditions, and would be reviewed by the CPC pursuant to findings that would assess the proposal in relation to its surroundings.

*Comment 1A.24 It is positive that there is a special permit provision for use modification for residential being considered. (31) (96)*

**Response:** Comment noted.

*Comment 1A.25 It would be fair to make the Yale Club eligible for a use modification by special permit—the way a hotel or residential use would be—because the Club’s activities are similar to a hotel – renting rooms, catering halls, etc. (51)*

**Response:** See response to Comment 1.16.

*Comment 1A.26* Unfortunately, the “A” Text would still allow most hotels in the district to be built without a special permit. The proposed special permit provision must be greatly expanded to achieve its purpose. In addition, the City’s “A” Text proposals responded to community concerns by introducing some residential development in the area. If it is adopted, not only would hotels be in direct competition with office development, they would also conflict with residential development in the area—something the community directly requested. Allowing unregulated hotels on non-qualifying sites may prevent the area from being seeded with the residential uses necessary to create a 24-hour mixed-use commercial district. (35)

**Response:** See response to Comment 1.84.

*Comment 1A.27* While we have heard from City Planning presenters numerous times that this plan will only produce a few buildings of the tallest allowable heights, it is effectively an upzoning of the entire area. Any block where enough street frontage is assembled could host a building far taller than what exists. The decrease in street frontage necessary from the original proposal would, of course, increase the ease and likelihood of these massive buildings. The inclusion of special provisions for retaining non-complying floor area and allowing residential use would further spur new construction as these uses are more profitable than the office space that this proposal claims the city needs so badly. (52) (77)

**Response:** The environmental effects of the reasonable worst-case development scenario under the “A” text, as well as the potential use of the Special Permits and authorizations allowed under the “A” text, are considered in Chapter 20, “Alternatives.”

## 25.2.2 Land Use, Zoning and Public Policy

*Comment 2.1* According to the DEIS (p. 2-1), “No significant adverse impacts on land use, zoning, or public policy would occur due to the Proposed Action.” We could not disagree more. (3)

**Response:** Comment noted.

*Comment 2.2* The DEIS states that “a project is generally considered consistent with PlaNYC’s water quality goals if it includes” one or more of several listed elements (p. 2-23). It is not clear that the proposed rezoning has any of them. Page 2-43 states, “All development facilitated by the Proposed Action would comply with the City’s laws and regulations. Therefore, the Proposed Action is consistent with PlaNYC’s water quality goals.” But the elements listed on p. 2-23 go well beyond compliance with the City’s laws and regulations; the “therefore” on p. 2-43 is inappropriate. (3)

**Response:** As noted in the DEIS, developments facilitated by the Proposed Action would have to comply with all applicable regulations regarding the implementation of

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low-flow water-efficient fixtures, as per the New York City Plumbing Code, Local Law 33 of 2007 and the U.S. Environmental Protection Agency’s WaterSense Program. Therefore, the Proposed Action is consistent with PlaNYC’s water-quality goals.

*Comment 2.3*      *It is important to preserve the delicate balance between business and existing residential land use. The proposed rezoning would do great violence to established Midtown residential communities given that the currently drawn boundaries show little respect for these neighborhoods and their inhabitants- especially where there are partial block "carve-ins". In many areas the boundaries of the proposed rezone are drawn so broadly (rather than truly focusing on the commercial center and hub around Grand Central) as to materially encroach into beautiful and established residential neighborhoods. (39)*

**Response:**      The boundary of the proposed East Midtown Subdistrict would generally be mapped along street centerlines and a line 150 feet east of Fifth Avenue, with “carve-ins” occurring along portions of certain blocks to include existing commercial buildings with frontages on Park and Third Avenues (the two widest avenues in the proposed rezoning area), as well as the large-footprint existing commercial and mixed commercial/residential buildings with frontages on East 54<sup>th</sup> Street (which is currently zoned for commercial uses). A total of 87.1 percent of the proposed East Midtown Subdistrict’s existing buildings comprise commercial and mixed commercial/residential uses; only three of the existing buildings in the proposed rezoning area are currently occupied by residential uses (refer to Figure 2-3 and Table 2-1 of Chapter 2, “Land Use, Zoning, and Public Policy”). As such, the proposed rezoning would not encroach into residential neighborhoods.

*Comment 2.4*      *It is possible that this rezoning would expand commercial development into the residential neighborhood of Turtle Bay—particularly east of Third Avenue in the 40s. If this rezoning is to succeed, we must ensure that it balances density where appropriate, while protecting the residential nature of this historic community. (45)*

**Response:**      Only a small portion of the proposed rezoning area would extend east of Third Avenue in the East 40s: the block bounded by East 42<sup>nd</sup> and East 43<sup>rd</sup> Streets and Second and Third Avenues (which is comprised entirely of commercial buildings) and the westernmost portions of the five blocks between East 43<sup>rd</sup> and East 48<sup>th</sup> Street that are bounded by Second and Third Avenues. As evident in Figure 2-3 of Chapter 2, “Land Use, Zoning, and Public Policy,” the portions of these five blocks that would fall within the proposed rezoning area are comprised almost entirely of large-footprint commercial buildings; four mixed commercial-residential buildings located on these blocks would fall within (or partially within) the proposed rezoning area; only one existing large-footprint residential building would fall partially within the proposed rezoning area. As such, the proposed rezoning would be consistent with existing land use trends and would not expand

commercial development into an existing residential area. The existing zoning in the remainder of the Turtle Bay neighborhood (east of the proposed East Midtown Subdistrict), including the residential zoning districts mapped along portions of East 46<sup>th</sup>, East 47<sup>th</sup>, and East 48<sup>th</sup> Streets, would remain.

### 25.2.3 Socioeconomic Conditions

*Comment 3.1 Care should be given to ensure that the new open space amenity along Vanderbilt Avenue does not harm existing businesses. Business owners along Vanderbilt Avenue are concerned that elderly and disabled customers will go elsewhere if they cannot be dropped off at the entrance. (51)*

**Response:** Comment noted.

*Comment 3.2 The CEQR process should address the economic and planning consequences that will result if the Hotel Benjamin, the Hotel Lexington, and/or the Marriott East Side Hotel are designated as individual landmarks. (62)*

**Response:** Any designation of these hotels or other buildings in the East Midtown area as individual landmarks would be made by the LPC and is not a CEQR issue under the East Midtown rezoning proposal.

*Comment 3.3 Smaller and older buildings in the project area are assumed to be functionally or economically obsolete buildings in the proposal however some of the said buildings serve a purpose as a small start up business incubator much as lesser priced space does elsewhere in the City providing a creative function not possible in new larger buildings due to economic feasibility and market conditions. This business incubator attribute of lesser priced older office buildings is not discussed in the DEIS despite the great entrepreneurial business history of NYC. (69)*

**Response:** It is the intent of the Proposed Action to ensure that the East Midtown area continues to remain a strong and dynamic premier central commercial district and facilitate the long-term expansion of the City's overall stock of office space in an area with excellent transit access at a hub location. In the future with the Proposed Action, most buildings in the East Midtown rezoning area would remain commercial offices. The Proposed Action would facilitate the construction of a limited and targeted amount of commercial office, retail, and hotel development. The new higher-density office buildings would be constructed on large sites with full block frontages along the avenue corridors near Grand Central Terminal, with slightly lower density buildings proposed on Park Avenue and in the remainder of the rezoning area. It is anticipated in the future with the Proposed Action, East Midtown would continue to retain its diverse inventory of office space, i.e., buildings of different sizes and ages allow the area to meet the needs of a wide range of tenants at varying price points.

#### 25.2.4 Open Space

*Comment 4.1 The East Midtown rezoning proposal will add additional density with full block coverage, perpetuating the open space problem. (7)*

**Response:** The EIS analyzed the potential effects of the Proposed Action on open space in accordance with the methodologies identified in the *CEQR Technical Manual*. As detailed in Chapter 4 of the EIS, the Proposed Action was not determined to result in any significant adverse open space impacts. Since the Proposed Action would introduce additional workers to the area, which would place demands on passive open space resources, the indirect effects analysis focused on passive open space resources. The indirect effects analysis demonstrated that the Proposed Action would decrease passive open space ratios by 1.37 percent for the non-residential population and 1.54 percent for the combined non-residential and residential population, compared to the No-Action condition. While the acreage of passive open space resources in the study area is and would continue to be deficient in comparison to the CEQR benchmark, the deficiency would not be substantially exacerbated with the Proposed Action, as the percentage changes in the open space ratios from the No-Action condition to the With-Action condition would be less than 5 percent, which is used as the threshold for identifying significant adverse impacts because the study area is neither well- nor underserved by open space resources. Therefore, the Proposed Action would not result in significant adverse indirect open space impacts.

*Comment 4.2 The City should study additional open space improvements, including an expansion of Pershing Square one block to the south to 40th Street, the possible expansion of the Park Avenue median, an expansion of the passageway that runs through the Helmsley Building, the inclusion of required public space on particular development sites, and reprogramming of existing Privately Owned Public Space to better serve the needs of East Midtown. (3) (67) (81)*

**Response:** See response to Comment 1.21.

*Comment 4.3 The open space ratios are calculated and compared to the CEQR benchmark and “the With-Action deficiency would be only slightly larger than that in the No-Action condition.” This seems contrary to the claim that the rezoning would improve the quality of the pedestrian experience. More importantly, there is no discussion of the consequences of falling so far short of the benchmark. The benchmark for passive open space is 0.187 acres per thousand people; the “With-Action Condition” has a ratio of 0.064 acres per thousand people, or one-third of the benchmark. (3)*

**Response:** The quantitative open space analysis included in the EIS was conducted in accordance with the methodologies outlined in the *CEQR Technical Manual*. As detailed in Chapter 4 of the EIS, although the study area’s existing conditions are characterized by a low open space ratio (i.e., below the citywide average of



0.15 acres of passive open space per 1,000 non-residents and the recommended weighted average of 0.187 acres of passive open space per 1,000 non-residents and residents), CEQR guidelines recognize that the goals for open space ratios are not feasible for areas such as Midtown Manhattan, and therefore do not constitute an impact threshold. While the acreage of passive open space resources in the study area is and would continue to be deficient in comparison to the CEQR benchmark, the deficiency would not be substantially exacerbated given the small incremental decreases in the open space ratios resulting from the Proposed Action of 1.37 percent for the non-residential population and 1.54 percent for the combined non-residential and residential population. Therefore, the Proposed Action would not result in significant adverse indirect open space impacts, as the percentage changes in the open space ratios from the No-Action condition to the With-Action condition would be less than 5 percent, which is used as the threshold for identifying significant adverse impacts because the study area is neither well- nor underserved by open space resources.

*Comment 4.4 The assumption that there will be a net decrease of residents is questionable. The recent proposal to convert the SONY Building into a mixed-use building to include residential, the extension of the City's rent control law due to "an emergency housing shortage" and the unrelenting demand for residential dwellings are all proof that the market will continue to develop housing in East Midtown. And finally – because the assumption that the neighborhood demographic could not shift upward by such a small number as 50 residents in this underserved area is flawed – it is unquestionable that a residential analysis should have been undertaken and its exclusion undermines conclusions presented with respect to open space. (3)*

**Response:** As shown in Table 4-1 of the EIS, compared to the future No-Action condition, the RWCDS for the Proposed Action would result in a net decrease of 568 residential units, or 903 residents, which assumes 1.59 persons per residential unit, based on 2010 census data for the proposed rezoning area. As the Proposed Action would result in a net reduction of residents compared to the future No-Action condition, a residential analysis of open space was not warranted for the Proposed Action, based on the methodologies outlined in the *CEQR Technical Manual*.

*Comment 4.5 The aesthetic value of Vanderbilt Avenue as open space has been overstated. A comparison was drawn between the possibilities for the creation of open space along the Vanderbilt Avenue corridor similar to that which presently exists in Paley Park, the Channel Gardens and the Rockefeller Plaza ice skating rink. Those comparisons are very far afield of the actual conditions on Vanderbilt Avenue. Additionally, Vanderbilt Avenue is cast in shadow for much of the day. (61)*

**Response:** The future design process for Vanderbilt Avenue is discussed in the response to Comment 1.24.

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**25.2.5 Shadows**

*Comment 5.1 Visual simulations from the Environmental Simulation Center show the historically significant Terminal City mostly replaced by mega-buildings blocking light and creating shadows in the Grand Central area. Shadows are cast elsewhere in the action area concerning Landmarked buildings. (69)*

**Response:** The detailed shadows analysis included in the EIS was conducted in accordance with the methodologies outlined in the *CEQR Technical Manual*. As detailed in Chapter 5 of the EIS, the redevelopment of the 19 projected development sites and the less likely redevelopment of the 20 potential development sites would cast new shadows at times throughout the year on several open spaces and sunlight-sensitive features of historic architectural resources. In most cases, incremental shadows resulting from the Proposed Action would not be considered significant, as the East Midtown area is densely developed with many mid- and high-rise buildings that already cast shadows on the majority of the area’s sunlight-sensitive resources under existing conditions. The detailed shadows analysis identified significant adverse impacts on three architectural resources with sunlight-sensitive features, namely the stained-glass windows of St. Bartholomew’s Church and Community House, the stained-glass windows of the Lady Chapel of St. Patrick’s Cathedral, and the stained-glass windows of the Christ Church United Methodist building.

**25.2.6 Historic and Cultural Resources**

*Comment 6.1 Which eligible historic resources will be protected? LPC should calendar the buildings it deemed eligible for designation. (3) (7) (9) (11) (46) (51) (52) (67) (75) (77) (91) (113) (114) (120) (125)*

**Response:** Comment noted.

*Comment 6.2 LPC should reconsider other buildings deemed “potentially eligible” for designation in the proposed rezoned area, as well as other noteworthy buildings recommended for designation by preservationists, and should respond in writing with an explanation as to why these buildings are not being pursued for designation. (3) (19) (34) (37) (67) (114) (118) (120)*

**Response:** Comment noted.

*Comment 6.3 LPC should expeditiously conduct its review of potential historic resources so that the City Council has the benefit of their analysis before voting on the proposed rezoning. (45) (49)*

**Response:** Comment noted.

*Comment 6.4*      *LPC should consider using standstill agreements to protect the remaining buildings eligible for designation. Such agreements provide that the owner agrees not to alter or demolish the building and LPC agrees not to calendar the building during the term of the agreement. (3) (120)*

**Response:**      **Comment noted.**

*Comment 6.5*      *DCP and LPC should meet with the Department of Buildings (DOB) and work out a procedure for the remaining buildings eligible for designation so that if any permits are requested, DOB will give LPC notice and will not issue any permits for an agreed period of time. (3) (120)*

**Response:**      **Current law provides special protections for buildings that are calendared by LPC, allowing LPC the opportunity to consider designation prior to issuance of permits. These provisions do not apply to eligible buildings that are not calendared.**

*Comment 6.6*      *Madison and Lexington Avenues' remaining masonry buildings are attractive and hit the ground gracefully. Some of them may merit landmark status. (21)*

**Response:**      **Comment noted.**

*Comment 6.7*      *Requests for eligibility on the State or National Registers should be made for additional properties to ensure that all historic commercial properties can take advantage of the Federal Historic Preservation Tax Incentives program. (67)*

**Response:**      **Comment noted.**

*Comment 6.8*      *We must protect those buildings that have definite historical value. However, we need to make sure we are preserving only those that have value and not “copy cats” or other structures not fully recognized by all in the community as “historic.” It would be a mistake to allow our future to be dictated by well-meaning preservationists who seek to designate ordinary and banal buildings as landmarks. There are many buildings in this area that have been identified for landmarking that simply do not merit that distinction. LPC should not prevent the development of future landmark buildings by designating existing buildings that lack true merit. CPC should consider the potential economic and planning consequences involved with landmark status and affirm that buildings located in the Midtown East Subdistrict which fail to meet the highest standards of historical and architectural merit should not be considered for individual designation. (10) (14) (24) (64) (65) (93)*

**Response:**      **Comment noted.**

*Comment 6.9*      *Whatever the motivations behind the sudden and unexpected call for designation of the Hotel Benjamin, the Hotel Lexington, and the Marriott East Side Hotel, it must be evaluated on the merits pursuant to the criteria set forth in the Landmarks Law. And the law's criteria require more than a finding that a building is old, that it has a*

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*recognizable style, that it was designed by a named architect, or that its guests have included one or two people of note. We think that an objective review of these hotels will show that none of them demonstrates the level of special architectural character and historical significance required for individual landmarks designation. The sudden push to designate the hotels is not merited on the grounds of architectural significance given the numerous alterations over the years, the actual design of the buildings, and the loss of original fabric. (62) (63) (64) (65)*

**Response:** **Comment noted**

*Comment 6.10 445 Park Avenue should be removed from the list of East Midtown's historic resources that will be included in the FEIS. The building does not meet the statutory standards for landmark designation because it does not have the "special character and interest" required for designation by the New York City Landmarks Law and because its exterior has been so compromised by unsympathetic alterations that it lacks the physical integrity necessary for designation. The staff of LPC has twice in the past five years determined that the building does not meet the criteria for designation. (68)*

**Response:** **Comment noted.**

*Comment 6.11 Landmark protection is an independent action that has its own clear rules and goals, and these should not be confused with the process of up-zoning. (15)*

**Response:** **Comment noted.**

*Comment 6.12 The following 10 skyscrapers should be designated as New York City landmarks: Hotel Beverly (125 E 50th Street); Shelton Hotel (525 Lexington Avenue); Lexington Hotel (509 Lexington Avenue); Pershing Square Building (100 East 42nd Street); Graybar Building (420 Lexington Avenue); Lincoln Building (60 E 42nd Street); Lefcourt National Building (519 Fifth Avenue); Union Carbide (270 Park Avenue); Universal Pictures Building (445 Park Avenue); and Citicorp Center (Lexington Avenue between 53rd and 54th Streets). (15)*

**Response:** **Comment noted.**

*Comment 6.13 The properties at 9 and 11 East 47th Street should not be shown as proposed for demolition on Page 6-155 of the DEIS. We also do not believe that the failed hotel development at Development Site 11 included the Mercantile Library at 17 East 47th Street as stated in the DEIS Section 6. (69)*

**Response:** **Projected Development Site 11 includes an assemblage of six lots comprising 7-17 East 47<sup>th</sup> Street (Block 1283 Lots 8-13). In the No-Action condition, which is based on a reasonably conservative estimate of future growth without the Proposed Action, Projected Development Site 11 is expected to be redeveloped as a residential building. As such, Projected Development Site 11 is identified as proposed for demolition under the No-Action condition in Table 6-3 of the EIS.**

The property at 17 East 47<sup>th</sup> Street (Block 1283 Lot 13) is included in Projected Development Site 11. Chapter 1 of the EIS discusses the RWCDs and the development site criteria, and Table 1-3 of the EIS identifies the site data for the RWCDs projected development sites.

## 25.2.7 Urban Design and Visual Resources

*Comment 7.1*      *42nd Street, given the location of two of the most iconic buildings in New York City - Grand Central Terminal and the Chrysler Building - deserves a more finely calibrated urban design study which is absent from the proposed rezoning. (3)*

**Response:**      As detailed in Chapter 7 of the EIS, portions of the 42<sup>nd</sup> Street corridor—from Sixth Avenue on the west to the FDR Drive on the east—were included in multiple analysis areas in the primary and secondary study areas for the detailed analysis of urban design and visual resources. Within the primary study area, comprising the area directly affected by the Proposed Action, most of the 42<sup>nd</sup> Street corridor was included in the Grand Central Analysis Area—from a point approximately 150 feet east of Fifth Avenue on the west to a point approximately 125 feet west of Third Avenue on the east—and the easternmost portion of the corridor—extending to Second Avenue—was included in the Third Avenue Analysis Area. Within the secondary study area, comprising the area within which indirect impacts may result with the Proposed Action, the western portion of the 42<sup>nd</sup> Street corridor—extending to Sixth Avenue—was included in the Midtown and Midtown South Analysis Areas, and the eastern portion of the corridor—extending to the FDR Drive—was included in the Murray Hill/Tudor City Analysis Area. Therefore, the detailed analysis of urban design and visual resources for the Proposed Action included consideration of potential impacts of the Proposed Action on the 42<sup>nd</sup> Street corridor from Sixth Avenue on the west to the FDR Drive on the east.

*Comment 7.2*      *What will these new skyscrapers look like? What are the possible effects of the new skyscrapers on iconic buildings such as Grand Central Terminal and the Chrysler Building? There is no guarantee that the Chrysler Building and the Empire State Building will not be lost in thickets of taller buildings. (9) (28) (37) (48) (75)*

**Response:**      As detailed in Chapter 7 of the EIS, the expected redevelopment of the 19 projected development sites and the less likely redevelopment of the 20 potential development sites in the With-Action condition would primarily comprise high-density commercial uses, consistent with the existing predominant building scale and use in the proposed rezoning area. The building bulk of the With-Action developments would not change the built environment's arrangement, appearance, or functionality. The height of the new buildings would be generally consistent with that of existing and planned high-rise buildings within East Midtown. The introduction of these additional buildings would not affect a

pedestrian's experience of public space, and the visual character of buildings in the With-Action condition would not be significantly different from that in the No-Action condition. Most of the visual resources included in the assessment are landmark structures whose important views are confined to a 1- to 2-block radius of their sites. These views would not be significantly affected by the projected and potential developments in the With-Action condition, as the streetwalls of the existing high-rise buildings in the area generally limit visibility of each resource beyond the block on which it is located. Views of a few visual resources, including the Chrysler Building, Helmsley Building, and MetLife Building, are along wider view corridors due to the buildings' height and/or location. As demonstrated through illustrative renderings (Figure 7-7 in the EIS), new buildings on potential development sites would be visible within the Park Avenue view corridor of Grand Central Terminal, but views of Grand Central Terminal would not be obstructed. Some views of the Chrysler Building would be modified—but not obstructed—by the addition of new buildings along the view corridors; other views would be obstructed from certain vantage points, but similar views would continue to be widely available from other locations. No views of the Empire State Building would be modified by the projected and potential developments.

*Comment 7.3*

*Visual simulations from the Environmental Simulation Center show the effect of the rezoning at various heights/FAR levels near Grand Central Terminal. These contrast to the figures in DEIS Section 7 and show a vastly altered skyline with the iconic Chrysler Building no longer visible from various vantage points and the historically significant Terminal City mostly replaced by mega-buildings. (69)*

**Response:**

The illustrative renderings prepared for the urban design and visual resources analysis in the EIS presented a reasonably conservative representation of the buildings that could be constructed on the projected and potential development sites under the Proposed Action. In the model used to create the renderings, it was assumed that development under the Proposed Action would attempt to maximize floorplate sizes, as has been the practice for recent commercial construction in the City. As such, the heights of streetwalls and buildings in the illustrative renderings presented a reasonably conservative estimate of the development potential of the Proposed Action. As detailed in Chapter 7 and shown in Figure 7-7 of the EIS, some views of the Chrysler Building would be modified—but not obstructed—by the addition of new buildings along the view corridors; other views would be obstructed from certain vantage points, but similar views would continue to be widely available from other locations. The skyline of the East Midtown area from across the East River would continue to be punctuated by the iconic crown of the Chrysler Building. Furthermore, the building bulk of the With-Action developments would not change the built environment's arrangement, appearance, or functionality, and the height of the

new buildings would be generally consistent with that of existing and planned high-rise buildings within East Midtown.

## 25.2.8 Hazardous Materials

## 25.2.9 Water and Sewer Infrastructure

*Comment 9.1 The DEIS states in section 9.2.3 that “due to the New York City Department of Environmental Protection’s (DEP) new storm water management requirements established in July 2012, stormwater runoff from new developments is expected to substantially decrease as compared to existing conditions.” That conclusion is inaccurate; in fact, the opposite is most likely the case. The conclusion is based on the implementation of DEP’s new stormwater management requirements established in July 2012 for new developments. Many alteration (redevelopment) projects would be excluded because they do not increase the foot print, as per DEP’s requirements. However, these redevelopments that would add office floors would increase the number of people utilizing the building and thereby likely increase water consumption and the burden on the city sewer system. Additionally, new development projects that would be subject to DEP’s new stormwater management requirements would not significantly reduce stormwater runoff into the city’s sewer system. That is because the new projects in the proposed rezoning area could not physically implement fully the most important features of the requirements to help reduce stormwater runoff, including water storage systems, gravel bed systems, perforated pipe systems, stormwater chamber systems, and rooftop systems (i.e., blue roofs, green roofs, multilevel green roofs, and uni-directional sloped roofs). Most new development projects could only accommodate rooftop systems since all other systems would require a great deal of ground space to be effective. The increased density, water and sewage usage resulting from developments that take advantage of increased FAR to increase office space and density would more than overcome whatever reductions resulted from having a rooftop system that complies with DEP requirements. DCP’s own Table 9-8 (Water Consumption and Wastewater Generation in the Future Without and With the Proposed Action) on page 9-14 of the DEIS indicates that the proposed action would generate an additional water consumption of 1,057,071 gallons per day. The DEIS, at the top of page 9-10, acknowledges that as many existing “buildings in the area most likely pre-date DEP requirements, it is expected that there is little or no on-site detention of stormwater on any of the projected development sites.” Therefore, the Proposed Action would increase runoff to the city’s sewer system and worsen existing conditions such as street flooding, surcharging sewers downstream, sewer back-ups or combined sewer overflows in surrounding water bodies, all of which are public health and natural resources concerns. (3)*

**Response:** As more new building construction would occur with the Proposed Action than under the No-Action condition, the amount of projected development sites that

would need to implement DEP's new stormwater management requirements would be greater in the With-Action condition. In addition, while the Proposed Action would result in an incremental increase in water consumption in the proposed rezoning area, all new constructions would be required to achieve the new stormwater flow rates. The new DEP performance standard allows for a wide range of management techniques, costs, and space considerations.

*Comment 9.2*

*To the best of our knowledge, the sewer on East 47 St. 5th to Madison Avenues where our properties are located is aging infrastructure put in service prior to several large buildings being constructed in the area. Stormwater runoff on this 47th St block has caused backups into our properties on numerous occasions from the City combined sewer during heavy rainfall. Without new and larger capacity sewer infrastructure being installed preferably with separate stormwater infrastructure for new development we see this condition worsening and fail to see how the new DEP Stormwater management regulations for new development will alleviate this problem. The problem has been ignored by DEP in the past and DCP is not considering this in the DEIS presently. While green infrastructure in the new development is heartily welcomed, this does not address the issues and inadequacies with current infrastructure which are not covered under stormwater or mitigation in the DEIS. While DEP and DEC are addressing CSO into waterways no one is addressing combined system backups into buildings. The DEIS does not consider and study capacity of the sewer infrastructure to handle system overflows at peak periods such as intense rainstorms which have caused backups into our properties repeatedly during such inclement weather events. This is a failure in the DEIS to address a significant environmental impact. (69)*

**Response:**

As stated in Chapter 9, "Water and Sewer Infrastructure," the incremental increase in sanitary flows under the With-Action condition would represent approximately 0.1 percent of the Newtown Creek WPCP's designated SPDES capacity and would not cause the WPCP to exceed its operational or SPDES-permitted capacity. In addition, pursuant to CEQR methodology, the water and sewer analysis looks at the incremental difference in combined stormwater runoff and wastewater generation flow volumes to the combined sewer system in the proposed rezoning area using the 3-month, 6-month, and 12-month storm events, with rainfall averaging from 0.00 to 2.50 inches over durations of 3.80 to 19.50 hours.

## **25.2.10 Solid Waste and Sanitation Services**

## **25.2.11 Energy**

*Comment 10.1*

*The air quality analysis concludes that for 35 development sites, it will be necessary to use Con Edison utility steam; the buildings cannot generate their own heat and hot water without causing air quality problems. However, the Energy section of the DEIS*



*(Chapter 11) does not discuss the adequacy of the Con Edison steam system to handle this load. (3)*

**Response:** The comment is noted and a discussion of steam capacity has been incorporated into Chapter 11, “Energy,” of the FEIS. Con Edison’s *Steam Long Range Plan: 2010-2030* released in December 2010 identifies managing supply capacity to better align it with customer demand as a primary objective and analyzed peak 2030 loads. The high alternative 2030 forecast estimated a peak load of 10,435 Mlb/hour in 2030 as well as a greater proportion of SC-2 (large commercial) and SC-3 (large multi-family) customers. On the capacity side, the Plan identifies developing a more modular, flexible capacity with potential third party steam purchases and possible cogeneration. As stated in the Plan, capacity resources exceed both the current and forecasted peak, and the distribution system has adequate capacity to meet demand well into the future.<sup>1</sup>

Consistent with Con Edison’s goal of attaining environmental excellence, a steam enhancement program (undertaken in 1990 and completed in 1999) upgraded the steam distribution system and improved its reliability and structural integrity. In addition, Con Edison has implemented a set of measures to reduce steam demand during the on-peak time interval of 6:00AM to 11:00AM on winter weekdays for customers whose annual consumption exceeds 22,000 Mlbs. Under Storage of Thermal Energy in Existing Mechanical systems (STEEMs), the building management system is programmed to reduce the building’s on-peak steam demand by using stored thermal energy in the building’s existing mechanical systems.<sup>2</sup>

Steam is readily available in the study area from Con Edison. Many buildings in the area use steam for their HVAC needs. With an installed capacity of about 13 million pounds per hour, Con Edison maintains the steam production capability to meet forecasted heating and cooling demands and peak loads.

*Comment 10.2* While Section 11 under Energy mentions LEED standards and NYC DCP “Zone Green” the discussion does not provide recommendations or code requirements for new buildings except meeting NYCECC and ECCCNYs and in Section 14-7 stating “that sites utilizing the District Improvement Bonus be designed to meet standards for reduced energy consumption that exceed code compliance.” (69)

**Response:** As stated in Footnote 5 of the DEIS, developments resulting from the Proposed Action would be constructed pursuant to the NYCECC performance path, rather than the trade-off or prescriptive paths. The performance path uses energy modeling to demonstrate that the total annual energy cost of the proposed

<sup>1</sup> Source: Con Edison, *Steam Long Range Plan: 2010-2013*, December 2010.

<sup>2</sup> Source: <http://www.coned.com/steam>

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building design is less than or equal to the total annual energy cost of the budget building design. In addition, see response to Comments 1.75 and 1.76.

*Comment 10.3      Section 11 Page 11-6 states that “no significant adverse energy impacts would result from the Proposed Action.” which is inconsistent with Table 11-3 shown on the same page which shows approximately 40% increased consumption over the no action alternative. (69)*

**Response:**      As stated in the *CEQR Technical Manual*, an individual project’s energy consumption often would not create a significant impact on energy supply. Consequently, a detailed assessment of energy impacts is limited to projects that may significantly affect the transmission or generation of energy. While the Proposed Action would increase energy consumption over the No-Action condition, the Proposed Action would not affect the transmission or generation of energy, and therefore would not result in a significant adverse energy impact, pursuant to CEQR.

*Comment 10.4      The DEIS does not discuss whether the amount of increased energy demand anticipated would accelerate hydrofracking in the Marcellus Shale. (69)*

**Response:**      As stated in Chapter 11, “Energy,” the anticipated incremental energy demand resulting from the Proposed Action would represent a negligible amount of the City’s forecasted annual energy requirements, and should there be a voluntary utilization of higher performance standards on the projected development sites, the forecasted energy load could be reduced. Hydrofracking in the Marcellus Shale is the subject of separate and unrelated environmental and regulatory reviews.

*Comment 10.5      On page 11.1 the DCP cites a conclusion that the proposed action would only result in a “minor” increase in demand on the city’s electrical system. The DEIS further states that since new development under the Proposed Action would have to comply with the New York City Energy Conservation Code (NYCECC) of 2010 (Local Law 48), the proposed action would “not result in a significant adverse impact on (the city’s) energy systems”. This conclusion is overly optimistic because it does not take into consideration the code non-compliance elements for redevelopment of existing buildings. (3)*

**Response:**      The NYCECC of 2010 followed the 2007 Energy Conservation Construction Code of New York State (ECCCNYS) while removing the ECCCNYS loophole that excluded most renovations in New York City from having to meet the code (the ECCCNYS only applied when at least 50 percent of an existing building’s system is replaced). The broader applicability of the NYCECC ensures that the City’s buildings garner the energy benefits at the time of renovation, even if the renovation is partial.

## 25.2.12 Transportation

*Comment 12.1 To what extent is the rate of 0.06 truck trips per hotel room based on 1981 data (from FHWA – The Curbside Pickup/Delivery Op & Arterial Traffic Impacts) as opposed to the 2009 Western Rail Yard FEIS? In 1981, hotels in general had less items in the rooms and more services were done on-premises (including laundry), compared to now with more items available to hotel guests and more services done off-premises (especially laundry), thus more trucks coming to a hotel district.(1)*

**Response:** The original source of the truck trip generation rate is the Federal Highway Administration’s *Curbside Pickup and Delivery Operations and Arterial Traffic Impacts* (1981); this rate was also used in the *Western Rail Yard FEIS* (2009). The transportation planning assumptions presented in the EIS were reviewed and approved for this project by the New York City Department of Transportation. It is noted that the Transportation Research Board’s *National Cooperative Highway Research Program Synthesis 298* (2001) includes rates of 0.034 and 0.040 daily truck trips per 1,000 square feet (sf) for hotels; these compare to a rate of 0.092 daily truck trips per 1,000 sf used for this EIS, which assumed an average rate of 650 sf per hotel room.

*Comment 12.2 If more hotels are built, how will accommodations be made for the inevitable concomitant rise in tourist traffic? (1)*

**Response:** The transportation planning factors provided in Table 12-6 of the EIS account for all types of trips generated by hotels, including those made by tourists, business travelers, and employees. As such, new trips that would be made by tourists are accounted for in the traffic, transit, pedestrian, and parking analyses.

*Comment 12.3 The EIS assumes that added burdens caused by increased traffic through the Grand Central stations would be fully mitigated by anticipated projects under the DIB program. (EIS 12.2.2). Whether the projects funded by the DIB program would also clear up existing "bottleneck(s)" is not entirely clear. (12)*

**Response:** Subway station pedestrian circulation elements (stairs, escalators, and passageways), fare control elements (regular turnstiles, high entry/exit turnstiles [HEETs], and high exit turnstiles), and representative analysis locations for each of these elements, are identified in the DEIS. A comparison of the capacity of each analysis location under existing and future conditions, with and without the priority DIB improvements, is provided in the DEIS. As summarized in Tables 12-68, 69, 70, and 71 for GCT Subway Station Complex with Improvements, the effect of DIB improvements for current, new, or improved subway elements are very clear and effective when they are compared to the No-Build conditions as summarized in Tables 12-49, 50, 51, and 52.

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*Comment 12.4      The proposal to close Vanderbilt Avenue to auto traffic from 42nd to 46th streets, allowing for emergency and overnight truck delivery access, would serve as a buffer for pedestrians at Grand Central, allowing the spreading of pedestrian flows among the various side streets for commuters heading to 5th and 6th avenues. (56)*

**Response:**      **Comment noted. (As clarification, in the future with the Proposed Action, Vanderbilt Avenue would not be closed to vehicular traffic between East 43<sup>rd</sup> and East 44<sup>th</sup> Streets).**

*Comment 12.5      The proposal to create a partially-pedestrianized public space on Vanderbilt Avenue would preclude vehicular access to building owners, which will have a significantly detrimental effect on their manner of operations, without any compensating alternatives. For instance, the proposal would preclude vehicular access to the Yale Club's only public entrance on Vanderbilt Avenue between 44th and 45th Streets, requiring Club members arriving by private car and taxi to be dropped off at the corner of 44th or 45th Streets. This would pose a hardship to many of the Club's guests, including those arriving with luggage to stay in one of the Club's 138 rooms, and those arriving in inclement weather or attending one of the many large events the Club frequently hosts, such as weddings. Furthermore, the Club's sizable elderly and disabled population would be unreasonably burdened, as the accessible elevator is located adjacent to the Club's main entrance on Vanderbilt Avenue. (6) (33) (61)*

**Response:**      **Any future improvement to Vanderbilt Avenue would take into account the needs of adjacent property owners, as described in response to Comment 1.24.**

*Comment 12.6      Access to Vanderbilt Avenue from 42nd Street is an important right-hand turn safety valve for traffic moving west on 42nd Street. A closure of Vanderbilt will mean that no right turns may be made along 42nd Street from 3rd Avenue to 6th Avenue. Additionally, one significant vehicular access point along Vanderbilt Avenue to Grand Central Terminal will be terminated, resulting in additional traffic along both of East 42nd Street and Lexington Avenue. (61)*

**Response:**      **This comment is inaccurate. There is an existing turn prohibition restricting westbound vehicles from making right turns onto Vanderbilt Avenue from 7 a.m. – 10 a.m. and 4 p.m. – 7 p.m. Monday through Friday. Therefore, vehicles cannot make right turns onto Vanderbilt Avenue during the AM and PM peak periods on weekdays. As described in Chapter 12, "Transportation," the portion of Vanderbilt Avenue between East 42nd and East 43rd Streets would be closed in the No-Action condition and is not related to the Proposed Action. Additionally, under the Proposed Action, the portion of Vanderbilt Avenue between East 43rd and East 44th Streets would remain open to traffic (accessible via East 43rd and East 44th Streets), preserving this vehicular access point to Grand Central Terminal and the existing taxi stand on the west side of Vanderbilt Avenue between East 43rd and East 44th Streets.**

Between Third and Sixth avenues, the Proposed Action would generate between 10 to 13 vehicle trips westbound and 2 to 3 vehicle trips eastbound during the AM peak hour; between 4 to 6 vehicle trips westbound and 3 to 7 vehicle trips eastbound during the Midday peak hour; and between 3 to 7 vehicle trips westbound and 2 to 5 vehicle trips eastbound during the PM peak hour as all shown, respectively, in DEIS Figures 12-25, 12-28, and 12-31 for the AM, Midday and PM peak hours. As noted above, the Proposed Action would not significantly add vehicle trips in the 42nd Street corridor during the three peak hours. However, some of the east- and westbound approaches along 42nd Street would be highly congested in the No-Action scenario, and the Proposed Action would exacerbate some of the movements as summarized in DEIS Tables 12-26, 12-27, and 12-28 for the AM, Midday and PM peak hours, respectively. Measures to mitigate significant adverse traffic impacts due to traffic generated by the Proposed Action at the Sixth Avenue and 42nd Street westbound approach, including the right turn movement, were identified in the DEIS.

*Comment 12.7* In 2001, in a response to the events of 9/11, the National Fire Protection Association developed Standard 1710 to identify national industry best practices for fire department and EMS responses. The stipulated standard is for four minutes or less travel time for the arrival of the first engine company and fire suppression or EMS incident, and eight minutes or less travel time for the full deployment of a full alarm assigning. These are considered minimum standards. These times will be significantly penalized and potentially unachievable based on the traffic delays identified in the DEIS analysis. (107)

**Response:** Emergency service vehicles can maneuver around and through congested areas because they are not bound by standard traffic controls. Such preferential treatment for emergency vehicles is expected to continue in future with the Proposed Action, including in the event of pedestrianization of Vanderbilt Avenue.

*Comment 12.8* Standard national emergency response best practices identify the need for emergency responders and for their apparatus to have available all sites of building frontage for effective tactical incident command response to save lives and property. The Incident Command Operation Center for Grand Central Terminal is at the corner of 43rd and Vanderbilt. Any closure of Vanderbilt must take into consideration a study which identifies the effects to the incident command tactical responses and access. This access needs to be immediately available and with the fewest obstructions to minimize the additional time for first responders. All of these tactical response capabilities are potentially in jeopardy and taking longer to effect. (107)

**Response:** As described in Chapter 1, “Project Description,” a potential future pedestrianization of Vanderbilt Avenue would still allow for unrestricted movement for emergency vehicles. The design of a pedestrianized Vanderbilt

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**Avenue would incorporate the equivalent of a travel lane to provide emergency access.**

*Comment 12.9      The closure of Vanderbilt to vehicular traffic and the creation of a pedestrian mall will have a significant impact on the immediate and surrounding areas, the safety and security of those who work in Vanderbilt, and the ability of emergency responders to respond there. (108)*

**Response:**      **See responses to Comment 12.7 and Comment 12.8.**

*Comment 12.10      Of what use would DIF monies be to the MTA if the rezoning is approved, Vanderbilt Avenue is closed, and significant monies are required to be spent by MTA-Metro North in an effort to ameliorate the access issue posed by the closing of Vanderbilt Avenue to vehicular traffic? (61)*

**Response:**      **While the environmental review evaluated conditions with Vanderbilt Avenue partially closed to vehicular traffic, the East Midtown Rezoning that is the subject of this action does not include such closing of Vanderbilt Avenue. See also responses to Comments 12.7, 12.8, and 12.11.**

*Comment 12.11      44th Street at present between Madison and Vanderbilt is confined to one lane and will remain so due to MTA construction until 2019 or later. On most weekdays the traffic still backs up into and on Madison Avenue resulting in a traffic hazard which continually blocks the bus lane. Service entrances for the Yale Club and 335 Madison are located on this block as is the only public parking garage, all of which are blocked at times throughout the day. (61)*

**Response:**      **The curb lane and sidewalk closures along the north side of East 44th Street between Madison and Vanderbilt Avenues is a temporary condition associated with construction of the East Side Access project and will not be present in the future with the Proposed Action. As shown in the traffic level of service tables in Appendix 4, there would reductions in vehicular delays on the eastbound approach of the intersection of Vanderbilt Avenue and East 44th Street between the No-Action and With-Action conditions during the AM, Midday, and PM peak hours. These improvements would occur as a result of the elimination of eastbound left turns at this intersection in the event of a closure of Vanderbilt Avenue to vehicular traffic between East 44th and East 47th Streets.**

*Comment 12.12      A vital cab stand serving Grand Central Terminal is now located just north of 43rd Street on Vanderbilt Avenue. The primary access for drop off and pick up to and from GCT is from 44th, 45th, 46th, and 47th Streets. If all the east-west streets between 42nd and 47th Street are closed except 44th, street cab service will be completely disrupted. (61)*

**Response:**      **This comment is inaccurate. As described in Chapter 1, “Project Description,” Vanderbilt Avenue was once the major taxi access point to Grand Central**

Terminal but has seen its use drop as taxis have been moved away from the building due to security concerns. Furthermore, as described in Chapter 1, “Project Description,” any potential future pedestrianization of Vanderbilt Avenue would still allow for uninterrupted crosstown traffic and would not result in the closure of any east-west streets between East 42nd and East 47th Street. The existing taxi stand on the west side of Vanderbilt Avenue between East 43rd and East 44th Streets would be unaffected by the Proposed Action and would still be accessible to taxis via East 43rd and East 44th Streets. See also response to Comment 12.6.

*Comment 12.13 Cars, cabs and trucks are forced to make a right turn from Vanderbilt onto 43rd Street, which is also now only one lane wide. The left lane is for trucks, which will be lost when SL Green starts construction. The right lane is used for a city bike rack and police parking. The result is that traffic on 43rd Street is often blocked by double parked trucks. (61)*

**Response:** Between Vanderbilt and Madison Avenues, East 43rd Street has one travel lane on the east side of the block adjacent to the bike-share station, while the west side of the block has two westbound travel lanes: a through lane and an exclusive right-turn lane. Enforcement of existing parking regulations is under the jurisdiction of the NYPD. As shown in Chapter 12, “Transportation,” the westbound approach of the intersection of Madison Avenue and East 43rd Street would not have any significant traffic impacts in the future with the Proposed Action in the AM, Midday, and PM peak hours.

As described in Chapter 18, “Construction,” temporary curb lane and sidewalk closures are anticipated adjacent to construction sites and moving lanes of traffic are expected to be available at all times along streets adjacent to construction sites, except for the segments of Vanderbilt Avenue that would be permanently closed to traffic. Detailed MPT plans for each construction site would be submitted for approval to the DOT Office of Construction Mitigation and Coordination (OCMC).

*Comment 12.14 The present condition along East 44th Street, where there is significant construction being undertaken by the MTA, and on 43rd Street, where presumably a new loading dock will be built on the south side of 43rd Street between Vanderbilt and Madison (along with the bike racks now on the north side of 43rd Street) significantly diminishes the movement of traffic around the entire block, Madison to Vanderbilt, 43rd to 44th Street. This situation is not likely to improve or be ameliorated as time goes on. (61)*

**Response:** With respect to the geometry of East 43rd and East 44th Streets between Vanderbilt and Madison Avenues, there would be no changes between No-Action and With-Action conditions as both streets would provide a minimum of one travel lane. See also responses to Comment 12.11 and Comment 12.13.

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*Comment 12.15 It would seem to be incumbent on CPC to conduct a separate environmental and traffic study before any definitive action is taken to close Vanderbilt Avenue. The failure to adequately study the impact of the potential closing of Vanderbilt Avenue to traffic is a shortcoming which should be addressed. (61) (108)*

**Response:** As discussed in Chapter 12, “Transportation,” the traffic analyses in the DEIS account for traffic that would be rerouted due to a possible future pedestrianization of Vanderbilt Avenue between East 44th and East 47th Streets.

*Comment 12.16 The proposed densities will overwhelm the already overcrowded streets and sidewalks of the area, including the narrow sidewalks on Madison and Lexington Avenues. One of the rezoning’s goals is to “improve the area’s pedestrian and built environments to make East Midtown a better place to work and visit.” The increased pedestrian congestion that the DEIS projects (Sec. 19.7) casts doubt on whether this goal will be achieved. Mitigation for existing overcrowding may be impossible despite the DEIS studies, which may amount to wishful thinking. (1) (3) (69)*

**Response:** As discussed in Chapter 12 “Transportation,” and Chapter 19, “Mitigation,” in the EIS, the Proposed Action would result in the creation of a substantial amount of new pedestrian space along sidewalks adjacent to development sites (where new demand would be most concentrated) as well as potentially along the Vanderbilt Avenue corridor, and recommended mitigation measures would fully mitigate the majority of the Proposed Action’s significant adverse impacts to sidewalks, corner areas, and crosswalks.

*Comment 12.17 The objection raised by many to this proposal regarding pedestrian congestion is overblown. There are only two locations in midtown Manhattan where sidewalks are truly overcrowded by New York standards: Lexington Avenue between 43rd and 50th Streets, and Seventh Avenue between 34th and 40th Streets, at rush hour only. The added bulk of towers resulting from this proposal may worsen the former situation, and pedestrianization of the west side of Lexington Avenue may be a solution. Otherwise, the argument is overstated, and sounds like the view of observers who don’t regularly commute through this district. (21)*

**Response:** Comment noted.

*Comment 12.18 The DEIS shows that even with mitigation, there will be significant degradation at intersections for vehicular traffic; for example, at Fifth Avenue and 47th Street. It is impossible to tell if these impacts are caused by the up-zoning alone or being combined with the Vanderbilt proposal. (106)*

**Response:** If Vanderbilt Avenue was not closed to traffic in the Proposed Action, the intersection of Fifth Avenue and 47th Street would still have unmitigated impacts during the AM, Midday, and PM peak hours. More specifically, without the closure of Vanderbilt Avenue, this intersection would still have unmitigated



impacts to the westbound left-turn movement during the AM, Midday, and PM peak hours and to the southbound through movement during the AM peak hour.

This intersection has split phasing on the westbound approach, and it is possible to shift only one second of green time from the westbound through signal phase to the westbound left turn/through signal phase while still maintaining the minimum crossing time for pedestrians on the north and south crosswalks. It is not possible to transfer any signal timing from the southbound signal phase to the westbound left turn/through signal phase without exacerbating a significant impact or creating a new impact on the southbound approach—both sides of Madison Avenue have no standing regulations so daylighting cannot be used to create additional capacity on this approach.

*Comment 12.19*      *Unmitigated pedestrian impacts will occur at Fifth Avenue and 42nd Street, 44th Street and 46th Street, and at crosswalks at Madison Avenue and 42nd Street, and Madison Avenue and 43rd Street. It is impossible to tell if these impacts are caused by the up-zoning alone or being combined with the Vanderbilt proposal. (106)*

**Response:**      The closure of Vanderbilt Avenue is not a contributing factor to pedestrian impacts. Vanderbilt Avenue, as stated in the DEIS Chapter 1, “Project Description,” would be redesigned with ample pedestrian circulation space along its edges. This would promote higher utilization of Vanderbilt Avenue as a pedestrian route in lieu of the existing routes along adjacent streets such as Madison and Fifth Avenues.

*Comment 12.20*      *It is clear that the proposal for Vanderbilt Avenue does not mitigate these pedestrian impacts. It is a solution in search of a problem. It may in fact exacerbate the already egregious impacts being created. In my opinion, the way in which the DEIS address the Vanderbilt proposal constitutes segmentation. (106)*

**Response:**      See response to Comment 12.19. The incorporation of analysis of the effects of Vanderbilt closure in the EIS does not constitute segmentation.

*Comment 12.21*      *A broader pedestrian circulation study for the district should be conducted, with special consideration given to pedestrian issues along Lexington and Madison Avenues and the potential closing of parts of discontinuous cross streets like 41st and 43rd Streets. (56)*

**Response:**      Comment noted. As discussed in Chapter 12, “Transportation,” in the EIS, the pedestrian analysis focuses on sidewalks, corner areas and crosswalks in proximity to projected development sites and along corridors connecting these sites to area transit services, as it is along these corridors that new pedestrian demand from the Proposed Action is expected to be most concentrated. The Proposed Action also includes the creation of a substantial amount of new pedestrian space along sidewalks adjacent to development sites. A broader pedestrian circulation study for the district and an assessment of potential pedestrian improvement measures

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(e.g., sidewalk widening and street closures) beyond those included as part of the Proposed Action or as mitigation for significant impacts are beyond the scope of this EIS. See also response to Comment 1.22 with regard to public realm improvements.

*Comment 12.22 The City should study potential sidewalk widening along Madison, Lexington and Third Avenues as well as 42nd and 53rd Street. There should be a study of pedestrian and vehicular traffic along these major avenues and streets to generate creative ideas to improve the already over-congested pedestrian network on existing sites. Ideas could include some kind of hierarchical pattern of street use, such as "through streets," which the City has implemented already. This may offer the opportunity to narrow the right-of-way through "bulb-outs" at corners in strategic areas and on strategic frontages in East Midtown. This could also include reducing the vehicular right of way. Another suggestion is traffic calming on 42nd Street in front of Grand Central to create a more vehicular/pedestrian shared space. (3)*

**Response:** See responses to Comments 12.21 and 1.22 with regard to public realm improvements.

*Comment 12.23 Rather than create site-specific improvements as new buildings are built, Midtown needs a plan for improving the entire network, in particular congested sidewalks. (67) (128)*

**Response:** See responses to Comments 12.21 and 1.22 with regard to public realm improvements.

*Comment 12.24 Midtown Manhattan needs a comprehensive street use plan that rationally allocates street space, the city's most valuable real estate, among competing users- pedestrians, bus riders, cyclists, truckers making deliveries, motorists and taxi passengers. The Institute for Rational Urban Mobility's (IRUM's) proposed grid of modern surface light rail lines set in auto-free streets—starting with IRUM's vision42 proposal for an auto-free light rail boulevard on 42nd Street—should certainly be considered in the development of this plan. (17) (42)*

**Response:** Comment noted. Development of a comprehensive street use plan for Midtown Manhattan and a grid of modern surface light-rail lines set in auto-free streets are not a part of the Proposed Action and are beyond the scope of this EIS.

*Comment 12.25 The City and the MTA should continue to work on resolving subway capacity issues in advance of the rezoning in order to accommodate the expected increase in ridership. The proposed rezoning will overwhelm East Midtown's public transportation system. The 4/5/6 subway lines are currently operating at 116% capacity, and new density plus the arrival of East Side Access will only further strain the transit network. (2) (13) (40) (47) (67)*

**Response:** Comment noted. As discussed in detail in Chapter 12, “Transportation,” in the EIS, it is anticipated that a number of priority improvements would be implemented at the Grand Central-42<sup>nd</sup> Street subway station complex under the District Improvement Bonus mechanism, and additional improvements have been identified for potential funding under this mechanism at the 51<sup>st</sup> Street and Lexington Avenue-53<sup>rd</sup> Street subway stations. Also see response to Comment 12.3. As detailed in the EIS Line Haul analysis, the Grand Central-42 Street subway station improvements would increase line-haul capacity in the peak direction during peak hours, more than offsetting the relatively minor increase in riders due to the East Midtown rezoning.

*Comment 12.26 Interventions to address congestion at the surface and in existing subway stations are the critical near-term priorities. Expanding the mezzanine for the Lexington Avenue subway, adding new connections and a mezzanine for the Flushing line, and constructing a passageway connecting to Metro-North's lower-level platforms and Long Island Rail Road's East Side Access concourse to the subway will make a substantial difference in the commuter experience, as will circulation improvements at the two crosstown 53rd Street stations. (56)*

**Response:** Comment noted. See response to Comment 12.25.

*Comment 12.27 The full build out of the Second Avenue subway, both Phase 2 extending to 125th Street and Phase 3 to Lower Manhattan, is essential to relieving congestion on the Lexington subway and at Grand Central Terminal, as well as providing the capacity for job growth along the entire East Side. A priority for future MTA capital plans should be to complete Phase 2 by the mid-2020s and getting Phase 3 underway as more space comes under the rezoning. (56)*

**Response:** Comment noted.

*Comment 12.28 Additional station entrances for East Side Access should be developed as new buildings are constructed above the Madison Avenue concourse. Improved access to the east also should be explored as new buildings are constructed on the eastern side of Park Avenue. (56)*

**Response:** Comment noted.

*Comment 12.29 Further study is needed to identify the full scope of potential improvements but they could include: a river to river transit strategy for 42nd Street, Bus Rapid Transit, improved bus service on Midtown avenues, improved ferry service and completion of Phase II and III of the 2nd Avenue subway. (3)*

**Response:** Comment noted. As described in Chapter 1, “Project Description,” in the EIS, the DIF would be focused on City-priority improvements to the pedestrian network, both above- and below-grade. The DIF would be responsible for maintaining and adjusting a list of priority district improvements in the East Midtown area over

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time, and dispersing funds for such projects as contributions to the DIB are made. The zoning text would also include provisions for public participation in the process and standards for what types of projects may be funded through the DIF.

*Comment 12.30 Our attention now should focus on Penn Station which must be revitalized to accommodate the approximately 600,000 riders who use it daily. That is of far greater necessity and relevance. Connectivity between Penn Station and Grand Central Station must be enhanced as well. (13)*

**Response:** **Comment noted. See response to Comment 12.27. Revitalization of Penn Station is beyond the scope of this EIS.**

*Comment 12.31 The East Midtown rezoning facilitates the development of more high-rise commercial office development in the neighborhood, adding thousands of additional riders to the already overcrowded subways and buses that travel through East Midtown. Despite this significant impact, the proposal lacks a clear strategy for improving an overburdened network. (37) (67)*

**Response:** **As discussed in detail in Chapter 12, “Transportation,” in the EIS, improvements are proposed for the Grand Central-42<sup>nd</sup> Street subway station complex and the 51<sup>st</sup> Street and Lexington Avenue-53<sup>rd</sup> Street subway stations under the District Improvement Bonus mechanism. With implementation of the proposed improvements, there would be no significant adverse subway station or line haul impacts as a result of new demand generated by the Proposed Action. Measures are also proposed in Chapter 19, “Mitigation,” to fully mitigate the Proposed Action’s significant adverse impacts to local bus service. Additional improvements to the pedestrian network, both above- and below-grade, would be identified and implemented under the under the District Improvement Bonus mechanism.**

*Comment 12.32 The DEIS analysis/discussion of buses (Table 12-6) seems to focus on only public and commuter buses. Is there data for charter buses? (1)*

**Response:** **The Proposed Action is not expected to result in appreciable numbers of charter bus trips during the AM, Midday and PM peak hours, and therefore they are not reflected as a separate mode split in the transportation planning factors shown in Table 12-6. CEQR transit analyses generally focus on regularly-scheduled public transit bus services, and do not typically include an analysis of charter buses.**

*Comment 12.33 We are unclear as to the ability of New York City to implement changes to MTA property. We understand that things such as subway entrances can be created, but this will not substantially alleviate an over-burdened IRT transit line. (52)*

**Response:** **Under the DIB/DIF mechanism, improvements to the transit network under the control of the MTA would be made by agreement between the City and the MTA. These improvements would improve the flow of pedestrians on concourses, stairs,**

and platforms and allow for improved loading and unloading of trains on the Lexington Avenue lines. These investments would both improve the reliability of service and increase the number of trains that can be accommodated in the peak hour. As discussed in Chapter 12, “Transportation,” in the EIS, the Proposed Action is not expected to result in significant adverse impacts to subway line haul conditions under *CEQR Technical Manual* criteria. In addition, it should be noted that the Lexington Avenue line platform circulation improvements that would be implemented at the Grand Central-42<sup>nd</sup> Street subway station under the DIB mechanism are expected to reduce dwell time on the No. 4 and No. 5 trains. This would result in additional capacity amounting to one peak-hour train on the northbound PM and southbound AM Lexington Avenue express service.

*Comment 12.34 The EIS estimates that new buildings resulting from the rezoning would add about 4,000 users of the subway platforms at Grand Central at peak hours (divided approximately evenly between the morning and evening peak hours). (EIS 15.5.2.1). This is about 0.8% of the current half million daily users. The cited figures raise an unanswered question as to just how significantly the rezoning would add to the existing "bottleneck." (12)*

**Response:** See response to Comment 12.3.

*Comment 12.35 Midtown Manhattan needs a comprehensive regional rail plan, developed by the City in cooperation with its partners in the regional planning community. Remaking the region's disconnected commuter rail lines into a regional rail system with frequent service, integrated fares and through running would shift passengers from overcrowded subways to speedier regional rail lines. A key element of such a plan, developed in the planning process for new passenger rail capacity under the Hudson River, would connect Penn Station with Grand Central Terminal. (17)*

**Response:** Comment noted. Development of a comprehensive regional rail plan is beyond the scope of this EIS.

### **25.2.13 Air Quality**

No comments.

### **25.2.14 Greenhouse Gas**

No comments.

### **25.2.15 Noise**

No comments.

### 25.2.16 Public Health

No comments.

### 25.2.17 Neighborhood Character

*Comment 17.1 The rezoning will encourage the destruction of many older buildings in East Midtown, many of landmark quality, that give the area its distinctive character. Preservation is a key component in the vibrant mix of buildings, and it gives East Midtown a sense of place. It is inconsistent to state that the proposed action would not result in a significant adverse impact to neighborhood character while stating that the action could result in the demolition of 14 properties that are eligible for landmarking or NHR and that the Proposed Action could potentially result in construction-related impacts to 24 eligible resources located within 90 feet of the projected and potential development sites. (12) (37) (69) (114) (123) (126) (133) (137) (140) (141)*

**Response:** As discussed in Chapter 17 of the EIS, potential significant adverse impacts on historic resources would not result in a significant adverse impact on neighborhood character. According to the *CEQR Technical Manual*, a significant impact identified in one of the technical areas that contributes to neighborhood character is not automatically equivalent to a significant impact on neighborhood character; while a neighborhood with a uniform and consistent context would typically be sensitive to change, a neighborhood that has a more varied context is typically better able to tolerate greater changes without experiencing significant impacts to its overall character. The significant adverse impact on historic resources would not alter the overall character of East Midtown as an area characterized by a varied context of older buildings interspersed with modern construction. In addition, the iconic historic structures that are defining features of neighborhood character—Grand Central Terminal, the Helmsley Building, St. Patrick’s Cathedral, St. Bartholomew’s Church and Community House, the Chrysler Building, the Seagram Building, and Lever House—would not be displaced.

*Comment 17.2 People who have opined in newspapers or elsewhere that the zoning proposal "is not a plan" or a "unified vision" and who prefer preserving the present buildings to any possible future ones are, I believe, wrong-headed about the character of East Midtown, which has in fact been an area of continuous change. In the 1920s, the Beaux Arts treasure box of Grand Central was encircled and overpowered by a group of ambitious, gaudy Art Deco towers, including the now-beloved Chrysler Building. In the 1950s and '60s, many Park Avenue apartment blocks were replaced with gleaming glass International Style towers, including the now-landmarked Lever House and Seagram Building. Every successive era (until now) has partially, but significantly, transformed East Midtown, so that today, the district resembles far more the spectacular*

*heterogeneity of Manhattan than an idealized acropolis of Beaux Arts Terminal City.*  
(15)

**Response:** Comment noted.

*Comment 17.3 The nature and extent of the proposed rezoning seems completely out of step with the wonderful diversity of neighborhoods that exist in New York, especially those to the East of Grand Central. (39)*

**Response:** As discussed in Chapter 17 of the EIS, two of the defining features of neighborhood character for the East Midtown area are the principal dominance of commercial land uses and a primarily high-density built context. The Proposed Action would reinforce the high-density commercial character of East Midtown by facilitating the construction of new commercial buildings to protect and strengthen the area's preeminence as a premier business district. The new commercial development within the proposed rezoning area as a result of the Proposed Action would not disrupt the existing pattern of development in the surrounding areas. The diverse neighborhoods that surround the East Midtown area would not be adversely affected by the Proposed Action.

*Comment 17.4 A ham-fisted commercial redevelopment, as proposed in this rezoning, would materially change neighborhood character through density, light, amenity, nature and extent of traffic, types of retail establishments, among other effects. East Midtown is already overcrowded and the area cannot withstand such high-density development. (39) (124) (127) (129) (130) (132) (133) (134) (136) (138) (139) (141) (142)*

**Response:** The assessment of neighborhood character in the EIS was conducted in accordance with the methodologies outlined in the *CEQR Technical Manual*. As detailed in Chapter 17 of the EIS, the Proposed Action would not result in a significant adverse impact on neighborhood character. The East Midtown area has a varied neighborhood context, and its defining features are the dominance of commercial land uses, the interspersing of older buildings with modern construction, high levels of pedestrian and vehicular activity and associated noise, a primarily high-density built context, and the presence of a number of iconic historic resources, including Grand Central Terminal, the Helmsley Building, the Chrysler Building, St. Bartholomew's Church and Community House, St. Patrick's Cathedral, the Seagram Building, and Lever House. In the future with the Proposed Action, the East Midtown area would continue to be defined by this combination of features. Of the relevant technical areas specified in the *CEQR Technical Manual*, the Proposed Action would not cause significant adverse impacts regarding land use, zoning, and public policy; socioeconomic conditions; open space; urban design and visual resources; or noise. The potential significant adverse shadow impacts on stained glass windows at St. Bartholomew's Church and Community House, and the Lady Chapel of St. Patrick's Cathedral, would not

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affect the characteristics of those structures, including their architecture, setting and cultural significance, which make them defining features of neighborhood character. The potential significant adverse impacts on transportation would not affect neighborhood character; while there would be increased activity, the resulting conditions would not be out of character with the East Midtown area. The significant adverse impact on historic resources would not alter the overall character of East Midtown as an area characterized by a varied context of older buildings interspersed with modern construction. Just as potential significant adverse impacts in the relevant technical areas would not affect any defining feature of neighborhood character, no moderate adverse effects that would affect such defining features—either singularly or in combination—have been identified.

*Comment 17.5*      *Smaller and older buildings in the project area are assumed to be functionally or economically obsolete buildings in the proposal however some of the said buildings provide for continuity of neighborhood character. (69)*

**Response:**      **Comment noted. As detailed in Chapter 17 of the EIS, the East Midtown area has a varied neighborhood context, and its defining features include a primarily—but not exclusively—high-density built context, as well as the interspersing of older buildings with modern construction.**

### **25.2.18 Construction**

*Comment 18.1*      *We have serious concerns as stakeholders in the action area (i.e., owners and managers of 9 and 11 East 47th Street) about the construction traffic impacts described in DEIS Section 18 as well as noise, air and sidewalk congestion impacts and the potential for construction accidents. (69)*

**Response:**      **As discussed in Chapter 18, “Construction,” no significant adverse impacts are anticipated to pedestrian conditions or to air quality conditions from construction-related sources. An analysis of air emissions from on-site construction activities and off-site (trucks and vehicles) was undertaken to quantify the potential effects of emissions from the proposed project. The analysis estimated the PM<sub>2.5</sub> emissions generated for each phase of construction for all proposed sites on a quarterly basis from 2016 to 2033. The period with the highest cumulative emissions (second quarter of 2022) was selected as the period with the highest potential for combined PM<sub>2.5</sub> emissions from all proposed sites. Then an impact assessment was performed for all applicable pollutants (using dispersion models) for the cluster of proposed sites under construction during this peak period—Projected Development Sites 5, 6, 7, 8, and 11 (located between Vanderbilt and Fifth Avenues and East 43rd to East 48th Streets). This quantitative analysis indicated that the proposed project would not result in any concentrations of NO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, and CO that exceed the National Ambient Air**



Quality Standards (NAAQS). In addition, the maximum predicted incremental concentrations of PM<sub>2.5</sub> would not exceed the City’s applicable interim guidance criteria.

Construction activities associated with the Proposed Action would occur on multiple development sites within the same geographic area, and as the result, have the potential to increase interior noise levels of existing adjacent commercial buildings. In particular, if simultaneous construction at Projected Development Sites 5, 6, and 7 were to occur, this would likely result in increases that would approach or marginally exceed the impact threshold for short periods of time and has the potential to do so during other construction quarters bordering the peak construction period. Therefore, if the peak-construction scenario conservatively assumed for the purposes of this analysis with regard to simultaneous construction on Projected Development Sites 5, 6, and 7 is realized, the Proposed Action would result in a significant adverse construction noise impact.

Chapter 19, “Mitigation,” identifies mitigation to reduce or eliminate construction-related traffic impacts to the fullest extent practicable. This analysis shows that implementation of traffic engineering improvements such as signal timing changes or modifications to curbside parking regulations would fully mitigate the anticipated traffic impacts at all but two intersections. As described in Chapter 19, “Mitigation” of the FEIS, the CPC is currently considering a modification to the proposed zoning text amendment, which, if adopted, would partially mitigate the potential for significant adverse noise impacts during construction.

Also, as discussed in Chapter 18, “Construction,” construction of the project will follow applicable federal, state, and local laws for building and safety, and protective measures for ensuring pedestrian safety surrounding each of the projected development sites would be implemented under these plans.

### 25.2.19 Mitigation

*Comment 19.1 With reference to mitigation of certain impacts to historic resources, the DEIS states, “DCP, as lead agency, will explore the viability of these mitigation measures between the Draft EIS and Final EIS” (p. ES-68). This method deprives the public of a meaningful opportunity to comment on the results of this exploration. (3)*

**Response:** The CPC is currently considering modifications to the proposed zoning text amendment, which would implement the referenced mitigation measures related to historic resources.

*Comment 19.2 The CEQR process has resulted in the identification of the Hotel Benjamin, the Hotel Lexington, and the Marriott East Side Hotel as historic resources that could be*

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*adversely impacted as the result of the rezoning. In light of the relative lack of distinction of these hotels and the important policy objectives at stake, a designation which would effectively freeze these properties is not the right option to address this potential impact. Instead, a more appropriate mitigation for the potential alteration or demolition of these minor hotels would be a requirement that the hotels' architecture and history be documented in accordance with Historic American Buildings Standards (HABS). Designation of these hotels is contrary to the goals of the Midtown East rezoning and would frustrate the realization of the City's goal to restore East Midtown as a premier office district. Landmarking would place significant financial and operational burdens on the hotels, creating an inability to modernize – which is the very goal of the proposed rezoning. (62) (63) (64) (65)*

**Response:** Any designation of historic resources as landmarks will be made by the LPC and is not a part of the CEQR process. The CPC is considering an amendment to the zoning proposal, which would require HABS documentation of any eligible building located on a qualified site, prior to development, as a form of partial mitigation with respect to such buildings that are not designated as landmarks by the LPC.

*Comment 19.3 If CPC does not remove 445 Park Avenue from the list of East Midtown's historic resources, CPC should state clearly in the CEQR findings of the FEIS that the designation of 445 Park Avenue as a landmark would directly frustrate the goals of the East Midtown Rezoning. (68)*

**Response:** Comment noted.

*Comment 19.4 Mitigation of vehicular traffic should be explicitly laid out now – currently there are vague promises but no plan. (51)*

**Response:** Table 19-4 through Table 19-6 of the FEIS detail the recommended mitigation measures for intersections with significant adverse traffic impacts for the AM, Midday, and PM peak hours, respectively.

*Comment 19.5 Mitigating pedestrian issues by widening crosswalks may actually worsen traffic congestion physically taking away space for vehicular traffic in the street unless measures are taken to reduce vehicular traffic in the action area to necessary commercial vehicles and public transportation such as buses and taxis during business hours to avoid massive congestion likely to result from the action. (69)*

**Response:** The proposed crosswalk mitigation would involve widening impacted crosswalks by from 0.5 to 4 feet, as well as minor signal timing adjustments at some locations. Neither the relatively small reductions in space for vehicular traffic nor the proposed signal timing changes associated with the proposed crosswalk mitigation would result in new significant adverse traffic impacts.

## 25.2.20 Alternatives

### 25.2.21 Conceptual Analysis

*Comment 21.1      The DEIS contains tables (p. 21-15) comparing trips under the proposed rezoning with and without the special permit scenario but nowhere do we see trips without the proposed rezoning as compared to trips with the proposed rezoning plus the special permit scenario. Likewise, there is a table (p. 21-17) showing the number of intersections and approaches with significant adverse traffic impacts under the rezoning, with and without the special permits, but we are not told the magnitude of traffic disruptions (e.g. delay times) without the rezoning as compared to the rezoning plus the special permit scenario. The discussions of transit and pedestrian impacts have the same deficiency. (3)*

**Response:**      Table 21-3 and Table 21-4 of the DEIS show the incremental trips that would be generated by the Proposed Action relative to the No-Action condition and the incremental trips that would be generated by the Special Permit scenario relative to the No-Action condition. As such, a comparison of trips without the proposed zoning (i.e., the No-Action condition) to the proposed rezoning plus the special permits (i.e., the Special Permit scenario) is provided in Table 21-3 and Table 21-4. The analysis of traffic, transit, and pedestrian conditions for the Special Permit scenario in Chapter 21, “Conceptual Analysis,” is based on the incremental trips that would be generated by the Special Permit scenario relative to the No-Action condition. Tables summarizing traffic level of service conditions for the Special Permit scenario have been added to Appendix 7.

### 25.2.22 Unavoidable Adverse Impacts

No comments.

### 25.2.23 Growth-Inducing Aspects of the Proposed Action

No comments.

### 25.2.24 Irreversible and Irretrievable Commitments of Resources

No comments.