

**Department of City Planning
City of New York**

MEMORANDUM

To: Members of the City Planning Commission

From: Robert Dobruskin, AICP RD

Date: January 26, 2018

Re: **Hudson Yards Rezoning: Hudson Boulevard and Park Text Amendment – TM009**
CEQR No. 03DCP031M
ULURP No. N180238 ZRM
SEQRA Classification: Type I

Attached is a Technical Memorandum (TM009) prepared by the Department for the above-referenced proposal. The Department is proposing a zoning text amendment of Section 93-32 of the City's Zoning Resolution (ZR) to facilitate the use of that Section's "contribution-in-kind" authorization. The purpose of the text amendment is to address certain limitations in the zoning text which DCP has come to recognize that may discourage private applicants from seeking the contribution-in-kind authorization.

This Technical Memorandum analyzes whether the proposed zoning text would result in any new or different significant adverse impacts not already identified in the Final Generic Environmental Impact Statement (FGEIS) for the No. 7 Subway Extension-Hudson Yards Rezoning and Development Program. The Technical Memorandum concludes that the proposed text would not result in any such impacts.

Based on our review, pursuant to the City's Environmental Quality Review process and NYCRR 617, the Environmental Assessment and Review Division concurs with the conclusion of the Technical Memorandum.

Attachment

cc: James Merani
Dominick Answini
Edith Hsu-Chen
Frank Ruchala
Annie White

Diane McCarthy
Olga Abinader
Pat Bussey
Mauricio Garcia
Susan Wong

Technical Memorandum 009

CEQR No. 03DCP031M

**Zoning Resolution Section 93-32(b) Text
Amendment**

January 22, 2018

A. INTRODUCTION

The Department of City Planning is seeking a text amendment of Section 93-32 of the New York City Zoning Resolution (the “Zoning Resolution” or “ZR”) to facilitate the use of that Section’s “contribution-in-kind” authorization (the “Proposed Action”). The purpose of the Proposed Action is to address certain limitations in the zoning text which DCP has come to recognize that may discourage private applicants from seeking the contribution-in-kind authorization.

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 the Proposed Action of a modification to the text of Section 93-32 of the ZR. The Proposed Action would only facilitate the application process and not affect the underlying analysis framework and resulting reasonable worst case development scenario (“RWCDs”) that was the subject of the FGEIS; therefore, no additional development would be realized under this Proposed Action.

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 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 New York City Council (“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.

Following the 2004 approvals discussed above, the Special Hudson Yards District became effective following City Council approval in January 2005. Within the District, six sub districts were established and within certain sub districts, subareas were established.

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 Boulevard and Park 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 Subareas A2-A5 of the Large-Scale Plan Subdistrict or Subareas D1 or D2 of Hell's Kitchen Subdistrict D of the Special District (per figure "Special Hudson Yards District Subdistricts and Subareas"). 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" ("CIK") to the Hudson Yards District Improvement Fund, by improving the property in accordance with the approved plan for the Hudson Boulevard and Park. Under ZR Section 93-32(b), the CPC 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 Subareas A2-A5 of the Large-Scale Plan Subdistrict or Subareas D1 or D2 of Hell's Kitchen Subdistrict D of the Special District 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 Subareas A2-A5 of the Large-Scale Plan Subdistrict through a transfer of floor area from the Eastern Rail Yards. Under ZR 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 Department is seeking a zoning text amendment to amend ZR Section 93-32 of the ZR to facilitate applications for the authorization of ZR Section 93-32(b) which allows the contribution-in-kind floor area bonus and also to clarify certain paragraphs of the text. The Department aims to

modify the text for the following reasons:

- 1) Before an applicant can obtain the authorization, ZR Section 93-32(b) states that an applicant must first meet the conditions of ZR Section 93-32(a) - the section under which floor area may be transferred off the Hudson Boulevard and Park sites - for lots that are the subject of the CIK application. These conditions include: the acquisition of the Hudson Boulevard and Park lot or lots, the selling off all of the development rights, and clearing and deeding the site to the City. That process can delay CIK approval which may imperil any CIK proposal to improve the Hudson Boulevard and Park (e.g., the applicant may have difficulty securing financing without confirmation that the authorization has been granted).
- 2) The CIK requires a construction schedule at the time of the authorization but the text is unclear how detailed such a construction schedule must be.
- 3) Only owners of the granting and receiving site can apply for the CIK. But often (see Issue #1, above) an applicant is seeking the authorization prior to having site control.
- 4) The current zoning doesn't explicitly outline how the CPC, when granting the CIK authorization, should calculate the bonus.
- 5) The current text does not clearly outline the required legal documents for both the floor area transfer certification (ZR 93-32(a)) and the CIK authorization.

In response to these issues with the text, the text is proposed to be amended as follows (new text is shown as underlines, deleted text is shown as crossed out).

* * *

Article IX - Special Purpose Districts

Chapter 3

Special Hudson Yards District

93-00

GENERAL PURPOSES

The "Special Hudson Yards District" established in this Resolution is designed to promote and protect public health, safety and general welfare. These general goals include, among others, the following specific purposes:

- (a) to facilitate and guide the development of an environmentally beneficial, transit-oriented business and residence district by coordinating high density development with expanded mass transit facilities, extended and improved subway lines, improved pedestrian access to mass transit facilities, improved pedestrian circulation and avoidance of conflicts with vehicular traffic;
- (b) to control the impact of buildings on the access of light and air to the streets and avenues of the Hudson Yards area and the surrounding neighborhoods;
- (c) to provide an open space network comprised of public parks, public open space and public access areas through the establishment of a large-scale plan and other controls and incentives;

- (d) to preserve the pedestrian orientation of ground floor uses, and thus safeguard a traditional quality of the City;
- (e) to preserve the low- and medium-scale residential character of the Hell’s Kitchen area;
- (f) to provide a transition between the Hudson Yards District and the Clinton community to the north;
- (g) to provide a transition between the Hudson Yards District and the Garment Center to the east;
- (h) to provide a transition between the Hudson Yards District and the West Chelsea area to the south;
- (i) to promote the use of the Jacob K. Javits Convention Center to the west by creating an active and attractive business district that facilitates pedestrian access to the Center;
- (j) to provide flexibility of architectural design within limits established to assure adequate access of light and air to the street, and thus to encourage more attractive and economic building forms;
- (k) to provide a transition between the Hudson Yards District and the Hudson River to the west;
- (l) to facilitate the restoration and reuse of the High Line elevated rail line as an accessible, public open space through special height and setback regulations;
- (m) to promote the most desirable use of land and building development in accordance with the District Plan for the Hudson Yards and thus conserve the value of land and buildings and thereby protect the City’s tax revenues; and
- (n) to limit the amount of off-street parking based on regulations that address the anticipated needs of residents, workers and visitors to the Hudson Yards Area, consistent with the objective of creating an area with a transit- and pedestrian-oriented neighborhood character.

* * *

**93-30
SPECIAL FLOOR AREA REGULATIONS**

* * *

**93-32
Floor Area Regulations in the Phase 2 Hudson Boulevard and Park**

In the #Phase 2 Hudson Boulevard and Park#, no #development# shall be permitted and, except as provided in Section 93-051 (Applicability of Article I, Chapter 1), no #building# shall be #enlarged#. However, #floor area# from a granting site within the #Phase 2 Hudson Boulevard and Park# may be transferred to a receiving site in accordance with the provisions of paragraph (a) of this Section.

For the purposes of this Section, a “granting site” shall mean a #zoning lot#, or portion thereof, within the #Phase 2 Hudson Boulevard and Park# and the #lot area# of such granting site shall include any area on such site designated on the City Map as Hudson Boulevard or #public park#, and a “receiving site” shall mean a #zoning lot#, or portion thereof, within Subareas A2 through A5 of the Large-Scale Plan Subdistrict A or Subareas D1 or D2 of Hell’s Kitchen Subdistrict D, to which #floor area# from a granting site has been transferred.

Special regulations for certain #zoning lots# partially within the #Phase 2 Hudson Boulevard and Park# are set forth in Section 93-33.

(a) Transfer of floor area by certification

The Chairperson of the City Planning Commission shall allow, by certification, the applicable basic maximum #floor area ratio# of a receiving site to be increased up to the maximum amount specified in Section 93-21 or 93-22, as applicable, through the transfer of #floor area# from a granting site, provided that:

- (1) the maximum amount of #floor area# transferred from a granting site shall not exceed the #floor area ratio# permitted on the granting site, as listed below, less any existing #floor area# to remain on the granting site:

District	Maximum #floor area ratio#
C2-8	7.5
C6-2	6.02
C6-4	10.0
M1-5	5.0

- (2) each transfer, once completed, irrevocably reduces the amount of #floor area# that may be transferred from the granting site by the amount of #floor area# transferred; _
- (3) the maximum amount of #floor area# transferred to a receiving site shall be based on an amount not to exceed the #floor area ratio# permitted on a #zoning lot# through such transfer pursuant to Section 93-21 or 93-22, as applicable. In the event a granting site generates more #floor area# than is permitted on a receiving site, the Chairperson shall certify that such excess #floor area# be credited towards future #floor area# transfers pursuant to this Section; and.
- (4) where all #floor area# shall be transferred from a granting site pursuant to one or more such certifications, all certificates of occupancy have been surrendered for such granting site, all structures on such granting site have been demolished, and such granting site has been conveyed to the City for improvement, where applicable, as a #public park# or #street#, as provided for on the City Map.-

Where, as a result of the transfer of #floor area# pursuant to this paragraph (a), the amount of #floor area# on a receiving site is less than the maximum allowable as specified for the applicable subarea in Row B in the table in Section 93-21 and Row C in the table in Section 93-22, any additional #floor area#, up to the maximum #floor area ratio# permitted on the receiving site as specified in such rows, may be achieved only through contributions to the #Hudson Yards District Improvement Fund# pursuant to Section 93-31 (District Improvement Fund Bonus), an increase in #floor area# pursuant to paragraph (b) of this Section or Section 93-33 (Special Regulations for Residual Portions of Zoning Lots Partially Within the Phase 2 Hudson Boulevard and Park), or the Inclusionary Housing Program pursuant to Section 23-154, as modified by Section 93-23.

An application filed with the Chairperson for the transfer of #floor area# pursuant to paragraph (a) shall be made jointly by the owners of the granting site and receiving site, and shall include a site plan and #floor area# zoning calculations for the granting site and the receiving site, and a copy of the transfer instrument legally sufficient in both form and content to effect such a transfer, together with notice of the restrictions upon further development of the granting site and the receiving site.

Notices of restrictions shall be filed by the owners of the granting site and receiving site in the Borough Office of the Register of the City of New York, indexed against the granting site and the receiving site, a certified copy of which shall be submitted to the Chairperson of the Commission. Receipt of certified copies thereof shall be a pre-condition to issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement# on the receiving site which incorporates #floor area# transferred pursuant to paragraph (a).

(b) Authorization for contribution-in-kind

The City Planning Commission may authorize a contribution-in-kind to the #Hudson Yards District Improvement Fund# for a receiving site, provided that:

- (1) the conditions for transferring #floor area# set forth in paragraph (a) of this Section have been met as of the date of the authorization or will be met in accordance with agreements or instruments entered into pursuant to paragraph (b)(3) of this Section;
- (2) the granting site will be improved, at the applicant's expense, as a #public park# or #street#, as provided for on the City Map, prior to conveyance to the City; and
- (3) the applicant, or an affiliate of such applicant, has entered into an agreement or provided instruments in a form satisfactory to the City, providing for the improvement of the granting site as a #public park# or #street# pursuant to an agreed-upon construction schedule. The construction schedule may be adjusted from time to time in accordance with the provisions of such agreement or instruments and shall include progress milestones, including the date by which the improvements will be 50 percent complete, and a date by which the improvements will be substantially complete and usable by the public. In the event that the conditions for transferring #floor area# set forth in paragraph (a) of this Section have not been completed as of the date of this authorization, such agreement or instruments shall also provide that such conditions will be met, to the extent applicable, pursuant to an agreed-upon schedule.

In order to grant such authorization, the Commission shall find that the #public park# or #street# has been designed in accordance with the approved plan for the Hudson Boulevard and Park, or as an appropriate interim design, in consultation with the Department of Parks and Recreation or Department of Transportation.

[All of the following text of this section, which was not previously indented, is indented 0.5" and included as part of paragraph (b).]

~~The amount of increased #floor area# generated by the contribution in kind shall be as determined by the Commission, which~~ The Commission shall determine the reasonable cost of such improvement, including any acquisition and site preparation costs, and shall permit a #floor area# bonus in relation thereto divide this reasonable cost by the contribution amount per square foot of the District Improvement Bonus, as determined pursuant to Section 93-31, and in effect on the date of authorization of the contribution-in-kind pursuant to this paragraph (b), in order to determine the amount of increased #floor area# generated by the contribution-in-kind. In making such determination, the Commission may consult with an appraiser or engineer at the applicant's expense. In the event the contribution-in-kind results in an amount of #floor area# in excess of what is permitted on the receiving site, the Commission shall authorize that such excess #floor area# be credited towards future #floor area# increases pursuant to Section 93-31.

The owner of the receiving site shall not apply for or accept a temporary certificate of occupancy for that portion of the #development# or #enlargement# identified as utilizing the increased #floor

area# permitted pursuant to this paragraph (b), and the Department of Buildings shall not issue a temporary certificate of occupancy for such portion until the Chairperson has certified that the improvements are substantially complete and usable by the public. The owner shall not apply for or accept a permanent certificate of occupancy for such portion of the #development# or #enlargement# nor shall the Department of Buildings issue a permanent certificate of occupancy for such portion until the improvements have been finally completed in accordance with the approved plans and such final completion has been certified by the Chairperson. A restrictive declaration in a form acceptable to the Chairperson shall be recorded against the receiving site in the Office of the Register of the City of New York in order to implement such restrictions.

~~An application filed with the Chairperson of the Commission for the transfer of #floor area# contribution-in-kind pursuant to this Section paragraph (b) shall be made jointly by the owners or contract vendees of the granting site and receiving site and shall, in all instances, include the party responsible either directly or through its affiliate, for the improvement of the granting site as a #public park# or #street# pursuant to the agreement or instruments entered into pursuant to paragraph (b)(3) of this Section, a site plan and #floor area# zoning calculations for the granting site and the receiving site, and a copy of the transfer instrument legally sufficient in both form and content to effect such a transfer, together with notice of the restrictions upon further development of the granting site and the receiving site.~~

~~Notice of restrictions shall be filed by the owners of the respective sites in the Borough Office of the Register of the City of New York, indexed against the granting site and the receiving site, a certified copy of which shall be submitted to the Chairperson of the Commission. Receipt of certified executed copies thereof shall be a precondition of the agreement or instruments required pursuant to paragraph (b)(3) of this Section, and of copies of the recorded restrictive declaration, shall be a precondition to the issuance of any a building permit, including any foundation or alteration permit, for any #development# or #enlargement# on the receiving site which incorporates a #floor area# bonus granted pursuant to this paragraph (b).~~

In no event shall a building permit for a #development# or #enlargement# utilizing a #floor area# increase pursuant to this paragraph (b) be granted for the receiving site until the Chairperson provides notice to the Commissioner of Buildings that the applicant or affiliate responsible for the improvement of the granting site, has provided acceptable evidence of site control for purposes of construction of the improvement.

93-33

Special Regulations for Residual Portions of Zoning Lots Partially Within the Phase 2 Hudson Boulevard and Park

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D. 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.

There are many sites within the Hudson Boulevard and Park that could be the subject of an application pursuant to ZR Section 93-32, although they are limited to, for granting sites, those within Phase 2 of the Hudson Boulevard and Park, and for receiving sites, those within Subareas A2-A5, D1 and D2 of the Special Hudson Yards District. However, the Proposed Action would only facilitate the application process and not affect the underlying fundamentals of the floor area transfer pursuant to ZR Section 93-32(a) or the CIK application pursuant to ZR Section 93-32(b). The potential granting and receiving sites would not change, nor would the amount of floor area able to be generated or transferred and so the Proposed Action would be consistent with the environmental analysis conducted under the 2004 FGEIS. Without the Proposed Action, an applicant could still obtain the authorization (pursuant to ZR Section 93-32(b)) although with the possible addition of time and expense depending on the applicant's situation. Also, if the time and expense made the 93-32(b) transaction impracticable, the same amount of floor area bonus could be obtained 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) or a combination.

The 2004 FGEIS also projected the proposed improvement of the Phase 2 portion of the Hudson Boulevard and Park. 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 analysis year of the FGEIS). 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 Phase 2 is a portion of the Hudson Boulevard and Park which was considered and analyzed in the 2004 FGEIS.

E. CONCLUSION

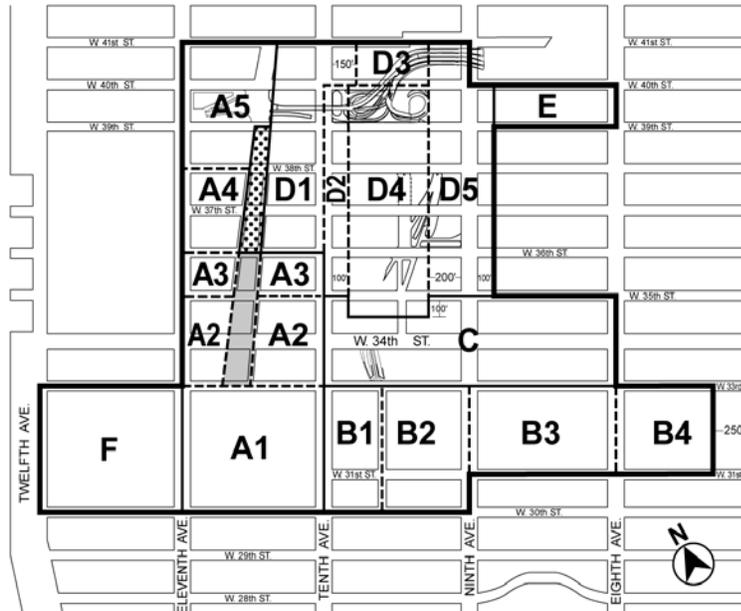
The Proposed Action would not affect the conclusions of the analyses presented in the 2004 FGEIS. The 2004 FGEIS projected that both the improvement of the granting sites within Phase 2 and the construction of developments on potential receiving sites would be completed by 2025. The Phase 2 portion of the Hudson Boulevard and Park is part of the larger network of new open space analyzed in the 2004 FGEIS and its construction will increase the amount of open space in the area.

Accordingly, 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.

Appendix A
Special Hudson Yards District

(12/21/09)

Map 1 - Special Hudson Yards District, Subdistricts and Subareas (93-A1)



- Special Hudson Yards District
- Subdistricts
- Subareas within subdistricts
- Phase 1 Hudson Boulevard and Park
- ▨ Phase 2 Hudson Boulevard and Park

Large-Scale Plan Subdistrict A

- Eastern Rail Yards Subarea A1
- Four Corners Subarea A2
- Subareas A3 through A5

Farley Corridor Subdistrict B

- Western Blocks Subarea B1
- Central Blocks Subarea B2
- Farley Post Office Subarea B3
- Pennsylvania Station Subarea B4

34th Street Corridor Subdistrict C

Hell's Kitchen Subdistrict D

- Subareas D1 through D5

South of Port Authority Subdistrict E

Western Rail Yard Subdistrict F