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## Chapter 26: Response to Comments on the DEIS<sup>1</sup>

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### 26.1 Introduction

This document summarizes and responds to comments on the Draft Environmental Impact Statement (DEIS) issued on December 30, 2016 for the Greater East Midtown Rezoning project.

City Environmental Quality Review (CEQR) requires a public hearing on the DEIS as part of the environmental review process. Oral and written comments were received during the public hearing held by the New York City Department of City Planning on April 26, 2017. Written comments were accepted from issuance of the DEIS through the close of the public comment period, which ended at 5:00 PM on May 8, 2017. Appendix N contains the written comments received on the DEIS.

**Section 26.2** lists the elected officials, organizations, and individuals that provided relevant comments on the DEIS. **Section 26.3** contains a summary of these relevant comments and a response to each. These summaries convey the substance of the comments made, but do not necessarily quote the comments verbatim. Comments are organized by subject matter and generally parallel the chapter structure of the DEIS. Where more than one commenter expressed similar views, those comments have been grouped and addressed together.

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### 26.2 List of Elected Officials, Organizations, and Individuals who Commented on the DEIS

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#### Elected Officials

1. Gale Brewer, Manhattan Borough President (resolution of the Manhattan Borough Board dated March 16, 2017, written comments dated April 12, 2017, and oral testimony and written statement dated April 26, 2017). (Brewer)
2. Daniel R. Garodnick, Council Member of District 4 (oral testimony and written comments dated April 26, 2017). (Garodnick)
3. Alicia Glen, Deputy Mayor for Housing and Economic Development (oral testimony). (Glen)
4. Brad Hoylman and Liz Krueger, New York State Senators (written comments dated May 8, 2017). (Hoylman and Krueger)

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#### Public Agencies

5. Fredericka Cuenca, MTA (oral statement) (MTA)

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<sup>1</sup> This chapter is new to the FEIS.

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## Community Board

6. Jesús Pérez, District Manager of Manhattan Community Board 6 (CB 6 Resolution dated March 10, 2017 and updated April 5, 2017). (CB6)
7. Vikki Barbero, Chair, and Eric Stern, Chair, Land Use, Housing and Zoning Committee, Manhattan Community Board 5 (CB 5 Resolution dated March 13, 2017). (CB5)

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## Organizations and Interested Public

8. John Alschuler, HR&A Advisors (oral testimony) (Alschuler)
9. Richard Bass, representing American Jewish Committee (oral testimony and written statement dated April 26, 2017) (Bass)
10. David S. Brown, Archdiocese of New York (written comments dated April 7, 2017) (Brown)
11. Rob Byrnes, President, East Midtown Partnership (oral testimony and written statement dated April 26, 2017) (Byrnes)
12. Deirdre Carson, representing 1248 Associates LLC (oral testimony and written statement dated April 26, 2017) (Carson)
13. J.G. Collins (written comments dated March 9, 2017) (Collins)
14. Lois Cremmins, Executive Director, Greenacre Foundation (oral testimony and written statement dated April 26, 2017) (Cremmins)
15. Tom Devaney, The Municipal Art Society of New York (oral testimony and written comments dated April 26, 2017) (MAS)
16. Lynn Elsworth, Alliance for Human-Scale City (oral testimony and written statement dated April 26, 2017) (Elsworth)
17. Elinor Fine (oral statement and written statement dated April 26, 2017) (Fine)
18. Judith Gallent, representing The Yale Club of New York City (written comments dated April 27, 2017) (Gallent)
19. Dev Gandhi, President of the Yale Club of New York (oral testimony and written statement dated April 26, 2017) (Gandhi)
20. Joseph Ginex, Managing Director of Development, 12-14 East 48th Street (oral testimony and written statement dated April 26, 2017) (Ginex)
21. Andrea Goldwyn, New York Landmarks Conservancy (oral testimony and written statement dated April 26, 2017) (Landmarks Conservancy)
22. Michael Gruen, The City Club of New York (oral testimony and written statement dated April 26, 2017) (City Club)
23. Mitch Korbey, representing 250 Park Avenue Partnership (written comments dated May 8, 2017) (Korbey)
24. James Korein, Omnispective (oral testimony and written statement dated April 26, 2017) (Korein)

25. Peter Lempin, Grand Central Partnership (oral testimony and written statement dated April 26, 2017) (GCP)
26. Dinal Liven, General Counsel, GCH Hotel Group (written comments dated April 25, 2017) (Liven)
27. Melanie Meyers, Fried, Frank, Harris, Shriver & Jacobson LLP (oral testimony) (Meyers)
28. Michael Parley, Development Consulting Services (oral testimony) (Parley)
29. Christopher Rizzo, representing Greenacre Foundation (oral testimony and written statements dated April 26, 2017 and May 16, 2017) (Rizzo)
30. Joseph Rosenberg, Executive Director, Catholic Community Relations Council (oral testimony and written statement dated April 26, 2017) (Rosenberg)
31. Joseph Sanderson (written comments dated January 4, 2017) (Sanderson)
32. Pierina Ana Sanchez, Regional Plan Association (oral statement and written comments dated April 25, 2017) (RPA)
33. Paul Selver, Real Estate Board Zoning Committee (oral testimony) (Selver)
34. Michael Slattery, Real Estate Board of New York (oral testimony and written statements dated April 24, 2017, April 26, 2017 and May 5, 2017) (REBNY, Slattery)
35. Eric Stern (oral testimony) (Stern)
36. Elise Wagner, representing Seaver Realty, LLC (written comments dated May 5, 2017) (Wagner)
37. John Pettit West III, The City Club of New York (oral testimony and written comments dated April 26, 2017) (City Club)

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## 26.3 Comments and Responses on the DEIS

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### 1. Proposed Action/Proposed Project

**Comment 1.1:** While incentive zoning amenities like public plazas, atriums, and adjacent subway station improvements provide public goods in exchange for, and with a direct nexus to, the bonused FAR, the transit improvements in the proposal contemplate no such nexus; amounts paid for the improvement amount to a veritable “sale” of additional FAR in exchange for an in-kind payment to the MTA capital budget in the form of a transit capital improvement. (Collins) This is a violation of the fundamental principles of good zoning that is further exacerbated because the proposal makes no provision for maintenance, repair, and replacement of the capital improvement. (Collins) The maintenance, repair, and replacement (MR&R) of public transit improvements be associated with FAR such that the occupancy of the bonused space be contingent on a Certificate of Occupancy, enforced by a tax lien, or ensured by such other enforcement mechanism that requires the recipient of the FAR to pay for the MR&R of the associated transit improvement. (CB6) The air rights transfer mechanism and the zoning proposal is bad public policy. (Elsworth) There should be a “geographic proximity” between the benefit and the burden of an action such as

transfers of development rights. The community (or localized area within a few blocks) should enjoy the benefits and carry the burden. For example, City Club suggests that smaller transfer districts, such as the existing Grand Central Subdistrict, be established rather than allowing air rights to be transferred throughout East Midtown. (City Club) There should be a proportional relationship between the impact of increased density on the site and the amenity that is intended to ameliorate that density. For example, a subway station improvement should be preferably adjacent, rather than remote, to the site that is being developed with increased density. (City Club)

**Response:** Please refer to Chapter 1, “Project Description” of the EIS for the planning rationale behind a district-wide approach to the Proposed Action.

**Comment 1.2:** We are concerned that there is a conflict of interest when the City uses zoning to raise revenues rather than for the authorized purposes of zoning—to regulate land use, light and air, and density in conformance with a well-considered plan—and that this conflict results in bad planning. (City Club)

**Response:** The proposed zoning is a valid use of the city's zoning powers. The proposed as-of-right floor area mechanisms have none of the features that characterize what is sometimes called ‘zoning for sale’ and are fully consistent with the legal framework of “incentive zoning” pioneered in the 1961 Zoning Resolution. Participation in incentive zoning is voluntary. The framework improves on the special permit and other incentive bonus provisions currently available in the Special Midtown District to produce area wide improvements as part of an integrated land use plan that couples development with improvements to the public realm.

**Comment 1.3:** The ULURP should be halted pending an investigation into undue and illegal influence of the East Midtown property owners and the financial companies they do business with, as well as an investigation of possible manipulation of the underlying database that tracks those doing business with the city. There are many examples of developers with a direct stake in the Midtown East rezoning who made contributions in excess of the allowed amount to the Mayor’s re-election fund. (Elsworth)

**Response:** Comment noted.

**Comment 1.4:** The proposals for East Midtown are not founded on a well-considered plan. Such a plan would put East Midtown in a regional context and would address issues of transit access, local circulation in an improved public realm, and the interrelationships of uses in a complex urban ecosystem. (City Club)

**Response:** Comment noted.

**Comment 1.5:** Given how scarcely the transportation special permit has been used in the past 30 years, RPA is not confident the transit improvement special permit mechanism will yield many benefits. The transit bonus in the GEM special district should be restructured so as to maximize the opportunity for approvals through certification by DCP and MTA, as opposed to through the ULURP. Otherwise, RPA recommends greater preference be given to transit improvements over landmark transfers. (RPA)

**Response:** As discussed in Chapter 1, “Project Description,” of the EIS, most transit improvements would occur via Certification and will be mandatory for developments on Qualifying Sites

within the Transit Improvement Zones. Qualifying Sites can achieve higher FARs through a separate Transit Improvement Special Permit, which would be available only after those sites have utilized both the Certification for transit improvements and landmark transfers for Qualifying Sites.

**Comment 1.6:** Is this proposal really needed? Shouldn't the City address resiliency first, protection against the next Sandy, our airports, the fact that there are 33,000 school children living in shelters? Churches are reaping millions from the sale of air rights, but not paying taxes. This is the same handful of developers who seem to own the City. The project will end up replicating the dark and gloomy canyons of Wall Street, will result in more people crowding into an already overburdened system. The project won't result in the widening of platforms, and so will result in dangerous conditions. The project will cast huge shadows. (Fine)

**Response:** Comment noted. The objectives of, and purpose and need behind the Proposed Action are described in Chapter 1, "Project Description."

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## 2. Governing Group

**Comment 2.1:** DCP must work with the relevant Borough Board members on changes to the composition and/or functioning of the governing board in accordance with recommendations of the East Midtown Steering Committee Report to ensure sufficient community participation. (Brewer) ) MAS asks the City to provide the precedent by which the group framework was conceived, particularly with regard to efficacy in executing and allocating funding. (MAS) Specific changes to the Governing Group should be made, as follows:

- **Membership.** The group should go from nine to eleven members. (Brewer) The governing structure in charge of disbursing the Public Improvement Funds must include community representation with either a supermajority requirement or as a majority of non-mayoral members of the group. (Garodnick) The Governing Group should be empowered to act, according to the Zoning Resolution, only if at least one non-Mayoral appointee votes for an action so as to ensure that the Governing Group is not a rubber stamp for the Mayor. (CB5, Stern) The Governing Group should have a representative of a citywide civic organization which has a mission inclusive of urban design and public space. In addition, the voting structure of the group should require the vote of at least one non-mayoral appointee—at least for purposes of approving or prioritizing projects. (Brewer) The governance structure should meet best practices for transparency and accountability. (Garodnick)
- **Transparency.** The Governing Group should be required, by the Zoning Resolution, to record every meeting by video and have a word-for-word transcription of each meeting that shall be made accessible by the Office of the Manhattan Borough President and either the Mayor's Office or the Department of City Planning. (CB5) To ensure full transparency and accountability in the conduct of the Governing Group, language should be added to the zoning text to state that the procedures for the conduct of business shall be publicly available and include rules on reporting and transparency functions, including, but not limited to the following: procedures on the adoption and amendment of the Concept Plan, requirements to provide a transcript or recording of all public meetings and hearings, and

transparency and reporting requirements concerning deposits and expenditures from the fund. (Brewer) The Governing Group should be required to have a minimum of one annual public hearing at which members of the public may appear and be heard. (Brewer)

- **Specific Funding.** The Governing Group should be empowered to fund operation of a closed or shared street so that the local business improvement district shall not have *de facto* veto power over the creation of new pedestrian space on a DOT-controlled street. (CB5)

**Response:** Comment noted. The proposed text amendment establishes the powers of the Governing Group to implement projects through the public realm improvement fund (PRIF). The PRIF is not able to be used for operational funding. The Governing Group must act in accordance with all relevant provisions laid out in the Zoning Resolution. Regarding transparency and procedures, the Governing Group must abide by the requirements of the New York State open meetings law.

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### 3. Concept Plan

**Comment 3.1:** The Concept Plan of identified improvements should be written into the Zoning Resolution so as to ensure that the Governing Group is obligated, based on the Zoning Resolution, to first carefully consider implementing these improvements even if it ultimately decides not to. (CB5) DCP and DOT must work with the relevant Borough Board members to adequately define the “Concept Plan” for above-grade public realm in the zoning text and develop a draft Concept Plan in a reasonable time frame. (Brewer)

**Response:** Comment noted. The proposed zoning text amendment includes requirements and standards for the types of spaces and projects that may be implemented through the Concept Plan. The Governing Group is granted the latitude to amend the list of projects and their appropriate location, as listed in the Concept Plan that guides public realm improvements.

**Comment 3.2:** RPA recommends flexibility be built into the Concept Plan to accommodate changing needs at GEM district transit stations. Pre-approved projects can be amended. (RPA) RPA is concerned that the public space Concept Plan will not be identified. RPA strongly recommends that the EIS evaluate the advancement of DOT public plaza and shared streets recommendations, including plazas at Pershing Square West, the northern section of Vanderbilt Avenue, a shared street along Library Way, and additional pedestrian space along Vanderbilt Avenue. The EIS should detail the potential safety, public health and cultural benefits of additional public space in this overcrowded district. (RPA)

**Response:** The FEIS analyzed and considered the above-grade public realm improvements formally recommended by the East Midtown Steering Committee, as well as other possible improvements. Chapter 12, “Transportation,” of the FEIS was updated to include a quantitative analysis of the PRIs, which were analyzed qualitatively in the DEIS. Additionally, quantitative calculations were made in Chapter 19, “Mitigation,” examining the Proposed Action’s effects with the addition of a subset of possible Public Realm Improvements targeted to enhance passive open space, including three new or improved plazas within the study area and additional open space along the Park Avenue Median. Please refer to the FEIS for details on the above and below-grade transit improvements.

**Comment 3.3:** In regards to transit improvements, RPA urges consideration of more aspirational transit improvements, such as making the underground transit corridors more user-friendly, considering how to upgrade relevant East Midtown bus routes as roadways are redesigned, involving greater preference for transit and more space for people, and exploring airport access from East Midtown to the area's airports. (RPA) The Steering Committee's recommendations are a foundation. Additional ideas can be borrowed from Grand Central Partnership's 1987 Revival Plan, Jonathan Rose Companies' "Places for People: A Public Realm Vision Plan for East Midtown", the Municipal Art Society's 2013 Vision, and the multi-board task force's 2013 statement. (RPA)

**Response:** See response to Comment 3.2, above.

**Comment 3.4:** The zoning text should be amended to reflect that above-grade improvements are the primary driver for the Concept Plan and expenditures. Language that explicitly prohibits the use of funds for above-grade improvements outside of the district should be included and language prioritizing large above-grade projects should be considered. The text must plainly state that all funds are for use in the Borough of Manhattan only and consultation with the affected property owners should be a criteria for improvement selection. (Brewer) FAR from landmark TDRs and public realm improvements should be limited first to the East Midtown district and then to the Community District where the landmark or improvement is located, consistent with the "fair share" considerations of the NYC Law Section 203(a)(2). The need for upzoning of Midtown East is presumed to be necessary for the entire city's economic well-being and should therefore be considered in the same context as city facility to ensure that the burden of the upzoning is fairly distributed. Thus, PRIs built on Avenue of the Americas should not be associated with FAR upzoning for a building on Third Avenue. A sale of TDR from St. Patrick's Cathedral should not affect an upzoning of a parcel on Third Avenue in the low East 40s. (Collins) Once the assessment is collected, the proposal should provide better guidance is how it is to be used, to ensure that it truly benefits the Midtown East community. A list of non-transit public realm improvements should be memorialized within the zoning text; and it should be clear the improvements go beyond standard upgrades, such as left turn lanes, that DOT typically funds in other neighborhoods across the City. The list of MTA improvements is extensive, and as two-thirds of them are outside of the rezoning area, one could conclude that the MTA could add to list indefinitely, using all of the funds before any above ground work is undertaken. (Landmarks Conservancy)

**Response:** Comment noted. The district-wide nexus is appropriate. The primary objectives of the Proposed Action, as described in Chapter 1, "Project Description," of the EIS, are to revitalize East Midtown and its public realm, to ensure its future economic vitality, and to allow designated landmarks that have unused development rights. These are all area-wide issues.

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#### 4. Public Improvement Fund/Transfer of Development Rights

**Comment 4.1:** A floor price should not be included in the plan. The proposed requirement that landmarks set aside a minimum amount of proceeds from each transfer—regardless of the sale price—significantly reduces the value of any transaction for landmark owners who could wait for

the market to catch up to the floor price. With landmark owners less willing to undertake transfers of their development rights, there will be less development, less funding available for landmark preservation, and less funding for public realm improvements. (Rosenberg) We oppose the floor price, which would disadvantage landmarks. The market is unpredictable and the three- to five-year schedule of evaluation is insufficient; as we've seen, a lot can change in a few years. With the floor price, the City will be creating a set stream of revenue for itself, while the landmark owners have no such guarantee. (Landmarks Conservancy) We have great concerns that a requirement for landmarks to set aside a minimum amount from each transfer—regardless of the sale price—will have a chilling effect on transfers. Consequently, there will be less development, less funding available for landmark preservation, and less funding for public realm improvements. We have seen no evidence of a need for this minimum set-aside. (Brown) An underlying rationale for a floor price is that owners will circumvent reporting the consideration received from a transfer. This fails to recognize well established reporting systems that determine transaction value. These include the transfer tax filing system at the Department of Finance and for houses of worship, the need for the New York State Supreme Court to approve all real property sales, thereby assuring the accuracy of the reported sales consideration. (Rosenberg)

**Response:** As stated in Chapter 1, "Project Description," of the EIS, the minimum contribution will help ensure that new developments appropriately support public realm improvements.

**Comment 4.2:** We urge DCP to consider how a minimum floor price may potentially disadvantage landmarks, including an examination of more cautious proposals for a minimum floor price that will ensure landmarks receive the necessary support and funding from incoming development. (Hoylman and Krueger) The Commission must make sure the proposed minimum contribution hits the right balance between ensuring that the public gets its fair share and encouraging enough development to take place to achieve the goals that the City has set out for this rezoning. (Garodnick) The purpose of the minimum contribution needs to be clear. (Garodnick) It is possible to have the minimum contribution change over time or have the commission evaluate it over time. (Garodnick) We support Manhattan Borough President Brewer's suggestion that the minimum price for transfers be set at a level that encourages healthy demand which will be necessary to achieve the stated goals of the rezoning. (Korein) The City should work with the Steering Committee to establish firm criteria for a floor price that is sufficiently flexible to adjust to potential fluctuations in the real estate market and ensures the availability of funds for the necessary public realm improvements under the proposal. (MAS) The valuation of floor area should be able to change over time. The public should receive fair benefits for the additional development rights, and this information should be made publicly available for each transaction. (RPA)

**Response:** Please refer to response to Comment 4.1.

**Comment 4.3:** REBNY maintains that the market should determine the value of TDRs and the City should collect twenty percent of the proceeds to fund public realm improvements. However, REBNY does acknowledge the need to determine the contribution amount for overbuilt floor area, making an accurate valuation necessary. (REBNY) DCP must work with the relevant community stakeholders to ensure accuracy of a floor price and that the floor price does not become an obstacle to the contemplated transfer of development rights. (Brewer) The implementation of a minimum contribution rate is a sensible solution for transparency



and predictability concerns. However, the current minimum valuation of \$393 per square foot and its corresponding contribution rate of \$78.60 have been under constant criticism and there is a massive disparity between the rate calculated by Landauer Valuation & Advisory report and by Cushman and Wakefield, Inc. Given that the City has explicated a mechanism by which the minimum contribution rate can be adjusted through third-party appraisals, we believe a lowering of the rate is reasonable. We believe it is prudent to err on the side of the lower number and give more room for the market to determine the appropriate price. This office believes the minimum valuation should be closer to the lower of the two appraisals, in the vicinity of the \$250 per square foot number of the Cushman and Wakefield analysis. (Brewer) We take issue with the City's assumptions in establishing the "floor price." The City's methodology significantly overstates the potential market value of TDRs in East Midtown. (Brown) We are unconvinced that the minimum contribution rate of \$78.60 per square foot, or 20 percent the value of a transaction, is set at an appropriate level. (Hoylman and Krueger) It is critical to resolve whether \$78.60 is the proper minimum, or whether there should be a minimum contribution at all. (Garodnick) The Commission must take a closer look at the competing evaluation proposals for the proposed minimum contributions. (Garodnick) There should be a greater reliance on market forces to determine floor prices for TDRs from landmarked properties. The proposed TDR price should be revisited. (Byrnes) The City's approach to determine the value of the development rights fails to capture the reality of the market for Transfers of Development Right (TDR) sales in three important ways: 1) the valuation relies on land sales to approximate TDR sales instead of studying actual TDR sales; 2) the Landauer report applied inflated growth rates despite market evidence to the contrary; and 3) half of the land sales that were used to determine the current floor price are systematically overvalued as a result of a failure to account for significant benefits offered to sites within Hudson Yards. (REBNY, Slattery)

The contribution rate should be established for pre 1961 buildings. The methodology should be the same for both post 1961 buildings and pre 1961 buildings that are overbuilt. (Slattery)

**Response:** The methodology for the proposed minimum contribution is based on sound appraisal industry practice and no modification is warranted.

**Comment 4.4:** Protections must be put in place to ensure that funds are maintained in a lockbox specifically reserved for the improvement of the East Midtown public realm. (Garodnick) The developer should establish a trust fund for the operation, maintenance, repair, and replacement of subway improvements. In addition, the building should replenish the fund as necessary as long as the bonus floor area exists. (City Club) We suggest that in addition to building the subway improvements, the developer establish a trust fund for its operation, maintenance, repair, and replacement and that the building replenish the fund as necessary as long as the bonus floor area exists. (City Club) DCP, in conjunction with the Department of Finance and the Department of Buildings, should create some mechanism of enforcement that ties the costs of maintenance, repair, and replacement of public realm improvements to a separate certificate of occupancy of the bonused FAR so that the COO of the bonus FAR is contingent on the developer paying the costs of the MR&R of the public realm improvement. (Collins)

**Response:** Comment noted. As presented in Appendix B, "Zoning Text," of the EIS, the proposed zoning text includes requirements that the funding be held in a separate account and only be used in capital improvements.

**Comment 4.5:** We would like to see an evaluation of how the transit improvements and other public benefits justify the additional floor area gained by developers. With direct transit improvements only accounting for 10-20 percent of additional FAR for new developments in transit improvements zones, will the predicted funds adequately cover the necessary transit work? Without an accurate comparison of the estimated value of additional floor area gained by developers to the estimated value of the respective transit benefits, we are unable to determine whether a proper balance has been struck between boosting developments and ensuring the public receives its fair share. (Hoylman and Krueger) We are concerned whether the Public Realm Improvement Fund is sufficient enough to address the proposed transit infrastructure improvements. We suggest exploring additional funding sources beyond the improvement fund, including the MTA capital budget, tax increment financing, PILOT financing, equitable road pricing, and Transit Assessment District benefits. (MAS) As proposed, the subway improvement is to be built by and at the expense of the developer and then operated, maintained, repaired, and replaced by and at the expense of the MTA. This means that in the long run the MTA, rather than the developer, is paying for the development's bonus floor area. (City Club) Ways other than rezoning should be explored to fund public realm improvements, such as tax increment financing. (City Club)

**Response:** The proposed incentive zoning mechanism for Qualifying Sites in Transit Improvement Zones is modeled, in consultation with the MTA, on the typical station improvements achieved through the existing Subway Station Improvement Bonus. Improvements have been identified that would most benefit East Midtown workers, visitors and residents. The MTA will continue to manage capital program funding sources existing independently of the special zoning provisions that, within resource constraints faced by the MTA, can be used to supplement the resources generated through this incentive mechanism. Additional funding sources suggested in comments are not within the purview of the City Planning Commission.

**Comment 4.6:** Thirty percent of the value of the transferred development rights must be deposited into the improvement fund, and the Greater East Midtown proposal must maintain the minimum contribution price so as to ensure that all parties pay their fair share. (CB5, Stern)

**Response:** As stated in Chapter 1, "Project Description," of the EIS, the 20 percent requirement will help ensure that new developments appropriately support public realm improvements in the area.

**Comment 4.7:** REBNY encourages the City Planning Commission to establish, either in the Greater East Midtown Rezoning text or in a follow-up rule or protocol, a maximum time for East Midtown certifications. Today, certifications of floating theater development rights, the closest analogue to the floating landmark development rights transfer under the Rezoning, can take nine months or even longer despite the fact that the required information is straightforward and easy to review. There is simply no reason that the process should take so much time. East Midtown presents an opportunity to establish rules (that may then be applied elsewhere in the City) to ensure that the process for utilizing additional floor area is not so long as to discourage using the Rezoning's incentives. (REBNY, Selver) I urge the

Commission to establish a task force follow-up on the maximum amount of time allowed for an East Midtown certification. (Selver)

**Response:** Comment noted.

**Comment 4.8:** Regarding the landmark TDR program, we are pleased to see that "landlocked" landmarks will have the opportunity to sell their development rights across the rezoning area. As you know, the original intent of the 74-79 transfer provision in the Zoning Resolution was to provide building owners significant relief from the cost of maintaining landmark buildings and to assist in their overall preservation. The proposed 20 percent assessment on transfers is at the low end of the range that the Steering Committee recommended, and should ensure that this intent can be realized. (Landmarks Conservancy)

**Response:** Comment noted.

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## 5. Rezoning Boundary

**Comment 5.1:** DCP must work with the relevant Borough Board members to review every option for limitations on the east side of Third Avenue—including changes to the eastern border—with the goal of reducing adverse impacts to residential neighborhoods bordering the eastern side of the Subdistrict. (Brewer) The boundary of the East Midtown Subdistrict should be moved to the center of Third Avenue from 43rd Street to 56th Street. (CB6) We reiterate CB6's request to omit the area east of Third Avenue from the rezoning area. Any development in this area should be built in context with the nearby residential neighborhoods of Turtle Bay and Tudor City. (Hoylman and Krueger) The eastern boundary remains in dispute; Community Board 6 and the Turtle Bay residential neighborhood is concerned with pressures on the neighborhood from larger commercial development, and the development community is concerned with losing this eastern boundary and its impact on the market for landmark air rights. (Garodnick) An alternative should be considered that omits the area east of Third Avenue from the rezoning. (City Club) It appears that the City is including Third Avenue in order to have enough development sites to use all of the transferable development rights from landmarks and all of the bonus floor area for subway improvements in order to collect the fees for TDRs and pay for improvements to MTA facilities. (City Club) Implementing a 20 percent limit on residential use for qualifying sites here contradicts Third Avenue's role as a mixed-use area that transitions the streetscape from its commercial uses to the west into the more residential areas to the east. (Hoylman and Krueger) Until the Second Avenue Subway can be extended farther south, this area does not have the capacity for the increased density possible under the proposed rezoning. (Hoylman and Krueger)

**Response:** The proposed removal of Third Avenue from the subdistrict would not advance the stated purpose and need of the Proposed Action. As described in Chapter 1, "Project Description," of the EIS, the primary objective of the Proposed Action is to facilitate the construction of new, state of the art, sustainable office buildings within East Midtown. The proposed removal of Third Avenue between 43rd Street to 56th Street from the subdistrict would be detrimental to the purpose and need of the Proposed Action.

**Comment 5.2:** At a minimum, all existing residential buildings on the east side of Third Avenue must be removed from the district. (Brewer) With the removal of all residential buildings on the

east side of Third Avenue, if needed, the City can study further adjustment of the boundaries to include additional commercial sites for potential redevelopment, such as the American Jewish Committee site on East 56th Street. (Brewer) There could be an opportunity to expand the district slightly to include one additional site at 165 East 56th Street. (Garodnick) We are comfortable with Manhattan Borough President Brewer's recommendation that residential properties on the east side of Third Avenue be considered for removal from the district. (Byrnes) We recommend a minor adjustment to the rezoning boundary to include the northwest corner of East 56th Street and Third Avenue (the C6-6 portion). (Bass)

**Response:** Comment noted, see response to Comment 5.1.

**Comment 5.3:** It is imperative that the east side of Third Avenue south of East 56th Street remain within the Subdistrict boundaries. (Byrnes)

**Response:** Comment noted.

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## 6. Proposed Zoning Text—Residential Use

**Comment 6.1:** There should be a prohibition on the as-of-right conversion of more than 12 FAR from non-residential to residential use and a special permit mechanism should be created to permit such conversions on a discretionary basis. (CB5, Stern) Serious consideration must be given to amending the text to limit residential conversion, including proposals advanced by the Steering Committee and CB5 to prohibit conversion of space to residential in excess of 12 FAR as well as limiting residential conversions on the avenues. (Brewer) DCP agreed to report to the Manhattan Borough President's office and City Council on residential conversions in the Subdistrict over a five-year period in order to determine if a text amendment prohibiting such conversions is warranted at some future date. An annual report should be required. (Brewer) The City must report residential conversion activity annually, rather than every 5 years, in the district. DCP should prepare the annual report. (Garodnick) A change in purpose of buildings from office to residential space should only be allowed by means of a special permit. (Collins) MAS urges the City to explore mechanisms that would restrict residential conversions. (MAS) RPA recommends that residential uses be discouraged. RPA agrees with the current provisions related to residential use and further recommends that any additional residential use should be mixed-income, applying the same provisions that apply to new rezonings under the city's Mandatory Inclusionary Housing provisions. (RPA) For grandfathered buildings that are currently permitted as-of-right conversions to residential, we recommend that owners be required to demonstrate, through a special permit or other mechanism, that commercial use is not economically viable. (RPA)

**Response:** Comment noted. As described in Chapter 1, "Project Description," of the EIS, the primary objective of the Proposed Action is to facilitate the construction of new, state of the art, sustainable office buildings within East Midtown. The need to curtail residential conversions were not identified as an issue in the studies leading to the East Midtown proposal and would not address the purpose and needs of the Proposed Action.

**Comment 6.2:** The proposed text should not require that residential floor area developed or converted pursuant to permits issued prior to the public review of the Greater East Midtown

Rezoning be offset against the maximum residential floor area permitted on a qualifying site. The requirement for such an offset in proposed Section 81-613 (“Qualifying Site”) makes a distinction without any basis in land use law or policy between zoning lot mergers with development rights parcels that are improved with commercial buildings (where there is no penalty to those wishing to build a mixed building) and mergers with development rights parcels that are improved with residential buildings (where the offset acts as a penalty to mixed-use development). Penalizing such mixed-use developments will discourage qualifying sites from entering into zoning lot mergers with parcels containing residential use, needlessly restricting potential new large commercial development which is the goal of the plan. An illustration of the impact of this requirement (modeled on a potential East Midtown assemblage) is attached. (REBNY, Selver)

**Response:** As stated in Chapter 1, “Project Description,” of the EIS, the Proposed Action is intended to generate new, state of the art office development. This was not found to be a concern for any of the projected and potential development sites studied in Reasonable Worst Case Development Scenario.

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## 7. Proposed Zoning Text—Open Space

**Comment 7.1:** The Proposed Action must require that new public space be created on every redeveloped site that takes advantage of the Greater East Midtown’s transfer of development rights framework. (CB5, Stern) The approved zoning text by the CPC and City Council must include language that makes the provision of indoor or outdoor public space a requirement, not an option. (Brewer) The requirement to provide open space on Qualifying Sites of 40,000 sf or more must be included. (Brewer) The FEIS must consider an alternative that requires redeveloped sites to include either outdoor plaza space or a covered pedestrian space. (Brewer, CB6) We need to ensure that public plazas are required under this proposal. (Garodnick) It is appropriate to require an outdoor plaza at the “Pfizer site” without the provision of an additional floor area bonus. (Brewer)

**Response:** Comment noted. An alternative scenario has been added to the Final EIS, which evaluates the effects of a mandatory POPS program under the circumstances described in Chapter 20, “Alternatives.” As discussed in that chapter, the Mandatory POPS Alternative does include an outdoor POPS on Site 15 (the “Pfizer site”).

**Comment 7.2:** The City must commit to undertake above-grade public realm pilot projects and provide seed money (i.e., a significant, specific funding commitment) for the Public Realm Improvement Fund in the upcoming budget so that other such projects can begin; this will underscore the City’s commitment to the above-grade public realm. (Brewer, Garodnick) There remain significant open questions on the public realm improvements, including the shared-street pilot, Park Avenue changes, 53rd Street beautification, and Pershing Square East upgrades; there needs to be certainty on these commitments by the time the City Council votes. (Garodnick) We hope the City will make an initial funding commitment to ensure that these improvements can be enacted. (Hoylman and Krueger) The City must invest in at least some of the NYCDOT-identified improvements prior to the adoption of the proposed zoning text. (CB5)

**Response:** Comment noted. In response to concerns raised during the public review process, the City has committed to a series of interim treatments to the above-grade public realm. Please refer to the letter from the Deputy Mayor to the Manhattan Borough President, outlining the nature of these commitments. This letter is included as part of the Borough President's resolution, which can be found in Appendix N of the FEIS.

**Comment 7.3:** The proposed improvements under the public realm improvement plan is fundamentally deficient. The proposed right-of-way improvements are not codified in the text amendment. The public has virtually no assurance that they will be implemented. (MAS) We remain concerned about when the public realm improvements will take place and how projects will be prioritized. (Hoylman and Krueger)

**Response:** Comment noted. It is expected that as development occurs over time, the funding generated will be utilized by the Governing Group to fund public realm improvements. The funds will be held in a segregated account, as per the proposed text amendment. In terms of the adequacy of the public realm improvements, the FEIS identified (see Chapter 19, "Mitigation") the potential to substantially lessen the open space impacts through implementation of approximately 1.20 acres of the passive open space improvements that are part of the Concept Plan.

**Comment 7.4:** How will the City divorce the funds for these public realm improvements from a developer's schedule? (Hoylman and Krueger)

**Response:** Contributions to the Public Realm Improvement Fund are a pre-requisite for the issuance of any applicable building permit.

**Comment 7.5:** The East Midtown Steering Committee report recognizes the dearth of public open space in East Midtown and recommends creating a plan for the public realm that includes on-site spaces such as plazas and covered plazas. By contrast, the proposed rezoning encourages very large buildings to be developed using transferred air rights and off-site subway improvements as-of right and discourages on-site public spaces by limiting them to a new special permit for "public concourse." Consequently, the DEIS finds the lack of public open space in the proposal to be a largely unmitigated significant impact. With respect to open space and a plan for the public realm, the proposed zoning turns the recommendations of the Steering Committee upside down. (City Club)

**Response:** Chapter 4, "Open Space," of the EIS includes a quantitative analysis of the Proposed Action's effect on open space ratios in the study area and examines the new population's effects on total and passive open space ratios. For the FEIS, additional calculations were made in Chapter 19, "Mitigation," examining the Proposed Action's effects with the addition of a subset of possible Public Realm Improvements targeted to enhance passive open space, including three new or improved plazas within the study area and additional open space along the Park Avenue Median. Based on the quantitative assessment provided in the FEIS, the inclusion of these Public Realm Improvements could offset the reduction in open space ratios. Chapter 20, "Alternatives," of the FEIS also includes an assessment of a Mandatory POPS Alternative, which would result in approximately 0.39 total acres of new passive open space. As with the Proposed Action, there would still be a significant adverse impact on open space ratios as a result of the Mandatory POPS Alternative, but those impacts would be less than those of the Proposed Action.

**Comment 7.6:** POPS have not been considered in the current proposal. MAS asks the City to study the following recommendations:

- Reevaluate the 1.0 FAR bonus.
- Reconsider requiring developers exhaust all other options for increasing commercial density before the FAR bonus for POPs can be utilized.
- Explore offsite bonus opportunities.
- Establish guidelines for improving existing and future indoor and outdoor POPS.
- Provide incentives for renewing POPS (MAS).

Explore the mechanism for improving the public realm through temporary and permanent art installations in existing and new public spaces in the district, including POPS. (MAS)

**Response:** As discussed in Chapter 1, “Project Description,” of the EIS, the Proposed Action includes multiple opportunities to improve the above-grade public realm through the Public Realm Improvement Fund, and includes a special permit for a Public Concourse. This level of discretionary review is consistent with other covered pedestrian spaces. The Zoning Resolution currently includes provisions to improve existing POPS, and have been used by numerous spaces in East Midtown over time. These provisions would not be modified as part of the Proposed Action, and are therefore out of scope of the environmental analysis.

A mandatory POPS alternative was explored in the FEIS, which could facilitate the construction of additional POPS on projected development sites that meet specific size and site criteria. However, as disclosed in Chapter 20, “Alternatives,” of the FEIS the Mandatory POPS Alternative would result in approximately 0.39 total acres of new passive open space. As with the Proposed Action, there would still be a significant adverse impact on open space ratios as a result of the Mandatory POPS Alternative, but those impacts would be less than those of the Proposed Action.

**Comment 7.7:** We are disappointed that DCP has not incorporated the Steering Committee’s recommendation of a 2 FAR incentive for developers to create POPS. We urge DCP to make open space a priority on equal footing with the proposed as-of-right public benefit mechanisms. We hope that DCP will increase the existing plaza bonus in East Midtown from 1.0 FAR to 2.0 or 3.0 FAR. (Hoylman and Krueger) It is necessary to make public spaces available for approval via certification rather than through special permits. (Hoylman and Krueger) RPA is dubious about the success of the NYC Planning’s privately owned public space bonuses. With a ULURP requirement, will it really be successful? (RPA)

**Response:** Comment noted. Please refer to response to Comment 7.6. The proposal intends to balance landmark TDRs and floor area generated through as-of-right below-grade transit improvements. The existing POPS bonus on other, non-qualifying sites, which is limited to 1 FAR, still applies. The 1 FAR POPS has been successful both in East Midtown and other parts of Midtown. Expansion of this bonus would not advance the goals and objectives, or purpose and needs of the Proposed Action.

**Comment 7.8:** A new unit should be created within DCP that would be charged with the sole oversight and enforcement of all POPS. (CB5) The resulting plazas must be well-maintained and relevant regulations must be properly enforced. (Garodnick)

**Response:** Comment noted.

**Comment 7.9:** The Club is adamantly opposed to the implementation of the shared streets program on Vanderbilt Avenue. (Gandhi) We oppose the implementation of a shared streets program on Vanderbilt Avenue without careful consideration of the potential effect on the Yale Club: a shared street at this location could essentially landlock the Club by severely limiting or precluding vehicular access to its only public entrance, which is located on Vanderbilt Avenue between 44th and 45th Street. This could result in unacceptable increased response times for first responders and other emergency vehicles and could make access to the Club very difficult for Club members, many of whom are seniors and people with disabilities. (Gallent, Gandhi). The Shared Streets program is largely untested in New York City; the notion of pedestrians and cars sharing a street without curbs seems ill-advised on Vanderbilt Avenue given the traffic associated with Grand Central and businesses on Vanderbilt Avenue itself. (Gallent, Gandhi) The concept for the shared street on Vanderbilt Avenue between 43rd and 47th Streets is ill-defined in its definition and is absent the level of study necessary to understand its operations and feasibility. (Alschuler) Such a proposal requires close analysis of the potential impacts on building access, traffic access for deliveries, loading and unloading, the procedures for emergency vehicle access, activation of the pedestrian realm, and a strategy to maintain the area. (Alschuler) We request a specific and detailed design be studies and a form to address remaining concerns. (Alschuler)

**Response:** As described in Chapter 1, "Project Description," of the EIS, the designs for shared streets would take into account the needs of all property and business owners along the street, incorporating the need for access to buildings and loading docks, sanitation and deliveries, pick-up and drop-offs, parking, and overall circulation. As part of the design process, DOT would conduct stakeholder outreach, including public surveys at the direction of the Governing Group, and ultimately present a proposal to the local Community Board for review. The City has also committed to piloting a shared street at a to-be-determined location in East Midtown, pending discussions with relevant stakeholders including property owners and BIDs.

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## 8. Light and Air/Height and Setback

**Comment 8.1:** Daylighting standards shall only be lessened pursuant to careful public review on a project-by-project basis that ensures that such modifications are truly necessary to facilitate Class A office development. (CB5)

**Response:** As discussed in Chapter 1, "Project Description," of the EIS, the Proposed Action includes limited modifications to underlying height and setback regulations which would be granted to Qualifying Sites so as to permit as-of-right development at the levels allowed through the proposed framework and to better take account of the smaller development sites and higher street walls found in the East Midtown area. The EIS includes an analysis of the effects of the Proposed Action on shadows, open space and urban design consistent



with the CEQR Technical Manual. Please refer to FEIS, specifically Chapter 5, “Shadows,” Chapter 7, “Urban Design,” and Chapter 19, “Mitigation.” Sixty-eight (68) sunlight sensitive resources required analysis for potential shadows impacts, as per the *CEQR Technical Manual* methodology. As discussed in Chapters 5 and 19, the shadows analysis for the rezoning resulted in identification of only one significant adverse shadows impact—specifically on portions of the stained glass windows of St. Bartholomew’s Church. Mitigation was explored between the Draft and Final EIS, and determined to be infeasible, thereby resulting in an unmitigated adverse impact on this individual resource.

**Comment 8.2:** MAS urges the City to work with the Steering Committee to study proposed changes to the daylighting methodology. (MAS) We urge DCP to reassess the newly adopted daylight evaluation methodology. We would like to see an analysis of the scoring system alterations and the impacts on the rezoning in East Midtown. How will increased FAR be balanced with existing daylight evaluations? (Hoylman and Krueger) The proposed zoning goes further than the Steering Committee’s compromise of reducing the passing Daylight Evaluation score from 75 to 66 and changes the scoring process for “qualifying sites” to allow much greater encroachment. By way of example, One Vanderbilt if scored using the proposed scoring would earn a score of positive 20 rather than negative 62 - a large difference. (City Club)

**Response:** Please refer to Response to Comment 8.1.

**Comment 8.3:** We urge DCP to consider how the plan can mitigate increases in large shadows cast by buildings onto already sunlight-sensitive resources. One step that would help to fulfill this request would be the lowering of the daylight evaluation passing score to the level recommended by the Steering Committee. (Hoylman and Krueger)

**Response:** Please refer to Response to Comment 8.1. Chapter 5, “Shadows,” of the EIS analyzed these issues. In relation to the single impact on the St. Bartholomew’s Church, mitigation was explored between the Draft and Final EIS, (see the analysis in Chapter 19, “Mitigation,” and the Shadows Technical Appendix O), and it was found that no changes to the bulk and setbacks of the Proposed Action buildings would measurably reduce the impact.

**Comment 8.4:** One part of the daylighting proposal requires greater scrutiny: the option for new buildings to either meet the existing minimum daylight score for individual Midtown streets (66 percent) or achieve at least the same daylight score of the buildings they replace. The allowance for new buildings to match the scores of the previous building on the site is meant to give some small degree of flexibility in redevelopment. We are wary though of buildings with egregious, failing scores being able to replicate that failure. Thus, there should be a sensible minimum score that redeveloped buildings must meet, regardless of the scores of the buildings they replace. (Brewer) The low scoring standards for qualifying sites are highly detrimental to the preservation of light and air in the public realm. (MAS)

**Response:** The EIS analyzed the effects of the Proposed Action on shadows, open space and urban design consistent with the CEQR Technical Manual. Please refer to EIS, specifically Chapter 5, “Shadows,” and Chapter 7, “Urban Design.”

**Comment 8.5:** Light and air is essential to the continued attractiveness of East Midtown, and as such, the zoning text for the East Midtown Subdistrict should be modified to retain the existing height and setback regulations of the Special Midtown District. (CB6) There is a great deal

of concern that the effects of proposed height changes and setback rules go too far and undermine the framework that has worked well in midtown since 1982. It is absolutely critical that we keep as much light and air as possible in the concrete canyons of midtown. (Garodnick) MAS concurs with the Steering Committee that the existing height and setback regulations should generally remain in place. Furthermore, if a project cannot be completed in conformance with these regulations, a Special Permit should be required. (MAS) MAS urges the City to work with the Steering Committee to reexamine potential height and setback modifications. (MAS)

**Response:** Please refer to Response to Comment 8.3

**Comment 8.6:** The proposed zoning text for East Midtown should be modified to protect the midblocks of narrow streets by limiting the floor area that may be added to the midblock districts and by maintaining the incentives of the current height and setback rules for lower street walls on narrow streets. (CB6) The East Midtown Steering Committee report recommended increasing density along wide streets, not in the midblocks. However, the proposed zoning allows greater increases in FAR in the 12.0 FAR midblocks than on the 15.0 FAR wide streets such that the FARs on the midblocks become the same as on the avenues. The proposed zoning also allows the height of the street walls on the midblocks to be as tall as the street walls on the wide streets. Furthermore, these changes seem to obviate the split lot rules. (City Club)

**Response:** Comment noted. As stated in Chapter 1, "Project Description," of the EIS, midblock sites are not permitted to utilize the as-of-right qualifying site regulations.

**Comment 8.7:** Mid-block buildings should be allowed to be a qualifying site. There should be greater site controls placed on developments here in order to make them a new lot and make them a qualifying site. (Slattery)

**Response:** Comment noted. As described in Chapter 1, "Project Description," of the EIS, the proposed zoning framework is intended to concentrate new as-of-right development of Class "A" office towers on wide streets, where they are typically found in Midtown Manhattan. The framework also includes a special permit whereby midblock sites can utilize the new zoning mechanisms through discretionary review.

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## 9. Split Lots

**Comment 9.1:** MAS believes that the rules for the proposed Subdistrict should not apply to the 13 properties that have less than 50 percent of their lot surface within the proposed East Midtown Subdistrict. (MAS)

**Response:** DCP prepared and filed an Amended Application on March 27, 2017 that addresses this issue. A technical memorandum analyzing the Amended Text was issued by DCP, and is further analyzed in Chapter 25, "Amended Application Analysis," in the FEIS.

**Comment 9.2:** Restore the text in proposed Section 81-60 as referred out authorizing split lots with 50% or more of their lot area within the Subdistrict to be treated as though they are entirely in the Subdistrict, but limit the right to do so to zoning lots that both are located entirely west of Third Avenue and are existing as of the date of the adoption of the Subdistrict. (REBNY)

**Response:** Comment noted, the Commission is considering a modification to the Proposed Action to address this issue.

**Comment 9.3:** The A-text is not as precise about how zoning lots that are partly within and partly without the East Midtown boundaries will be treated. (Meyers)

**Response:** Comment noted.

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## 10. Hotels

**Comment 10.1:** We request that the Commission add an amendment to the proposed text to add a special vesting provision to Article 1, Chapter 1 of the zoning regulation, vesting the rights of projects for new hotels that have obtained any building permits and commenced construction prior to the enactment date to continue construction under those permits without seeking a special permit. (Carson, Ginex) The text change proposed by the Commission would alter the status of hotel uses in midtown Manhattan, making this use, which has been as-of-right at this location since the City first enacted zoning more than a hundred years ago, discretionary for the first time. (Carson, Ginex) We ask that the Commission add language to Section 81-261 to clarify that new transient hotel projects that are under construction but will not have complete foundations on the date of adoption of the East Midtown text amendment will not be subject to the special permit requirement of proposed Zoning Resolution Section 81-621. (Liven) We suggest that you have the hotel special permit not apply to hotel buildings that are under construction today. (Meyers)

**Response:** Section 11-33 of the Zoning Resolution contains vesting provisions that include a BSA process for developments that have commenced construction, but not yet completed their foundation.

**Comment 10.2:** The proposed special permit for hotel use in Section 18-621 is misguided and counterproductive. It is not really a land use provision and is intended to favor a particular union. I doubt it would withstand any legal challenges. Moreover, very few hotels will be built under this proposal because there is nearly no one who would want to suffer 18 to 24 months of administrative torture to produce a hotel. Instead of a special permit, I recommend that hotels be permitted by certification with an advisory committee set up to make recommendations to the Commission on each application. (Parley)

**Response:** Comment noted, the objectives of, and purpose and need behind the Proposed Action are described in Chapter 1 "Project Description."

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## 11. Overbuilt Buildings/Pre-1961 Buildings

**Comment 11.1:** The text should allow small enlargements of overbuilt buildings without requiring a "buy back" of excess floor area. Proposed Section 81-684 fosters East Midtown's goal of creating upgraded, desirable first-class office space by authorizing the enlargement of existing buildings where the City Planning Commission finds, among other things, that the enlargement is accompanied by a significant renovation that will bring the building up to contemporary environmental and space standards. However, the provisions of the text requiring a "buy-back" of pre-existing, non-complying floor area can severely undercut –

and in some cases will absolutely preclude – use of this provision where the enlargement proposed is small. By way of example, a 17.5 FAR building within both a C5-3 zoning district and an 18 FAR Subarea that is seeking the available .5 FAR increase in FAR would be required to “buy back” 2.5 FAR from the City, effectively doubling the cost of the development rights needed to enlarge the building. Faced with this choice, it would be no surprise if the owner were to forgo the opportunity to enlarge the building – with the attendant loss to the City of both the upgrade of the existing office space and the newly constructed office space. This issue can be addressed by ensuring that the Rezoning text exempts small enlargements (say under 1 FAR) of both pre- and post-1961 buildings from purchasing the “buy back” floor area. (REBNY)

**Response:** Comment noted. The provisions governing overbuilt floor area are appropriate given the existing Special Midtown District framework, under the establishment of which, maximum permitted floor area was reduced.

**Comment 11.2:** Enlargements are another way of trying to stimulate new investment and larger buildings on the avenues. This should be done through a certification as opposed to an authorization. (Slattery)

**Response:** Comment noted. As stated in Chapter 1, “Project Description” of the EIS, the Proposed Action is intended to reinforce the area’s standing as a premier central business district, and protect and strengthen Greater East Midtown as a regional job center and premier central business district by seeding the area with new modern and sustainable office buildings. The proposed zoning framework therefore allows as-of-right development of new buildings, but permits enlargements of existing buildings through discretionary action.

**Comment 11.3:** The increase of FAR on the Pfizer site from C5-2 (10 FAR) to C5-3 (15 FAR) should require the owner to contribute to public realm improvements just as any other owner of an overbuilt building would be required to do. (CB6) The inclusion of the full block from Third Avenue to Second Avenue with frontage along 42nd Street (the “Pfizer site”) is appropriate given the prominence of 42nd Street in East Midtown and Midtown as a whole, the array of transit infrastructure below it, and its commercial character. However, this block will gain in greater proportion than other sites. As such, it is appropriate to require an outdoor plaza at this site without the provision of an additional floor area bonus. (Brewer) The “notch” on the proposed map at East 42nd Street (the Pfizer block) implicates longer-term zoning considerations involving the planned Second Avenue Subway, adjacent subway improvements, and pedestrian circulation that are included in the existing zoning regulation. It should be addressed in that context as a separate matter apart from the subject proposal. The upzoning of the Pfizer block should not be approved as part of this proposal. (Collins) We find that an increase of 5 FAR on the Pfizer site, tied to no public realm improvements, is inconsistent with the rest of the proposal and amounts to “spot zoning.” This site should be required to contribute to the public realm in the same way as any other overbuilt building in the rezoning area. (Hoylman and Krueger)

**Response:** The area between Second and Third Avenues along East 42nd Street is entirely commercial in character, with a number of existing aging office buildings with potential for redevelopment. The Special Midtown Subdistrict generally follows the boundary of Midtown’s commercial areas and thus this area would more appropriately be located in the Midtown Subdistrict, and additionally as part of the East Midtown Subdistrict. By

incorporating the area into Midtown, the Special Subdistrict regulations, including height and setback and streetscape requirements, would become applicable. These are more tailored to the needs of the area than the generic 1961 high-density commercial zoning provisions that now apply. See also response to Comment 7.1.

**Comment 11.4:** The inclusion of 229-241 East 42nd Street, which contains a 33-story building constructed in 1960 and currently occupied by Pfizer, is appropriate for several reasons:

- a. East 42nd Street is different in character than other streets in this area in that it is a wide street with consistently high-density commercial development and it is anchored at one end by Grand Central Terminal and at the other end by a 42nd Street and Second Avenue subway stop shown on the current alignment of the Second Avenue subway.
- b. The buildings in this area were all built prior to 1961. When the comprehensive amendments to the Zoning Resolution were enacted in 1961, and then again when the Special Midtown District was created in 1982, they did not recognize the built form of these buildings. The current remapping would, in effect, rectify a past oversight.
- c. The buildings in this area are obsolete buildings that are appropriate candidates for redevelopment. Redevelopment under existing zoning would not result in either a fully state-of-the-art building or the contributions to the fund (by “buying back” the overbuilt FAR, or in connection with the purchase of landmark air rights).

The inclusion of this area will not act as a precedent for inclusion of the blocks to the east, south, and north in the Subdistrict as these blocks do not contain sites that are candidates for large-scale commercial redevelopment consistent with the goals of the Subdistrict. (Wagner)

**Response:** Comment noted.

**Comment 11.5:** The reconstruction provisions of proposed Section 81-643 should be refined – the provision allowing non-complying pre-1961 buildings to be rebuilt with a contribution to the public infrastructure fund - to make clear that portions of a building incorporating transit infrastructure may be preserved without requiring a cleared wide street frontage. By way of example, there are instances identified as development sites in the DEIS whose development would require the preservation of existing transit infrastructure. Creation of a cleared wide street frontage for such sites would thwart important transit improvements or new development. Such an outcome would be contrary to the goals of the rezoning. Allowing for reconstruction of a Class-A building while also preserving transit access serves two goals of East Midtown, and it should be allowed. (REBNY) We suggest a refinement to the text to allow for buildings that have a transit volume within their ground floor to be able to preserve that volume in regards to 81-643 of the zoning regulation, which is the provision that allows for the rebuild of pre-1961 buildings with a contribution to the transportation fund. (Meyers)

**Response:** Comment noted, the Commission is considering a modification to the Proposed Action to address this issue.

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## 12. Historic Resources/Landmark Buildings

**Comment 12.1:** LPC should add buildings that are eligible for inclusion on the National Historic Landmarks Register to its calendar before the FEIS is completed. (Collins) There are at least eight additional sites that warrant further consideration by the LPC: the Vanderbilt Concourse Building, Roosevelt Hotel, Lincoln Building, Postum Building, Hotel Intercontinental, and Chemists Club. Unless LPC is willing to see these historic sites demolished for incoming development, it should assure their survival with landmark designations. (Hoylman and Krueger, MAS) Our priority list for designation includes sites such as the Hotel Intercontinental and the Postum Building, both projected development sites. We urge LPC to bring them to a public hearing. (Landmarks Conservancy)

**Response:** Any future consideration for designation by the Landmarks Preservation Commission will be considered in the context of the agency's priorities in all five boroughs.

**Comment 12.2:** The foundation is in the process of having the park recognized as eligible for listing on the State and National Registers of Historic Places. (Cremmins)

**Response:** Pursuant to the New York State Office of Parks, Recreation and Historic Preservation's Cultural Resource Information System (CRIS)<sup>2</sup>, Greenacre Park was designated as "Eligible" for the State and National Registers of Historic Resources on March 24, 2017. The basis for the designation was identified as "Embodies the distinctive characteristics of a type, period or method of construction; or represents the work of a master; or possess high artistic values; or represents a significant and distinguishable entity whose component may lack individual distinction." Chapter 6, "Historic and Cultural Resources," has been updated in the FEIS to include Greenacre Park's designation as "Eligible" for the State and National Registers of Historic Resources.

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## 13. Requests for Specific Text Provisions

**Comment 13.1:** The City should explore ways of utilizing floor area on second and third levels of existing and proposed buildings for public space, gardens, and art displays. (MAS)

**Response:** As stated in Chapter 1, "Project Description," and Section 81-622 of the proposed text in Appendix B, "Zoning Text," of the FEIS, the Proposed Action permits a mix of uses above the ground floor on Qualifying Sites.

**Comment 13.2:** For developments that would exceed 24 FAR, there must be some mechanism for Community Board review (even if not ULURP). (CB5, Stern)

**Response:** The Proposed Action allows qualifying sites to utilize a primarily as-of-right framework in order to earn higher densities. An additional discretionary process based on density alone would not advance the goals and objectives of the proposal. Two subareas permit densities of 24 FAR and higher: the Grand Central Transit Improvement Zone Subarea, which allows a maximum permitted as-of-right FAR of 27 because of its transit-rich location and immediate proximity to Grand Central Terminal; and the Park Avenue

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<sup>2</sup> <https://cris.parks.ny.gov/>, Accessed May 18, 2017

Subarea, which is permitted a maximum as-of-right FAR of 25, because of Park Avenue's extra width.

**Comment 13.3:** CB5 requests that there be no increase in the base permitted floor area approved as part of the Greater East Midtown rezoning. (CB5)

**Response:** Comment noted.

**Comment 13.4:** DCP must create pedestrian circulation maps that illustrate the specific and demonstrable public value of open space that would provide FAR benefits to the developer. DCP should provide design guidance making plazas, covered pedestrian spaces, and other POPS as-of-right by certification and require that the first additional FAR earned by any site be for on-site public open space, including on-site transit access improvements. (CB6)

**Response:** Comment noted.

**Comment 13.5:** Certain technical aspects of the rezoning, as proposed, create challenges for the redevelopment approach at 250 Park Avenue. We believe that with some minor changes that these imperfections can be eliminated or mitigated, allowing an as-of-right 27 FAR building of the design we envision. Among our most important concerns with the current zoning text are the following:

- As per ZR 81-671, Street Wall Continuity is required within 10' from the street line. This requirement greatly affects our Concept Plan because it would prohibit the proposed public open space at ground level. We urge that new provisions to this section be included to allow for more openness for the public realm at street level.
- As per ZR 81-44, curb cuts are not permitted on all avenues in Midtown - unless the DOB Commissioner approves or the City Planning Commission authorizes. And, as per ZR 81-675, curb cuts are not allowed on E. 47th Street between Park Avenue and Madison Avenue. Taken together with loading berth requirements that mandate head-in and head-out truck movements, these limitations force a loading berth to be placed only on E. 46th Street - in lieu of a south-facing open space. This would massively disrupt the ground floor area and any open space connections.
- As per 81-674 (b), a lobby must have entrances on two street frontages and as per 81-674 (c), a minimum of 50% of a building's ground floor level street wall frontage along a narrow street is limited to retail use. These rules significantly constrain 250 Park's building layout and planning options - given that the building has 125' frontage on two narrow streets. Flexibility is needed with as-of-right exceptions for sites with frontage less than 150' on a narrow street and when a building fronts on two narrow streets.

We would greatly appreciate your consideration of these issues and hope that you will make appropriate adjustments so that our Concept Plan for an as-of-right 27 FAR development with ground floor transparency, retail and public open space amenities can be fully realized. (Korbey)

**Response:** Comment noted. These provisions are currently applicable to the site under the existing zoning in the area and the Proposed Action included no changes to them. However, the Proposed Action does allow for modifications of these requirements by special permit.

**Comment 13.6:** The proposed text should allow proposed Section 81-642, which authorizes as-of-right (but capped) transfers of floating landmark development rights, to be used in conjunction with Section 74-79, which allows uncapped (but discretionary) landmark development rights transfers across individual streets by special permit. The ability to use these two sections together would eliminate an artificial and unnecessary constraint on the development options available in East Midtown. (Parley, REBNY, Selver)

**Response:** The use of Section 74-79 special permits with the other TDR mechanisms available in the current Grand Central Subdistrict is not permitted today. This change is outside the scope of the Proposed Action.

**Comment 13.7:** The proposed text should allow sidewalk extensions (or widenings as they are called in the proposed Section 81-672(a)) that are mandated for certain sites on Madison Avenue and Lexington Avenue to be covered by a cantilever or an arcade. (REBNY, Selver)

**Response:** Sidewalk widenings are required to be open to the sky in the Special Midtown District. The widenings required for Qualifying Sites would be subject to this requirement and such a change would not reduce or eliminate any identified significant adverse impacts.

**Comment 13.8:** MAS recommends that the text amendment include provisions for a mix of retail, restaurants, and entertainment venues to increase the vibrancy of the area. (MAS)

**Response:** The existing zoning provisions include active ground floor use requirements along major corridors like Lexington and Madison Avenues, and the Proposed Action extends similar provisions on the side street frontages for Qualifying Sites around Grand Central Terminal. The regulation of store sizes and formats does not address any of the objectives of the Proposed Action and is outside of the scope of the Proposed Action.

**Comment 13.9:** The 1 FAR as-of-right transfer from Grand Central Terminal for non-qualifying sites in the Grand Central Core should not be eliminated. The 1 FAR transfer and bonus both facilitates the transfer of landmark development rights and ensures that sites within the existing Grand Central Subdistrict have the same right to additional floor area as sites outside the Subdistrict that can take advantage of the plaza bonus. Leaving the existing 1 FAR transfer provisions in place will ensure that the floor area potential of non-qualifying sites within the Grand Central Core will not be changed. In this regard, we note that there are a number of non-qualifying development sites located in the Fifth–Madison Avenue midblocks between East 43rd and East 46th Streets and the Lexington–Third Avenue midblock between East 45th and East 46th Street. There have been no land use changes in the area around Grand Central Terminal since the adoption of the Subdistrict in 1992 that would justify elimination of this transfer and bonus. Moreover, continuing to offer non-qualifying buildings the opportunity to increase their floor area in the most transit-rich area of East Midtown is consistent with the Greater East Midtown Rezoning’s goal of encouraging higher density development near transit hubs. Maintaining the transfer and bonus is also consistent with the Rezoning’s landmark preservation objectives because it is limited to non-qualifying sites, where it supplements rather than competes with the district-wide, as-of-right development rights transfers that are available only to qualifying sites. (REBNY)

**Response:** Comment noted. The applicability of the 1.0 FAR, as-of-right transfer from Grand Central Terminal was limited to a small geography and is intended to be replaced by the broader



transfer mechanism (pursuant to Section 81-642 of the proposed text) as stated in the purpose and needs section of Chapter 1, "Project Description."

**Comment 13.10:** CB6 endorses high-performance building and sustainability goals as outlined in the East Midtown Steering Committee report. (CB6) DCP must work with the relevant Borough Board members to ensure that the language on environmental standards in the text is sufficient to support the achievement of the Steering Committee's goal of achieving an environmental standard of LEED Gold or its equivalent. (Brewer) MAS questions whether the sustainability and energy goals of the project go far enough. In regards to sustainability, MAS recommends new development should achieve LEED Gold standard for core and shell and more than 3% energy efficiency. MAS recommends 15%-above the City's Energy Conservation Code (NYCECC) standard. (MAS) The City should explore sustainable practices, guided by LEED or equivalent standards, regarding the reuse of demolition and construction materials. (MAS)

**Response:** The New York City Energy Conservation Code (NYCECC) continues to be updated to reflect advances in construction practices and increase minimum standards for new buildings. The 2016 updates to the NYCECC substantially increase the minimum standards that would apply to new buildings. The proposed provisions for qualifying sites in Greater East Midtown are designed to reflect this substantially more stringent baseline, and to establish a higher standard that is verifiable and achievable for the range of building types and configurations that are anticipated in the area, promoting high-performing buildings while ensuring that other project objectives can also be achieved.

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## 14. Transit Improvements

**Comment 14.1:** In planning transit improvements a high priority should be given to both focusing on improvements that will benefit the Greater East Midtown Subdistrict while considering the multi-modal use of both above and below ground transit and public space and relieving the existing overcrowding and connections with the No. 7 subway line and the future Second Avenue Subway. (CB6) The public realm improvements near Grand Central should favor portals and connections to multiple modes of transport over other improvements, such as plazas or atriums. (Collins)

**Response:** Comment noted. Please refer to the project description and proposed text amendment for more information on the below grade public realm improvements that may be realized through the Proposed Action.

**Comment 14.2:** There should be additional connections from the 4/5/6 to the 7 train at Grand Central Terminal. (CB5) Any improvement related to the installation of an elevator tied to an as-of-right FAR bonus must only occur if the improvement results in full elevator access from the platform to the street level. (CB5) As part of the transportation improvements packages that developers would be required to pay for, the City should consider bus improvements, such as funding for bus lane expansion, bus shelters, and equipping intersections with signal priority for buses and emergency vehicles. (Sanderson)

**Response:** Comment noted. The MTA has identified and prioritized below-grade improvements that were analyzed in Chapter 12, "Transportation." Also refer to Chapter 1, "Project

Description,” for details on the above-grade improvements to the public realm, which include various streetscape and roadway improvements.

**Comment 14.3:** We are concerned about relying upon a local rezoning and subsequent development to fund transit infrastructure improvements that benefit the entire region. DCP and MTA must provide a timeline for when transit improvements will take place and how projects will be prioritized. (Hoylman and Krueger)

**Response:** Comment noted.

**Comment 14.4:** RPA recommends the zoning framework include language about future stations that will serve the district, leaving room for improvements and density considerations near future stations, including Second Avenue. (RPA)

**Response:** As discussed in Chapter 1, “Project Description,” the proposal includes provisions for transit improvements and Concept Plan improvements within the Greater East Midtown Subdistrict as well as select areas outside the Subdistrict, such as nearby rail mass transit facilities, that have a significant nexus to the Subdistrict. Transit improvements are prioritized by proximity and nexus to the associated development. In no case will transit improvements or Concept Plan improvements occur on sites that lack significant nexus to the Greater East Midtown Subdistrict and the buildings within it.

**Comment 14.5:** RPA recommends that the GCT TIZ be extended two blocks north to 49th Street, from 47th Street. This would enable more of the developments with holdings directly over transit stations to “earn” FAR through implementation of pre-identified transit improvements. (RPA)

**Response:** Comment noted.

**Comment 14.6:** The City should consider partnering with LIRR, MNR and NJ TRANSIT to encourage developers to contribute to improvements to the regional rail systems. Increased development in Midtown East will put greater strains on these railroads and developers should be incentivized to contribute to measures that would enhance their capacity, such as through-running trains between Grand Central and Penn Station and signal upgrades. (Sanderson) Developers should be required to contribute funds toward the installation of Communications-Based Train Control (CBTC) on all subway lines serving Midtown East, with a priority on the over-capacity Lexington Avenue line. (Sanderson) The City should encourage developers to create a system of elevated enclosed pedestrian passageways and retail similar to Minneapolis’s Skyway system. This would provide an alternative to congested sidewalks while providing much-needed additional space for small retail businesses. (Sanderson)

**Response:** These comments are inconsistent with the goals of the Proposed Action, stated in Chapter 1, “Project Description,” of the EIS, which include to “upgrade the area’s public realm through improvements that create pedestrian friendly public spaces and that facilitate safer, more pleasant pedestrian circulation within the transit stations and the street network.”

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## 15. Other Requests

**Comment 15.1:** The proposed plan addresses the needs of the 21st century but assumes the economy of the last century. DCP is building additional floor area for an economy of 20 years ago; DCP is ignoring developments in collaborative mobile productivity. The concept of the “Big Office” will likely end within the next 20 years. The Class A office space contemplated by the proposal is vastly overrated. (Collins)

**Response:** Comment noted.

**Comment 15.2:** Incentives should be provided for developers to include theaters and other cultural space within their developments. (Sanderson)

**Response:** Comment noted. Providing incentives for theaters and cultural spaces is not consistent with the purpose and need of the Proposed Action.

**Comment 15.3:** We fully support the Greater East Midtown Rezoning plan. It is crucial that any planned public realm project in the district be fully evaluated to help identify the negative impacts and not just the potential benefits. Language should be provided in the Concept Plan that will provide greater clarity and certainty on how traffic congestion, lack of access to businesses, freight elevators, loading docks, and emergency vehicle access will be addressed during review of full or partial street closures. (GCP) It is important that stakeholders have input in the development stage of the above-ground public areas. (Byrnes) The interests of immediately affected stakeholders, such as building owners, should be included when planning any public realm improvements. (Byrnes)

**Response:** Since publication of the DEIS, analyses of the Proposed Action with the above-grade public realm improvements identified in the Concept Plan have been added to the following chapters: Project Description; Land Use, Zoning and Public Policy; Open Space; Shadows; Urban Design and Visual Resources; Transportation; Air Quality; Noise; Neighborhood Character; Mitigation; Alternatives; Conceptual Analysis; Unavoidable Adverse Impacts; and Amended Application Analysis.

As described in Chapter 1, “Project Description,” of the EIS, the designs for shared streets would take into account the needs of all property and business owners along the street, incorporating the need for access to buildings and loading docks, sanitation and deliveries, pick-up and drop-offs (by both for-hire and private vehicles), parking, and overall circulation. Likewise, the designs for pedestrian plazas would take into account pedestrian circulation, transit connections, building connections, building access, sanitation, deliveries, ADA accessibility, emergency access, utilities, events and programming, and pedestrian plaza maintenance capacity. As part of the design process for shared streets and pedestrian plazas, DOT would conduct extensive stakeholder outreach, public surveys, and ultimately present a proposal to the local Community Board(s) for review.

As described in Chapter 1, “Project Description,” the Governing Group will have the ability to amend, add, or remove projects on the Concept Plan, and to prioritize the funding of projects.

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## 16. RWCDs and Analytical Framework

**Comment 16.1:** We continue to question some of the criteria used in the DEIS to exclude sites from the RWCDs. The EIS excludes all condominium, co-op, and rental buildings with more than six rent regulated units from the list of projected and potential development sites. In recent years, we have seen developers in our districts manage to buy out all the owners and/or rent regulated tenants in buildings to be able to redevelop the sites. We believe that these buildings will be vulnerable to development and should be evaluated as part of the RWCDs. (Hoylman and Krueger)

**Response:** The RWCDs's methodology regarding the exclusion of sites with residential condominiums, co-ops or more than six rent regulated dwelling units is appropriate and consistent with previous RWCDs and CEQR standards. As discussed in Chapter 1, "Project Description," of the EIS, the RWCDs presents a reasonable and conservative estimate of the total amount of anticipated development resulting from the Proposed Action in the foreseeable future.

**Comment 16.2:** The DEIS does not include a list of projects for the No Build development scenario. This is particularly important for the shadow analysis, since it is not clear which buildings have been included in the baseline condition used for the analysis. (MAS)

**Response:** The EIS includes information on the projects that are anticipated to occur in the future without the Proposed Action (i.e., No Build projects): anticipated development on the Projected and Potential Development Sites identified in the RWCDs in the future without the Proposed Action is presented in Appendix A, Tables 1A and 1B. No-Action development projects expected to be completed in the primary and secondary study areas are listed in Chapter 2, "Land Use, Zoning, and Public Policy," Table 2.4 and mapped in Figure 2-9. Chapter 5, "Shadows," includes a reference to the No Build projects that are included in the No Action condition in Chapter 2.

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## 17. Socioeconomic Conditions

**Comment 17.1:** A comprehensive analysis of the potential for direct or indirect business and residential displacement should be undertaken, as well as an assessment of how the modernization of building stock will diversify the existing commercial tenants in the area. (Hoylman and Krueger)

**Response:** Chapter 3, "Socioeconomic Conditions," of the EIS examines the potential for the Proposed Action to result in significant adverse impacts to the five socioeconomic areas of concern, including direct residential displacement, direct business/institutional displacement, indirect residential displacement, indirect business/institutional displacement, and adverse effects on specific industries. The chapter also discusses how the Proposed Action would protect, promote, and strengthen the East Midtown central business district, and provide support for the overall continued long-term health of the area as an integrated and dynamic office district with a diverse inventory of office space and tenant roster.

**Comment 17.2:** It is important to ensure the incoming development pays mind to existing commercial building service workers jobs and sustains a steady stream of jobs in the business service industry. (Hoylman and Krueger) We must make sure that East Midtown continues to be

a job center for people of all sectors. For example, security guards, porters, and cleaning jobs must be respected (good paying and high quality jobs). (Garodnick)

**Response:** As stated in Chapter 1, "Project Description," and Chapter 3, "Socioeconomic Conditions," of the EIS, the Proposed Action is intended to reinforce the area's standing as a premier central business district, and protect and strengthen Greater East Midtown as a regional job center and premier central business district by seeding the area with new modern and sustainable office buildings.

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## 18. Open Space

**Comment 18.1:** The DEIS concludes that because the CEQR threshold for evaluating open space impacts has been exceeded based on existing conditions (ratio of daily worker population to available passive open space), no quantitative analysis would be conducted since the project would not be able to achieve the city's goals of 0.15 acres of passive open space per 1,000 non-residential users. Although MAS understands that CEQR regulations hold that if thresholds are exceeded under existing conditions, no further quantitative analysis is required, we are duly mindful of the incremental 28,000 new workers anticipated under the proposal and the additional open space these numbers would demand. We argue that this condition further underscores the need for POPS to be explored thoroughly as part of the overall proposal as a way to increase and improve open space in the project area. (MAS)

**Response:** Chapter 4, "Open Space," of the DEIS includes a quantitative analysis of the Proposed Action's effect on open space ratios in the study area and examines the new population's effects on total and passive open space ratios. For the FEIS, additional calculations were made in Chapter 19, "Mitigation," examining the Proposed Action's effects with the addition of a subset of possible Public Realm Improvements targeted to enhance passive open space, including three new or improved plazas within the study area and additional open space along the Park Avenue Median. Based on the quantitative assessment provided in the FEIS, the inclusion of these Public Realm Improvements could offset the reduction in open space ratios. Chapter 20, "Alternatives," of the FEIS also includes an assessment of a Mandatory POPS Alternative, which would result in approximately 0.39 total acres of new passive open space. As with the Proposed Action, there would still be a significant adverse impact on open space ratios as a result of the Mandatory POPS Alternative, but those impacts would be less than those of the Proposed Action.

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## 19. Shadows

**Comment 19.1:** The DEIS does not include a list of projects for the No-Build Development Scenario in regards to shadows. It is not clear which buildings have been included in the baseline condition used for the shadow analysis. (MAS) The DEIS does not indicate which sites the new incremental shadows will come from, nor the height of the buildings. The FEIS should be revised to include location and height of these buildings. (MAS)

**Response:** The DEIS included details on the projects expected to be complete by the analysis year, independent of the Proposed Actions. The EIS references the location of these details

(Chapter 2, "Land Use, Zoning, and Public Policy"). All No Action projects are accounted for in the Shadows analysis.

**Comment 19.2:** DCP must devise building massing regulations that eliminate or drastically limit the amount of shadow cast on Central Park and other light sensitive resources of our district. (CB5) DCP must work with the relevant community stakeholders to explore mechanisms that can prevent or limit shadow impacts, especially on parks and open spaces. (Brewer)

**Response:** Chapter 5, "Shadows," of the FEIS has been updated to include a discussion of the Proposed Action's potential shadow increment on Central Park. As described in that chapter, no significant adverse impacts on Central Park would occur because of shadows. While the Proposed Action would result in new incremental shadow on the park, this shadow would be limited to the morning during the December analysis period; shadows would cover a relatively small area.

Between publication of the Draft and Final EISs, where significant adverse shadow impacts were identified in the DEIS, the feasibility of mitigation was explored. The results of this effort are summarized in Chapter 19, "Mitigation." As discussed in that chapter, no mitigation measures were identified to avoid the impact on St. Bartholomew's Church and this impact is described as unavoidable in Chapter 22, "Unavoidable Adverse Impacts."

Further, as discussed in Chapter 5, "Shadows," both the individual building massings and their projected combined shadow effect on sunlight sensitive resources in the shadow screening study area represent a highly conservative approach to this analysis.

**Comment 19.3:** It is important to protect existing open space in East Midtown, particularly Greenacre Park on East 51st Street. We urge DCP to consider how this park can maintain access to light and air and protect it from the shadows of incoming developments. (Hoylman and Krueger) We must do everything we can to protect the few high-quality open-space resources that already exist in this open-space-starved area. Specifically, Greenacre Park, a beautiful vest-pocket park on East 53rd Street -- an unusually leafy and restful place of respite for local workers and residents -- is likely to see significant shadow impacts as a result of some of the buildings that will go up. This would hurt the park's ability to grow the foliage that is such an essential element of its appeal. As we work to create new public space in the area, it would be irresponsible to fail to protect the space that we already have. I urge the Commission to find a way to preserve this exceptional public resource. (Garodnick)

**Response:** In response to comments on Greenacre Park, more detailed figures illustrating the incremental shadows effects on the park and its sunlight sensitive features were added in the FEIS, Chapter 5, "Shadows," as well as further discussion of the potential effects of the incremental shadows on the viability of the vegetation and usability of the park. As shown in the additional figures, the incremental shadows cast by the Proposed Action on Greenacre Park would not result in a significant adverse impact to this resource.

Further, as discussed in more detail in Chapter 5, "Shadows," and in response to comment 19.2 above, both the individual building massings and their projected combined shadow effect on sunlight sensitive resources in the shadow screening study area represent a highly conservative approach to this analysis.

**Comment 19.4:** The DEIS concludes that the loss of 1.5 hours of afternoon sunlight on Greenacre Park would not be a significant adverse impact. However, I do consider it significant, especially given the park's small size, flourishing of vegetation, and potential shadow impacts from future development on Second Avenue. I urge the City to continue working with Greenacre Park to explore all options to avoid shadow impacts from new buildings. (Brewer) According to recent shadows models commissioned by the Foundation, the proposed rezoning will result in 6 development sites placing additional shade on the park and thus causing significant adverse impacts to the park. Afternoon sun will virtually be eliminated. (Cremmins) The DEIS must characterize the shadows impacts on Greenacre Park as significant. (Rizzo) Specifically, Greenacre Park, a beautiful vest-pocket park on East 53rd Street—an unusually leafy and restful place of respite for local workers and residents -- is likely to see significant shadow impacts as a result of some of the buildings that will go up. This would hurt the park's ability to grow the foliage that is such an essential element of its appeal. As we work to create new public space in the area, it would be irresponsible to fail to protect the space that we already have. (Garodnick)

**Response:** The duration of direct sunlight on Greenacre Park under the Proposed Action was included in the FEIS, in response to comments. During the May 6 and June 21 analysis period, approximately 50 percent or more of the area of Greenacre Park would experience 4 to 5 hours of sunlight during the morning and early afternoon hours of these periods (see Chapter 5, "Shadows," for more a more detailed explanation). These periods of direct sunlight are considered sufficient for vegetation growth, and, therefore, the Proposed Action would not compromise the viability of vegetation at the park.

The additional shadows models commissioned by the Greenacre Park Foundation were reviewed and were not conducted in accordance with the methodology of the *CEQR Technical Manual*. The development sites referenced in the study as placing additional shade on the park would not be constructed as illustrated. The sites within the proposed rezoning area were modeled inconsistent with the proposed zoning regulations. Additionally, the Proposed Action would not directly facilitate development along Second Avenue that could cast new incremental shadows on Greenacre Park. Further, assessing the development potential along Second Avenue in regard to possible incremental shadows on Greenacre Park is not feasible, as the nature of such potential developments cannot be predicted accurately, as it depends on many market and regulatory factors. In the future, if proposed development along Second Avenue that is not as-of-right has the potential to generate shadows on Greenacre Park, those effects would have to be analyzed and addressed in a separate environmental impact analysis.

With regards to whether the incremental shadows would affect the utilization of the park, it was observed on multiple site visits that the park is readily used during shaded conditions. The FEIS was updated to include photographs of the park's utilization (see Chapter 5, "Shadows," Figure 5-48f). Furthermore, as discussed in Chapter 5, the park was designed for intermittent sunlight, and as a secluded enclosure and respite from the surrounding dense urban environment. The Proposed Action would not affect the nature and use of the park due to the small areas of incremental shadow that were shown to mainly fall on already partially covered portions (the pergolas) of the park.

**Comment 19.5:** Development of all the projected and potential development sites would essentially eliminate afternoon sunlight in the park, harming vegetation and eliminating one of the

park's most important qualities-sunlight. The FEIS must include mitigation for these impacts. The Foundation recognizes that all shadow impacts do not rise to the level of significance. But Greenacre Park is not an ordinary public open space. (1) It is only lushly landscaped public open space in East Midtown. (2) East Midtown has one of the lowest open space rankings in the City and this rezoning is intended to substantially increase its employee population. (3) It is designed to give both residents and workers alike a respite from the hustle and bustle of midtown. (4) It is too small to allow users to migrate away from shadows. (Rizzo)

**Response:** Please refer to response to comments for Comments 19.3 and 19.4 regarding the Proposed Action's effect on the usability and viability of vegetation at Greenacre Park.

**Comment 19.6:** The development of Second Avenue, which has no height limits, will eliminate morning sun in the park and its ability to support diverse vegetation. The Foundation's second comment is that the FEIS must include a sensible mitigation measure. Only a small part of the rezoning area has the potential to shadow the park. And the development sites in that area will only shadow the park if certain trigger heights are reached. The Foundation thus asks for the creation of a review process for shadows that is only triggered if and when a relevant new building application is submitted. It should require applicants to disclose shadow impacts on the park and efforts to mitigate them. These kinds of nonbinding, review procedures are used in the Zoning Resolution where impacts are by their nature project and site-specific. (Rizzo)

**Response:** Comment noted. Please see response to Comment 19.3.

**Comment 19.7:** MAS is greatly concerned about shadow impacts on Greenacre Park. Despite the conclusion that incremental shadows would not affect vegetation or the public's enjoyment of the park, MAS believes substantive mitigation measures, including but not limited to height and bulk limitations, should be implemented to reduce shadow effects on Greenacre Park from projected and potential development sites 7, 10, 11, C, D, and J. (MAS)

**Response:** As discussed in Chapter 5, "Shadows," of the EIS, new incremental shadows on Greenacre Park from the Proposed Action would not create significant adverse impacts (please refer to responses to Comments 19.3 and 19.4 regarding the Proposed Action's effect on the usability and viability of vegetation at Greenacre Park). As such, no mitigation measures for incremental shadows on Greenacre Park are necessary.

**Comment 19.8:** (1) The DEIS must recognize the critical importance the Park plays in serving the open space needs of the community; (2) The DEIS must accurately characterize the impacts on the Park as significant; (3) The DEIS must include mitigation of shadow impacts on the Park; (4) The DEIS should recognize the development potential on Second Avenue and the impacts it may have on the rezoning area. (The Greenacre Park Foundation)

**Response:** (1) Due to public concerns related to new incremental shadows on Greenacre Park that were voiced after the findings of the DEIS were published, additional analysis was added to Chapter 5, Shadows, regarding the nature and extent of these incremental shadows in response to comments received.

(2) In the FEIS, additional figures were provided to more fully characterize the extent of new incremental shadows cast on Greenacre Park. As detailed in Chapter 5, "Shadows,"



of the FEIS and illustrated on Figures 5-48c through 5-48e, new incremental shadows during the May 6 and June 21 analysis periods would fall primarily on features of Greenacre Park that are already providing shade relief for park users (i.e., trees and lattices), such that new shadow falling in these areas would not compromise the use and enjoyment of the park. As further discussed in Chapter 5, Greenacre Park is projected to receive between 4 and 6 hours of direct sunlight during the morning and early afternoon hours of both the May 6 and June 21 analysis periods, such that vegetation within the park would not be jeopardized. Based on the foregoing analysis, the incremental shadows associated with the Proposed Action that are projected to fall on Greenacre Park would not create significant adverse impacts.

(3) As previously discussed, new incremental shadows associated with the Proposed Action that are projected to fall on Greenacre Park would not create significant adverse impacts (see Chapter 5, “Shadows,” and response to comment 19.2 for further details). As such, no mitigation measures are necessary.

(4) As illustrated on Figure 1-1, the rezoning area boundary only extends to Second Avenue at the southeast portion of the rezoning area, approximately 10 blocks south of Greenacre Park. As such, the Proposed Action would not directly facilitate development along Second Avenue that could cast new incremental shadows on Greenacre Park. Assessing the development potential along Second Avenue in regard to possible incremental shadows on Greenacre Park is not within the purview of the CEQR analysis as it is outside the proposed zoning area, and further depends on many market and regulatory factors. In the future, if proposed development along Second Avenue that is not as-of-right has the potential to generate shadows that would on Greenacre Park, those effects would have to be analyzed and addressed in a separate environmental impact analysis.

**Comment 19.9:** MAS questions the validity of the DEIS recommendation to install artificial lighting on the exterior of St. Bart’s Church and Community House in response to shadows and strongly urges that the EIS include an evaluation of potential bulk regulation changes to the site that would reduce shadow impacts. (MAS)

**Response:** Between publication of the Draft and Final EIS, measures to mitigate the identified shadows impact on St. Bartholomew’s Church and Community House were examined, including exploration of feasible changes to the height and bulk regulations governing certain Projected and Potential Development Sites and the provision of artificial lighting to simulate sunlit conditions. Please refer to Chapter 19, “Mitigation,” and to Appendix O, “Additional Shadows Mitigation Analysis of St. Bartholomew’s Episcopal Church.”

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## 20. Urban Design and Visual Resources

**Comment 20.1:** We find the evaluation of the proposal’s impacts on critical view corridors to be highly flawed. Although many of the photo simulations contained in the DEIS clearly show that development under the Proposed Action would obscure critical views of historic buildings, in particular, the Chrysler Building, the Chanin Building, and the Waldorf Astoria New York Hotel, the DEIS concludes that no adverse visual resource impacts would occur. Therefore, we expect the FEIS to include an accurate analysis of the proposal’s impact on view corridors, particularly those that would be affected by the

rezoning and subsequent redevelopment of the Pfizer World Headquarters site (235 42nd Street) and substantive mitigation measures (e.g., bulk regulation changes) that would reduce impacts on visual resources. (MAS)

**Response:** The detailed analysis of visual resources in Chapter 7, “Urban Design and Visual Resources,” has been updated in the FEIS to provide additional information supporting the conclusion that no adverse visual resource impacts would occur under the Proposed Action. While some views would be partially impeded by the new projected development, the partially obstructed views are typical of new development within a highly dense urban environment such as East Midtown; the surrounding grid street system also provides a variety of viewing locations, and therefore while certain views would be obstructed in certain locations, these obstructions are considered moderate in effect and are not considered to cause a significant adverse impact as defined by the *CEQR Technical Manual*. Please refer to in-line modifications in FEIS Chapter 7, “Urban Design and Visual Resources,” for additional information.

**Comment 20.2:** The impact of the proposed changes to the Daylight Evaluation score does not seem to be disclosed or analyzed in the DEIS. (City Club)

**Response:** As explained in EIS Chapter 5, “Shadows,” the shadows assessment analyzed the effects of incremental shadows resulting from projected and potential developments on sunlight-sensitive resources, in accordance with the *CEQR Technical Manual*. Daylight evaluation scores are not part of the CEQR analysis.

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## 21. Solid Waste and Sanitation Services

**Comment 21.1:** The City should provide incentives for developers to install an automated garbage collection system similar to the one of Roosevelt Island. (Sanderson)

**Response:** As concluded in EIS Chapter 10, “Solid Waste and Sanitation Services,” the Proposed Action would not result in a significant adverse impact on solid waste and sanitation services. The net increment of 169.1 tons of solid waste generated per week under the Proposed Action would be a minimal addition to the City’s solid waste stream, representing 0.05 percent of current waste generation. The Proposed Action would not directly affect a solid waste management facility. The net increase in commercial solid waste handled by private carters would represent less than 1.0 percent of the SWMPs projected future commercial waste generation for the City, and the decrease in residential uses would result in a decrease in solid waste handled by the City of New York Department of Sanitation (DSNY), compared to the No-Action Condition. The net increase in waste generated due to the Proposed Action would not be significant relative to the total City- and region-wide solid waste management system. Mitigation measures are therefore not warranted for the Proposed Action.

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## 22. Transportation

**Comment 22.1:** The DEIS identifies significant impacts at pedestrian access ways at three subway stations (GCT, 42-Bryant Park and Lex-53rd), two of which would be unmitigated under the proposal. MAS contends that the pre-identified transit improvements under the proposal

should have anticipated and addressed potential adverse impacts to pedestrian circulation at transit stations in the project area. (MAS)

**Response:** As described in EIS Chapter 1, "Project Description," MTA studied the area's transit network to identify its primary issues and conducted extensive engineering and costing analyses to deliver a list of feasible transit improvements to address them. The pre-identified list of transit improvements would most benefit Greater East Midtown office workers, visitors, and residents to address current issues that impact the area's transit network and anticipate potential needs of the area based on future development. As such, the pre-identified transit improvements were not specifically developed to mitigate potential significant adverse impacts to subway station resulting from additional trips from Projected Development Sites.

As described in Chapter 19, "Mitigation," mitigation measures for the significant adverse impact to one stairway at the 42nd St-Bryant Park subway station are considered infeasible and this impact would remain unmitigated. Between publication of the Draft and Final EIS, measures to mitigate significant adverse impacts at the Grand Central 42nd Street and Lexington Avenue-53rd Street subway stations have been evaluated by New York City Transit (NYCT) and are identified in Chapter 19, "Mitigation." Some of the significant adverse impacts to escalators at these two stations could be mitigated by operating the escalators at a higher speed (100 feet per minute versus 90 feet per minute). Operating the escalators at a higher speed would also mitigate the significant adverse impact at one stairway during the PM peak hour (free zone stair KC). NYCT will perform a monitoring program to assess pedestrian operations and conditions at these two subway stations as developments are constructed and reevaluate the need for improvement measures.

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## 23. Conceptual Analysis and Alternatives

**Comment 23.1:** For a project of this magnitude we find the DEIS Alternative and Conceptual Analyses to be deficient. The DEIS discusses which qualifying development sites could increase density by a 3.0 FAR by utilizing special permits to construct a public concourse, make transit improvements, permit a hotel, and modify the Subdistrict's bulk and qualifying site regulations, but it does not include an actual analysis of this or other alternatives to the proposal. At a minimum, we expect the FEIS to include an evaluation of shadow impacts on open space and historic resources from the sites that could utilize the special permit option to increase FAR and building height. (MAS)

**Response:** As discussed in EIS Chapter 21, "Conceptual Analysis," the RWCDS does not include specific development sites that would achieve the higher maximum FARs available under the potential special permits, since the number and locations of sites that may utilize the discretionary actions cannot be predicted with certainty. Therefore, the analysis provided in both the EIS is conceptual rather than site specific and serves to generically assess potential environmental impacts that could result from development at higher FAR pursuant to the various special permit mechanisms. Application for each of the proposed special permits would be subject to a separate review and discretionary approval and any environmental impacts associated with such action would be assessed and disclosed pursuant to separate environmental review, with a project-specific analysis beyond what is analyzed in the conceptual analysis. As provided in the DEIS, the conceptual analysis

does consider how potential changes to bulk and height on certain Conceptual Development Sites would affect shadows on sunlight sensitive

**Comment 23.2:** An alternative should be considered that omits the area east of Third Avenue from the rezoning. (City Club)

**Response:** As provided in EIS Chapter 20, "Alternatives," an alternative scenario, which considered the modification of the easterly boundary north of the center line between East 47th and East 48th streets, was analyzed. The assessment of this alternative scenario concluded that removal of this segment of the rezoning area would not reduce or lessen any of the impacts under the Proposed Action. The complete omission of Third Avenue from the subdistrict would not advance the purpose and need of the Proposed Action. As described in Chapter 1, "Project Description," of the EIS, the primary objective of the Proposed Action is to facilitate the construction of new, state of the art, sustainable office buildings within East Midtown. The proposed removal of Third Avenue from the subdistrict would be detrimental to the purpose and need of the Proposed Action.

TOC updated 5-19-17

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