



TECHNICAL MEMORANDUM 008

CEQR No. 03DCP031M

**Block 4 Contribution-in-Kind – Section 93-32(b)
July 18, 2017**

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A. INTRODUCTION

The Applicants, 509 W 34, L.L.C. and 509 W 34 TRS, L.L.C. (the “Co-Applicants”), are seeking an authorization pursuant to Section 93-32(b) of the New York City Zoning Resolution (the Zoning Resolution or ZR) to permit a contribution-in-kind to the Hudson Yards District Improvement Fund (the “Proposed Action”). In order to earn the contribution-in-kind floor area bonus allowed under Section 93-32(b), the Co-Applicants propose that the site comprising a portion of the property located at 438 Eleventh Avenue (Block 708, p/o Lot 1) in the Borough of Manhattan (the “Granting Site”) be improved as a portion of Hudson Boulevard and Park. The proposed receiving site for the contribution-in-kind is the property located at 66 Hudson Boulevard (Block 706, Lots 17, 20, 29, 35 and 36) in the Borough of Manhattan (the “Receiving Site”).

The Proposed Action is subject to environmental review under the State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review (CEQR). This technical memorandum addresses whether the Proposed Action would result in any new or different significant adverse impacts not already identified in the Final Generic Environmental Impact Statement completed by the City of New York Planning Commission (“CPC”) and the Metropolitan Transportation Authority (“MTA”), as co-lead agencies for the No. 7 Subway Extension-Hudson Yards Rezoning and Development Program (CEQR No. 03DCP031M) on November 8, 2004 (the “FGEIS”).

This technical memorandum addresses: (i) the proposed development under the Proposed Action of a commercial building at the Receiving Site and (ii) the proposed improvement of the Granting Site as a portion of the Hudson Boulevard and Park (collectively, the Proposed Project).

B. OVERVIEW OF THE FGEIS

The FEIS was completed on November 8, 2004. On November 22, 2004, the CPC approved Application No. N040500(A) ZMM and related actions, which together established the Special Hudson Yards District on the Far West Side of Midtown Manhattan. The approved actions consist of Alternative S, which was analyzed in Chapter 26, “Alternatives,” of the FGEIS, together with

modifications to Alternative S made by the CPC and City Council and assessed in Technical Memoranda, dated November 17, 2004, January 14, 2005, August 4, 2005, and September 14, 2005. During the ULURP process, text changes were identified that required subsequent actions and these were assessed in a Technical Memorandum dated December 2, 2005. Since that time, additional text changes were also identified and adopted to clarify the text, eliminate inaccurate references in the text and add new provisions, and these were assessed in a Technical Memorandum dated February 8, 2008.

The Hudson Yards Rezoning component of the project included zoning and related land use actions that would allow approximately 26 million square feet of commercial development, 13.6 million square feet of residential development as well as hotel and retail uses, a new midblock boulevard between Tenth and Eleventh Avenues and substantial new open spaces.

The proposed action analyzed in the 2004 FGEIS and subsequent Technical Memoranda had multiple elements that were assumed to be developed or implemented over a period of 20 years or more. The FGEIS assessed the future conditions for the years 2010 and 2025. The 2025 analysis year was based on long-term projections of the Hudson Yards area's potential to capture a share of regional growth in office space, hotel rooms, and households, with accompanying increases in retail space. These projections were conservatively assumed in the FGEIS to occur by 2025.

As described in the 2004 FGEIS, the sites most likely to be developed over time as a result of the rezoning were identified based on a set of criteria that focused on size of the site, its location, its current utilization and land use, and the opportunity for assemblages and use of development rights from adjacent properties. The sites that were most likely to undergo new development were defined as Projected Development Sites; the development projection on these sites comprised the reasonable worst-case development scenario (RWCDs) for analysis in the FGEIS. A number of other sites with smaller footprints and less potential for redevelopment or conversion were also addressed in the FGEIS and defined as Potential Development Sites. In all, 99 development sites were identified, 46 of which are considered to be Projected Development Sites, 1 of which could be either projected or potential, and the remaining 52, Potential Development Sites.

Following the 2004 approvals discussed above, the Special Hudson Yards District became effective following City Council approval in January 2005.

C. ACTIONS NECESSARY TO FACILITATE THE PROPOSAL

The Special Hudson Yards District includes an open space network consisting chiefly of a linear north-south park bordered by a new tree-lined boulevard, known as the Hudson Boulevard and Park that, upon completion, will run from 33rd Street to 39th Street between Tenth and Eleventh Avenues, with portions built on new platforms above the existing Amtrak rail cut that runs through the Special District. Phase 1 of Hudson Park and Boulevard opened to the public in 2015 and runs from West 33rd Street to West 36th Street (Blocks 1 through 3). Phase 2 (Blocks 4 through 6) is not yet under construction.

Under ZR Section 93-32, no development is permitted within Phase 2 of Hudson Boulevard and Park, and, with certain exceptions only, no existing building in this area may be enlarged. Under

ZR Section 93-32(a), unused floor area on properties located in Phase 2 may be transferred to receiving sites in the Large-Scale Plan Subdistrict A or Subareas D1 or D2 of Hell's Kitchen Subdistrict D of the Special District. In the event all of the floor area appurtenant to a property within Phase 2 is transferred to a receiving site, the property must be cleared and conveyed to the City in order to allow for its improvement as part of Hudson Boulevard and Park.

Under ZR Section 93-32(b), prior to conveying a property located in Phase 2 to the City, an owner may seek a CPC authorization for a floor area bonus, known as a 'contribution-in-kind' to the Hudson Yards District Improvement Fund, by improving the property in accordance with the approved plan for the Hudson Boulevard and Park. Under Section 93-32(b), the Commission determines the reasonable cost of the improvements, taking into account site acquisition and site preparation costs, and grants a floor area bonus calculated by dividing such costs by the District Improvement Fund Bonus rate. Under ZR Sections 93-21 and 93-32(b), this floor area bonus may be utilized in lieu of or in combination with the District Improvement Fund bonus on receiving sites located within Large-Scale Plan Subdistrict A of the Special District in order to achieve an increase from a floor area ratio (FAR) of 10.0 to up to 18.0 FAR. An owner can further increase the maximum permitted floor area on a site within the Large-Scale Plan Subdistrict A through a transfer of floor area from the Eastern Rail Yards. Under Section 93-32(b), the owner of a receiving site may not accept a temporary certificate of occupancy for the portion of the development or enlargement that utilizes the contribution-in-kind floor area bonus until the Chairperson has certified that the improvements are substantially complete and usable by the public.

The Co-Applicants seek an authorization under Section 93-32(b) for the grant of a contribution-in-kind floor area bonus for the improvement of the property located at 438 Eleventh Avenue (Block 708, p/o Lot 1) as part of Block 4 of the Hudson Boulevard and Park (Block 4), with the bonus floor area proposed to be utilized at 66 Hudson Boulevard (Block 706, Lots 17, 20, 29, 35 and 36) in order to increase the maximum base FAR for that site above 10.0 FAR. For this purpose, 438 Eleventh Avenue and 66 Hudson Boulevard are referred to, respectively, as the Granting Site and the Receiving Site.

In connection with the Proposed Action, 509 W 34, L.L.C., the owner of the Receiving Site and one of the Applicants, will seek the following additional approvals to facilitate the development of a commercial building on the Receiving Site:

- Certification by the CPC Chairperson pursuant to ZR Section 93-31 for the increase of floor area pursuant to the District Improvement Fund Bonus; and
- Certification by the CPC Chairperson pursuant to ZR Section 93-34 for the increase of floor area via distribution of floor area from the Eastern Rail Yard.

D. DESCRIPTION OF THE PROJECT SITE

The Granting Site is in the Phase 2 Hudson Boulevard and Park, and forms part of Block 4, which is located midblock within the former block bounded by West 36th Street to the south, Tenth Avenue to the east, West 37th Street to the north, and Eleventh Avenue to the west. The Granting Site is an irregular L-shaped lot that covers the northern and western sections of Block 4. It comprises the eastern portion of the parcel of land designated as Block 708, Lot 1 and has a lot

area of 23,378.08 square feet. It is unimproved except for an open rail cut for the Amtrak Empire Line, which traverses the site pursuant to an easement, and does not contain any existing floor area. The Granting Site is in underlying C6-2 and C6-4 zoning districts and may be utilized as a “granting site,” as defined in ZR Section 93-32.

The Receiving Site is located two blocks to the south of the Granting Site. It occupies the entire block bounded by West 35th Street to the north, Tenth Avenue to the east, West 34th Street to the south, and Hudson Boulevard East to the west. The Receiving Site is located within Subarea A2 of the Large-Scale Subdistrict A in the Special Hudson Yards District. The Receiving Site is in an underlying C6-4 zoning district and may be treated as a “receiving site,” as defined in ZR Section 93-32. The Receiving Site has a lot area of 67,451.83 square feet.

Both the Granting Site and the Receiving Site are subject to Hazardous Materials and Noise (E) Designations (E-137) established as part of the FGEIS. In order to comply with the requirements of the Hazardous Materials (E) Designation, the Proposed Project would require additional investigation and documentation, including a Remedial Investigation Work Plan/Health and Safety Plan that requires approval of the New York City Mayor’s Office of Environmental Remediation (OER), a Remedial Investigation (Phase 2 Subsurface Investigation), a Remedial Action Plan (RAP) or Remedial Action Work Plan (RAWP), and a Construction Health and Safety Plan (CHASP). The Noise (E) Designation requires sufficient window/wall attenuation on all facades to maintain an interior noise level of 45 dBA for residential uses and 50 dBA for commercial use as well as an alternate means of ventilation that will allow for the maintenance of a closed-window condition.

E. DESCRIPTION OF THE PROPOSED PROJECT

The new development on the Receiving Site is a Class A office tower that will contain approximately 2,225,910.39 square feet of floor area or 33.0 FAR. All floor area is anticipated to be for commercial uses. Under ZR Section 93-21, the maximum base FAR is 10.0 (674,518.30 square feet), which may be increased by 8.0 FAR under Row B of the floor area table in that section to 18.0 FAR (1,214,132.94 square feet) (the Row B floor area) through contributions to the Hudson Yards District Improvement Fund under ZR Section 93-31, transfers of floor area from Phase 2 under ZR Section 93-32(a), and contributions in kind under ZR Section 93-32(b). In addition, under Row C of the floor area table in ZR Section 93-21, the FAR on the receiving site may be increased by an additional 15.0 FAR to 33.0 FAR (2,225,910.39 square feet) through the transfer of floor area from the Eastern Rail Yard pursuant to ZR Section 93-34 (the Row C floor area).

The Co-Applicants estimate that the site preparation and construction costs to improve the Granting Site as part of Hudson Boulevard and Park are \$38,476,660 and seek an authorization for a contribution-in-kind to the Hudson Yards District Improvement Fund of 303,563 square feet. The contribution-in-kind floor area will be utilized in combination with a contribution to the District Improvement Fund made pursuant to a related application made under ZR Section 93-31, in order to allow for an increase of floor area on the Receiving Site from 10.0 FAR to 18.0 FAR. 509 W 34, L.L.C. will also make a related application pursuant to Section 93-34 for certification for a transfer of floor area from the Eastern Rail Yards to increase the floor area on the Receiving Site from 18.0 FAR to 33.0 FAR.

The proposed commercial development on the Receiving Site described above can be developed with or without the Proposed Action. Without an authorization by the City Planning Commission to make a Contribution-in-Kind to the Hudson Yards District Improvement Fund, 509 W 34, L.L.C. can increase the Row B floor area to the maximum 8.0 FAR entirely through a contribution to the District Improvement Fund made pursuant to Section 93-31.

The Granting Site will be improved as a portion of Block 4 pursuant to plans approved by the Public Design Commission. The plan was developed in consultation with the Department of Parks and Recreation (DPR) and the Department of Transportation (DOT). The western portion of the Granting Site would be improved as a section of Hudson Boulevard West, running from West 36th Street to West 37th Street. Hudson Boulevard West is mapped at a width of 50 feet and would contain a 30 foot wide one-directional roadway and a 15 foot wide sidewalk on its western edge. The Boulevard would be designed to DOT standards and would accommodate three lanes of traffic running in a southerly direction. The park portion would be located on the eastern edge of the Boulevard. The park portion would contain a mix of coniferous and deciduous trees and other shrubbery. Curved pathways will run through the park and the park will contain a variety of seating, including moveable tables and chairs, park benches, and large marble block seating. The Granting Site is expected to be completed in 2020.

F. ANALYSIS

The 2004 FGEIS examined in detail the potential for significant adverse impacts consistent with CEQR. Areas of concern included: land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space and recreational facilities; shadows; architectural historic resources; archaeological resources; urban design and visual resources; neighborhood character; natural resources; hazardous materials; waterfront revitalization program; infrastructure; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise and vibration; construction; and public health. The 2004 FGEIS also included an assessment of a broad range of 21 alternatives to the Proposed Action. The approved actions are largely described as Alternative S in the 2004 FGEIS, with subsequent CPC and City Council modifications.

As described above, the 2004 FGEIS identified the sites most likely to be developed over time as a result of the rezoning, based on a set of criteria that focused on size of the site, its location, its current utilization and land use, and the opportunity for assemblages and use of development rights from adjacent properties. Forty-six sites were identified as most likely to undergo new development and were defined as Projected Development Sites. The development as a result of the proposed rezoning was conservatively assumed in the FGEIS to occur by 2025.

The Receiving Site under consideration in this technical memorandum is Projected Development Site No. 5 in the 2004 FGEIS, consisting of Block 706, Lots 17, 20, 29, 35 and 36. Under Alternative S, Projected Development Site No. 5 was assumed to be built out to the maximum FAR (33.0), all of which would be commercial floor area. The Applicant proposes to develop a commercial building on the Granting Site with the maximum allowable FAR of 33.0 by approximately 2020, within the 2025 build year of the 2004 FGEIS.

Under the Proposed Action, the amount of floor area and use of the proposed development on the Receiving Site would be consistent with the environmental analysis conducted under the 2004 FGEIS. The Proposed Action relates solely to the method by which the Applicants will achieve the maximum allowable FAR. The Proposed Action will enable the use of a Contribution-in-Kind to the Hudson Yards District Improvement Fund and determine the amount of floor area bonus earned by the Contribution-in-Kind. Without the Proposed Action, the Applicant could achieve the same amount of floor area bonus through other mechanisms—either through a contribution to the Hudson Yards District Improvement Fund under ZR Section 93-31 or through a transfer of floor area from Phase 2 under ZR Section 93-32(a).

The 2004 FGEIS also projected the proposed improvement of the Granting Site. Alternative S included a number of new open space and park elements, including the construction of Hudson Boulevard and Park.

As stated in the 2004 FGEIS, the Midblock Park and Boulevard System would add 4.3 acres of mapped parkland when completed. As discussed in Chapter 7 of the FGEIS “Open Space and Recreation Facilities,” for the purpose of identifying adverse impacts related to open space, the 2004 FGEIS assumed that the portion of Hudson Boulevard and Park from West 34th Street to West 39th Street would be completed by 2025. The 2004 FGEIS concluded that Alternative S would improve open space ratios, relative to a future without the proposed action, and that no significant adverse impact to open space resources would occur. The Granting Site is a portion of the Hudson Boulevard and Park considered and analyzed in the 2004 FGEIS.

The Granting Site and Receiving Site are subject to (E) designations (E-137) relating to Hazardous Materials and Noise, and the Proposed Action would not affect the requirements imposed by those (E) designations. Under the Hazardous Materials (E) Designation, the Proposed Project would continue to require additional investigation and documentation, including a Remedial Investigation Work Plan/Health and Safety Plan that requires approval of the New York City Mayor’s Office of Environmental Remediation (OER), a Remedial Investigation (Phase 2 Subsurface Investigation), a Remedial Action Plan (RAP) or Remedial Action Work Plan (RAWP), and a Construction Health and Safety Plan (CHASP). The Proposed Action would also not affect the (E) designation relating to Noise, which requires sufficient window/wall attenuation on all facades to maintain an interior noise level of 45 dBA for residential uses and 50 dBA for commercial use as well as an alternate means of ventilation that will allow for the maintenance of a closed-window condition (during operational conditions).

G. CONCLUSION

The 2004 FGEIS projected that both the improvement of the Granting Site and the construction of the proposed development on the Receiving Site would be completed by 2025. The portion of the Block 4 consisting of the Granting Site is part of the larger network of new open space analyzed in the 2004 FGEIS and will increase the amount of open space in the area. The Proposed Action will also allow the Applicants to earn a floor area bonus commensurate with the reasonable cost of improving the Block 4 Portion through the ‘Contribution In Kind’ process. The floor area bonus will be used to increase the floor area available on the Receiving Site. The 2004 FGEIS projected

that the Receiving Site, Projected Development Site No. 5, would be built to the maximum FAR allowed with all available floor area bonuses (33.0 FAR).

Accordingly, the Proposed Action would not alter the conclusions of the 2004 FGEIS. The Proposed Action would not result in any new or different significant adverse impacts or require any new or different mitigation measures than those identified in the 2004 FGEIS.