

TECHNICAL MEMORANDUM
EAST MIDTOWN REZONING AND RELATED ACTIONS
CEQR No. 13DCP011M
September 27, 2013

A. INTRODUCTION

The New York City Department of City Planning (DCP) has proposed zoning map and zoning text amendments, and a potential change to the City Map (collectively, the “Proposed Action”) affecting an approximately 70-block area within East Midtown, in Manhattan Community Districts 5 and 6. The rezoning area is generally bounded by East 39th Street to the south, East 57th Street to the north, Second and Third Avenues to the east and a line 150 feet east of Fifth Avenue to the west. The Proposed Action would ensure that East Midtown’s stature as a preeminent commercial district and one of the world’s best business addresses is retained, while providing for pedestrian network improvements in the area. The Draft Environmental Impact Statement (DEIS) for the Proposed Action was accepted as complete on April 19, 2013, by DCP, acting on behalf of the City Planning Commission (CPC) as lead agency. The Notice of Completion for the Final Environmental Impact Statement (FEIS) was issued on September 20, 2013 (CEQR No. 13DCP011M).

The FEIS considered a “Modified Proposal Alternative,” which reflected modifications to the proposed zoning text amendment pursuant to ULURP No. N130247(A) ZRM.¹ Following the publication of the FEIS, further modifications to the proposed text amendment have been identified as under consideration by the CPC (the “Potential CPC Modifications”). These modifications are detailed in Section B below.

This technical memorandum examines whether the Potential CPC Modifications would result in any new or different significant adverse environmental impacts not already identified in the FEIS. As set forth below, this technical memorandum concludes that the Proposed Action with the Potential CPC Modifications would not result in any new or different significant adverse impacts not already identified in the FEIS.

B. DESCRIPTION OF THE POTENTIAL CPC MODIFICATIONS

The Potential CPC Modifications consist of changes in the following areas: 1) Use Modification; 2) Sunrise Provision; 3) In-Kind Provision; 4) Building Performance Requirement; 5) Superior Development Special Permit; 6) Mass Transit Easement Requirement; 7) Height and Setback Controls; 8) Environmental Requirements; 9) DIB Pricing and Adjustment; 10) District Improvement Fund; 11) District Improvement Fund Committee and 12) Other Modifications. Each of these is described below.

¹The original zoning text amendment pursuant to ULURP No. N130247 ZRM was withdrawn on September 27, 2013.

1) USE MODIFICATION

Under the Modified Proposal Alternative considered in the FEIS, sites that utilized the District Improvement Bonus (DIB) could develop a maximum of 20 percent of the new building as a mix of hotels and residential uses as-of-right. In addition, sites with existing hotels would be permitted to maintain their total floor area in a new building as-of-right if the amount exceeded the 20 percent cap. The rest of the new building would be required to be developed as a mix of office and retail uses. Higher percentages of residential and hotel use, as well as all other permitted underlying uses, would be available only by use of the Use Modification Special Permit. The Use Modification Special Permit would restrict the amount of residential use which could be developed pursuant to the special permit to a maximum of 40 percent of the building.

Under the Potential CPC Modifications, up to 20 percent of a new building could be developed as use group 6E non-commercial clubs as-of-right. In addition, the Use Modification Special Permit would restrict the maximum amount of residential use that could be developed through the special permit to 25 percent, rather than 40 percent.

2) ‘SUNRISE’ PROVISION

The Modified Proposal Alternative restricted the granting of foundation and building permits for Qualifying Site development until July 1, 2017.

Under the Potential CPC Modifications, Qualifying Site developments on sites of less than 30,000sf in area would be permitted to obtain foundation and building permits upon enactment of the rezoning.

In addition, the Potential CPC Modifications would permit the CPC—for sites that utilize the Superior Development Special Permit, and propose substantial below-grade improvements—to modify the sunrise provision so as to obtain foundation and building permits up to one year earlier (July 1, 2016), on condition that no certificates of occupancy would be granted until 2020.

3) IN-KIND PROVISION

The Modified Proposal Alternative permitted new developments to undertake construction of projects on the District Improvement Fund (DIF) Committee’s Priority Improvement List in lieu of a monetary contribution into the DIF. This was permitted for all bonus floor area and was allowed as-of-right.

The Potential CPC Modifications would only allow use of the in-kind provision for the floor area above a required DIB contribution of 3.0 Floor Area Ratio (FAR). In addition, use of the In-Kind provision would be modified to require discretionary approval of the CPC through an authorization.

4) BUILDING PERFORMANCE REQUIREMENT

The Modified Proposal Alternative required new buildings that used the DIB to meet a higher energy efficiency standard—set at a minimum of 15% over the 2011 NYC energy code. The provision permitted the CPC to modify the provision by rule to keep the standard up to date.

The Potential CPC Modifications would require DCP to report to the CPC within 90 days of an update to the energy code and recommend modifications to keep the standard up to date. Following receipt of the report, the CPC would adopt a rule to modify the standard, as necessary. These modifications would also permit use of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Building Performance Rating method to meet the requirement.

5) SUPERIOR DEVELOPMENT SPECIAL PERMIT

The Modified Proposal Alternative permitted higher FARs than under the as-of-right framework through a new special permit for Superior Development.

As discussed in ‘Sunrise’ Provision above, the Potential CPC Modifications would permit modification of that provision through use of a modified Superior Development Special Permit. The modifications would also clarify the requirements of the application, the process for obtaining Metropolitan Transportation Authority (MTA) agreements and other approvals, and the timing necessary for required improvements to be completed. The Potential CPC Modifications would also permit in-kind improvements to be approved under the special permit process, in the event that the DIF Priority Improvement List has not yet been established as of the time of special permit review.

6) MASS TRANSIT EASEMENT REQUIREMENT

The Modified Proposal Alternative included requirements for sites in the Grand Central Subarea to provide easement volumes, if required by the MTA, to allow access between the street and the area’s below-grade network. The provision also permitted the development to improve the easement volume and count it toward the required Pedestrian Circulation Space requirements necessary for a new development.

The Potential CPC Modifications would clarify that easements could be utilized for access to all types of mass-transit facilities. In addition, the Potential CPC Modifications would modify the process for working with the MTA to identify the necessary on-site easement.

7) HEIGHT AND SETBACK CONTROLS

The Modified Proposal Alternative included a series of limited modifications to the Special Midtown District’s underlying height and setback controls to account for the high street walls found in the area, and lots adjacent to the Grand Central Terminal.

The Potential CPC Modifications would clarify the above-mentioned provisions describing how required streetwalls are to be treated for compliance purposes in both the Grand Central Subarea and along Park Avenue. In addition, these modifications would clarify the requirements for height and setback compliance for Qualifying Sites on Park Avenue by incorporating a new applicable Waldram diagram in the District’s appendix.

8) ENVIRONMENTAL REQUIREMENTS

The Potential CPC Modifications would modify the zoning text to require sites that use the DIB to comply with a series of measures to partially or fully mitigate the effects of new development as identified in the FEIS, or to avoid the potential for impacts, including:

- Projected and Potential DIB sites that contain an eligible resource identified in the FEIS would be required to follow Historic American Buildings Survey (HABS) protocol for documenting the building, prior to demolition;
- Projected and Potential DIB sites that are located within 90 feet of an eligible resource identified in the FEIS would be required to follow construction monitoring protocols similar to those for construction sites close to designated landmarks;
- Projected and Potential DIB sites identified in the FEIS as having the potential to result in shadow impacts would be required to develop an artificial or indirect lighting plan for affected stained-glass windows or demonstrate why doing so is infeasible,

East Midtown Rezoning and Related Actions

impracticable, would negatively affect the character or integrity of the historic resource, or that the plan has not been accepted by the resource's owner;

- Construction noise path and source controls would be required for development on Projected Sites 5, 6 or 7, in the event that the peak construction scenario conservatively analyzed in the FEIS involving simultaneous construction on all such sites occurs;
- Construction equipment used on Qualifying Sites will be required to meet emissions-related standards; and
- DIF funding may be used for studies needed to determine the need for, adjustment, and timing of mitigation and environmental measures as the build-out of the Subdistrict occurs.

9) DIB PRICING AND ADJUSTMENT

The Modified Proposal Alternative included an initial DIB rate of \$250 per square foot, which would be updated annually based on an included index. Adjustments could not fall below the initial \$250 rate.

The Modified Proposal Alternative permitted residential use (as described above in the Use Modification section), and anticipated a separate rate for the residential uses.

The Potential CPC Modifications would modify the above-mentioned provision to include a rate of \$360 per square foot for residential use, and would include a separate annual adjustment index for this residential rate.

In addition, the Potential CPC Modifications would require reappraisals of the DIB rates every three to five years to ensure the rate continues to track conditions in East Midtown.

10) DISTRICT IMPROVEMENT FUND

This Potential CPC Modifications would modify the Modified Proposal Alternative to include an option that, if chosen to facilitate early development of area improvements, would permit assignment of DIF revenues to a special financing entity to support the financing.

11) DISTRICT IMPROVEMENT FUND COMMITTEE

The Potential CPC Modifications would modify the Modified Proposal Alternative to add the Chair of the MTA as a non-voting member of the DIF Committee and would also modify the requirements for administration and use of the DIF.

12) OTHER MODIFICATIONS

The Potential CPC Modifications would modify the Modified Proposal Alternative in a number of ways in order to clarify its intent and make a series of minor corrections. These include:

- Renumbering and reordering the provisions for ease of use;
- Clarifying requirements and timing of various provisions of the Qualifying Site framework; and
- Clarifying the requirements and applicability of transfers from landmarks.

C. ANALYSIS

As a result of development pursuant to the RWCDs for the Proposed Action, the FEIS identified significant adverse impacts with respect to shadows, historic and cultural resources (architectural), transportation (traffic, bus transit, and pedestrians), and construction activities related to historic and cultural resources, traffic, and noise. Partial mitigation measures were identified for transportation (traffic and pedestrians), historic resources impacts, impacts due to shadows, and construction activities related to historic resources, traffic, and noise. In general, compared to the Proposed Action, the Modified Proposal Alternative evaluated in the FEIS would result in the same significant adverse shadows impacts (on the sunlight-sensitive features of St. Bartholomew's Church and Community House, the Lady Chapel of St. Patrick's Cathedral, and Christ United Methodist Church), and would have the same potential for significant adverse impacts related to historic and cultural resources and construction. With respect to transportation, the Modified Proposal Alternative would, in general, result in the same significant adverse impacts and the same unmitigated significant adverse impacts as the Proposed Action, although in a few instances the affected intersections and time periods would be different. As in the case of the Proposed Action, standard mitigation measures—such as signal timing and daylighting for traffic; and crosswalk widening and bulbouts for corners for pedestrians—could mitigate impacts. With respect to traffic, the Modified Proposal Alternative would result in unmitigated impacts at one additional intersection. With respect to pedestrian impacts, the Modified Proposal Alternative would have unmitigated significant adverse impacts at one additional crosswalk and one additional corner area.

As noted above, the Potential CPC Modifications consist of changes in the following areas: 1) Use Modification; 2) Sunrise Provision; 3) In-Kind Provision; 4) Building Performance Requirement; 5) Superior Development Special Permit; 6) Mass Transit Easement Requirement; 7) Height and Setback Controls; 8) Environmental Requirements; 9) DIB Pricing and Adjustment; 10) District Improvement Fund; 11) District Improvement Fund Committee; and 12) Other Modifications. Analyses of these changes are presented below:

POTENTIAL CPC MODIFICATIONS #3, 5, 6, 7, 10, 11 AND 12

These Potential CPC Modifications would clarify the proposed zoning text or result in changes (e.g., modifications to the structure of the DIF and DIF Committee) which would not alter the Reasonable Worst Case Development Scenario (RWCDs) for the Modified Proposal Alternative evaluated in the FEIS. Accordingly, these modifications would not result in any new or different environmental impacts than those set forth in the FEIS. .

BUILDING PERFORMANCE REQUIREMENT

This Potential CPC Modifications would require DCP to report to the CPC within 90 days of an update to the energy code and recommend modifications to keep the standard up to date. It would also permit use of the ASHRAE Building Performance Rating method. This Potential CPC Modification would result in greater efficiency in energy use, and would not alter the RWCDs analyzed in the FEIS. Accordingly, this modification would not result in any new or different environmental impacts from those already disclosed in the FEIS.

ENVIRONMENTAL REQUIREMENTS

As described in Chapter 19, "Mitigation," and Chapter 20, "Alternatives," Potential CPC Modifications related to environmental requirements would provide for the full mitigation of construction impacts on buildings eligible for designation by the New York City Landmarks

East Midtown Rezoning and Related Actions

Preservation Commission, and partial mitigation of significant adverse impacts related to historic and cultural resources, shadows, and construction. DIF funding, pursuant to this modification, may be used for studies needed to determine the need for, adjustment, and timing of mitigation and environmental measures as the build-out of the Subdistrict occurs. These modifications would not alter the RWCDs analyzed in the FEIS. Accordingly, these modifications would not result in any new or different environmental impacts from those already disclosed in the FEIS.

DIB PRICING AND ADJUSTMENT

Pursuant to the CPC modification, the DIF is anticipated to remain funded at the same or greater levels as under the Modified Proposal Alternative, and would provide funding for improvements considered in the FEIS. The “DIB Pricing and Adjustment” modification would not alter the RWCDs analyzed in the FEIS to result in environmental impacts different from or exceeding those already disclosed in the FEIS.

USE MODIFICATION

This Potential CPC Modification would permit the as-of-right development of up to 20 percent of a new building as use group 6E non-commercial clubs, which is the equivalent of hotel use for environmental review purposes. The Modified Proposal Alternative evaluated in the FEIS permits up to 20 percent of the floor area of a new building that utilizes the DIB for hotel use as-of-right. Therefore, this provision of the “Use Modification” would not alter the RWCDs analyzed in the FEIS to result in environmental impacts different from or exceeding those already disclosed in the FEIS.

The Modified Proposal Alternative permitted, by use of the Use Modification Special Permit, up to 40 percent of the floor area of a new building to be utilized for residential use. The rest of the new building was required to be developed as a mix of office and retail uses, which were allowed as-of-right. Furthermore, the FEIS included a conceptual analysis as part of the Modified Proposal Alternative (the “Modified Proposal Conceptual Analysis scenario”), which considered potential use of one or more special permits and authorizations on the same site. The FEIS also considered fully-commercial buildings that could utilize the Superior Development Special Permit, under the “Conceptual Analysis” for the Proposed Action. Thus, the reduction of permitted residential use to 25 percent pursuant to the Potential CPC Modifications would fall in between the scenario in the fully-commercial Conceptual Analysis of the Proposed Action, and the Modified Proposal Conceptual Analysis scenario. Therefore, this provision of the “Use Modification” would not result in environmental impacts different from or exceeding those already disclosed in the FEIS for the Proposed Action and the Modified Proposal Alternative.

‘SUNRISE’ PROVISION

This Potential CPC Modification is pertinent only to the construction-related environmental effects. For sites that utilize the Superior Development Special Permit and propose substantial below-grade improvements, this modification would permit change in the sunrise provision so as to obtain foundation and building permits up to one year earlier—on the condition that certificates of occupancy would be restricted until 2020. Consequently, the construction period analyzed in the FEIS could commence in 2014-15 instead of 2017. This would result in a greater staggering of construction activities on development sites and reduce the likelihood of simultaneous development on sites in close proximity to each other, as considered under the RWCDs evaluated in the FEIS. Therefore, this Potential CPC Modification would not alter the RWCDs analyzed in the FEIS to

result in environmental impacts different from or exceeding those already disclosed in the FEIS for the Modified Proposal Alternative.

CONCLUSION

The Potential CPC Modifications to the Modified Proposal Alternative would not result in any new or different environmental impacts than those disclosed in the FEIS for the Modified Proposal Alternative, and the same mitigation measures would continue to be available including those additional measures identified in the FEIS as modifications under consideration by the CPC which are set forth in the Environmental Requirements of the Potential CPC Modifications.