



**Comments on the Draft Scope of Work for an Environmental Impact Statement  
Expanded Moynihan/Penn Station Redevelopment Project  
December 16, 2007**

The Municipal Art Society (MAS) offers the following comments to the Empire State Development Corporation, the lead agency in the New York State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA) of the Expanded Moynihan/Penn Station Redevelopment Project, with the intention of identifying where the Draft Scope is insufficient or incomplete in describing the scope of the EIS for the project, the methodology for studying the project, and its impacts.

**MAS History with Project**

The Municipal Art Society has a long-standing interest in this important project. In the late 1990s, Senator Moynihan asked us to help encourage the notion that New York should once again have a grand train station and intermodal transportation portal worthy of a great city. We produced a master plan at his request and helped jump-start the project. We have been advocating for more than a decade that his vision must be fulfilled. We believe the creation of a new Moynihan Station, East and West, is one of the most critically important civic projects in New York City today.

Moving Madison Square Garden off the Penn Station site provides us an opportunity to build something greater than Senator Moynihan could have envisioned, and we fully support that aspect of the project. However, to ensure we get the great gateway to New York that he envisioned, we must have careful and critical oversight by the State. In this public-private partnership, the state needs to be the guardian of the public's interest and also actively engage the public in the process.

**Failure to Adequately Describe Details of Project**

One fundamental and overarching problem we have in analyzing the scope is that the document is not accompanied by a detailed general project plan or conceptual renderings. While we appreciate that plans developed by the Moynihan Station Development Corporation and the Venture are not final, the lack of conceptual plans accompanying the scope makes engaging the public in a meaningful way challenging at best.

MAS conducted a poll over the summer to gauge the public's interest and knowledge about the new Moynihan Station. Overall we found that there was a general lack of knowledge about the project, although those who were informed were generally

supportive. That said, one of our most striking responses was that 92 percent of those polled believe the public should have a chance to see the renovation plans before they are endorsed by any elected officials. We urge you to release those plans now, so the public can have a greater understanding of the project.

The public also ought to be engaged in determining the factors that will dictate the design and functionality of the improved Moynihan East station as required by the City Planning Commission's Special Permit.

## **PROPOSED DEVELOPMENT PROGRAM**

There is insufficient information in the scope in two areas:

1. *Moynihan Station East*: The draft scope does not adequately describe the project so as to be able to predict and identify the relevant environmental issues and potential mitigation measures.
2. *Moynihan Station Subdistrict Option*: The subdistrict is woefully lacking in detail and it is completely impossible to predict and identify the relevant environmental issues and potential mitigation measures. The impact of the "concentration rule" and the bonusable improvements in the core area are impossible to predict as presented, without any information on receiving sites or a plan for where it would be appropriate to have receiving sites.

## **NEW YORK CITY ACTIONS AND APPROVALS**

Under the proposed Moynihan Station Subdistrict option, the scoping document states that "[t]he Penn Station Block would qualify for a floor area bonus for transportation improvements under a City Planning Commission special permit, to permit a total of up to 19.5 FAR in the portion of the block more than 250 feet west of Seventh Avenue, and up to 18.0 FAR in the portion within 250 feet of Seventh Avenue. Under the new special permit, approximately 4.3 million square feet of zoning floor area could be transferred to sites within the Moynihan Station subdistrict, provided that the transportation improvements result in substantial enhancements to the public areas of Penn Station and the creation of a public train hall and associated public spaces on the existing Penn Station Block with superior functionality, amenity, and civic grandeur." (emphasis added). Under this Subdistrict option, the development would require zoning text amendments to "[e]stablish procedures for individual transfers of floor area to sites within the Moynihan Station Subdistrict by certification of the City Planning Commission Chair."

By allowing the transfer to occur only by Certification, the environmental impacts of said transfer may never be disclosed. Allowing these significant transfers of development rights without public input is not only detrimental to the idea of public participation, but will also potentially cause significant environmental impacts which were not analyzed or vetted through the environmental review process.

Even though the DEIS will examine the total amount of FAR which will be developed, the scoping document does not reveal the specifics of this development, and therefore, this environmental review is based upon speculation. Currently, we only have vague notions where the proposed receiving sites are located, or whether they will be located near significant historic resources.

It is imperative that the draft language for the zoning text amendments is released in the DEIS, or before the DEIS is released, in case the draft scope needs to be amended. We are gravely concerned that significant environmental effects could result from the language construction of the zoning text changes. If the language is too vague and does not create true criteria for a grand train hall, there is a possibility the public gets another unfortunate result such as the current Penn Station. We must ensure we are getting the grand train hall and functional train station for which the bonus FAR will be granted.

To cite an example: The Hearst Magazine Building, a New York City Landmark, sought a special permit for a floor area bonus of 3.0 FAR. The bonus was granted in exchange for extensive improvements to the Columbus Circle subway station and public access to space on the third floor of the Hearst Building. In the aftermath of September 11, 2001, security concerns led the applicant to restrict access to the third floor space. The subway renovations are still underway. The building has been built and the FAR of 3.0 has been realized, but the public has lost its access to the promised public space.

Furthermore, Certification is improper here. A transfer of development rights should only occur via Certification when it can be an objective determination and where the scale of the transfer is more benign. The passion and long debate stemming from the need for a new train station that is a great public space indicates that this is one of the most subjective determinations a public official could make.

The scale of this transfer far exceeds previous legislation granting a transfer of development rights – for example for Grand Central Terminal, the Theater District, and South Street Seaport – where the public better understood the public benefit and the scale of these transfers. In the Grand Central SubDistrict, a transfer of development rights may be allowed by Certification only if the transfer will not exceed 1 FAR. If the transfer is larger than 1 FAR, or requires other modifications to the zoning text for said transfer, the transfer of development rights may only be allowed by special permit. Similar threshold levels are used in the Theater District.

For these reasons, the transfer of development rights from the Penn Station Block to the proposed Moynihan Station Subdistrict should only be allowed via the City Planning Commission special permit process.

On a related note, the floor area bonus for improvements to the underground pedestrian network in the proposed Subdistrict should also be obtained by special permit as opposed to City Planning Chair certification. The bonuses currently require a special permit as part of the Special Midtown District. Given the considerable size of the bonus, and the

importance of the underground pedestrian network, the public ought to be able to weigh in on the specifics of each plan in a public hearing. As an alternative to granting this “bonus,” City Planning ought to make underground improvements mandatory.

### **Chapter 1: Project Description**

The project description in the EIS must contain detailed drawings of the new Penn Station (Moynihan East), as well as detailed information on the existing Penn Station. This will be necessary in order to understand that the new station will indeed have larger concourses and meet other criteria set forth in the project goals.

If there are any known receiving sites in the Moynihan station sub-district, they must be identified.

### **Chapter 3: Land Use, Zoning, and Public Policy**

The proposal should be reviewed for consistency with all existing public policy documents, including but not limited to the following:

- District Need Statements of Community Boards 4 and 5;
- “A Community Vision for 9th Avenue.”
- 2005 Hudson Yards Rezoning
- 1999 Chelsea rezonings
- We concur with the concerns of Community Board 4 that the plan should be reviewed in light of the carefully-negotiated 2005 Hudson Yards Rezoning and 1999 Chelsea rezonings. The Land Use, Zoning and Public Policy Analysis must thoroughly analyze the significant departures from the policies that underlay those recent rezonings.
- 32nd Street Pedestrian Corridor, The Hudson Yards rezoning and the 2006 Farley/Moynihan Project called for a pedestrian corridor along the line of 32nd Street, which would be eliminated in the Expanded Moynihan Project. The impact of this change must be analyzed and other possibilities must be explored, such as pedestrianizing 31st or 33rd Streets or making a connection via the High Line.

### **Chapter 4: Socioeconomic Conditions**

Development pressures will be further increased by the creation of the Special Moynihan Subdistrict. The assessment for direct and indirect business displacement must include a careful study of the following:

- Garment industry uses.
- “Class B” office space.
- Business in “Little Korea,” generally located from 30<sup>th</sup> to 32<sup>nd</sup> Streets, from 5<sup>th</sup> to 6<sup>th</sup> Avenues.
- A study of the businesses in the area likely to be affected by the relocation of USPS operations.

### **Chapter 5: Community Facilities and Services**

The U.S. General Post Office is the main retail post office for the Borough of Manhattan. The assessment of the potential for adverse impacts on postal service should be extended

beyond the local community and include the entire Borough. This community facility has special significance to the culture of New York, especially on tax day, April 15, when last-minute filers depend on the facility's 24-hour service, and at Christmas time, when all of the city's "Dear Santa" letters are delivered to this post office (with many being answered from here as well).

### **Chapter 6: Open Space**

The FEIS concluded that the Farley/Moynihan Project itself would help to alleviate the study area's existing deficiency in open space by providing substantial and high quality areas of **indoor public open space**. The dimensions and quality of this indoor public open space is not discussed. The Moynihan Scope for the proposed expanded Moynihan project does not mention further study of this indoor public open space. It is critical that the Moynihan scope include an analysis of this projected indoor space. Does the expanded Moynihan project alter the indoor public open space that was contemplated in the FEIS for the Farley/Moynihan project? How does this affect the conclusion that the Farley/Moynihan Project would not have significant adverse open space impacts?

### **Chapter 7: Shadows**

#### Farley Post Office

The former mail-sorting room in the Farley Post Office, in which the Train Hall must be considered a light-sensitive feature.

#### Moynihan East

Given that the design principles for the station are "*Well lit, spacious concourses,*" and that there is an emphasis on natural light entering the concourses. It is critical that shadow studies be conducted on the new Moynihan East Station. Faulty logic was used in the FEIS conclusion that "since the skylight would not exist without the project, the shadows on this resource are not considered a significant adverse impact." If shadows will be cast on Moynihan East they should be considered a significant adverse impact.

#### Moynihan Station Subdistrict

Because there are no identified receiving sites in the Moynihan Station Subdistrict, it is impossible to anticipate the potential shadow impacts in that district. It is therefore critical that all potential historic resources in the entire district be identified, and subsequently those with light-sensitive features be identified.

### **Chapter 8: Historic Resources**

The Farley Post Office was designed by McKim, Mead & White as New York's premier general post office. It is a landmark of the people and its historic and architectural integrity must be safeguarded.

- We strongly believe that the project ought to be renovated in a way that makes it eligible to receive federal historic preservation tax credits. Not only would that increase federal funding to the project, it would streamline other historic preservation review processes, including the Section 106 and 4f reviews required under NEPA.
- The Farley Post Office is intimately tied to the culture of New York. The post office's use of the historic retail lobby contributes to the historic and cultural significance of

the landmark. We believe the loss of that use as a post office would be considered a significant adverse impact to the building and we therefore fully support the alternative to study the retention of the retail functions and urge that the post office retail functions be made part of the General Project Plan.

#### Survey of Historic Resources in Subdistrict

The identification of potential architectural resources is defined as being limited to those resources “that could be affected by the Expanded Moynihan Project.” All resources in the study area should be equally analyzed. Limiting the scope of review to a small subset of buildings is to inadequately consider the project's full range of potential impacts. No development sites in the Moynihan Station subdistrict have been identified and therefore the impact of the transfer of development rights is unknown and not predictable. To better understand the impact of the project on historic resources, each site in the subdistrict must be considered to be equally “affected by the Expanded Moynihan Project.”

Furthermore, in recent large-scale rezonings in New York City, the area impacted by accelerated land values has been more generalized than the limited study area. Subsequently, attempts at the preservation of noteworthy historic buildings in the general area but not within the study area are weakened because the resources have not been adequately considered.

MAS has conducted a quick windshield survey of some of the known historic resources in the Moynihan Station subdistrict and found it contains more than 40 historic resources, including a portion of the New York City designated Madison Square North Historic District. A map of those resources is attached.

In addition to the resources on the map, the following buildings should be studied to determine their significance:

- 3 W. 29<sup>th</sup> Street
- 274 5<sup>th</sup> Ave
- 8 W. 30<sup>th</sup> Street
- 24 W. 30<sup>th</sup> Street
- 4 W. 31<sup>st</sup> Street
- 1220 Broadway
- 29 W. 30<sup>th</sup>
- 11 W. 30<sup>th</sup> Street
- 7 W. 30<sup>th</sup> Street
- 285 5<sup>th</sup> Ave
- 303 5<sup>th</sup> Ave
- 315 5<sup>th</sup> Ave
- 302 5<sup>th</sup> Ave
- 316 5<sup>th</sup> Ave
- 12 W. 32<sup>nd</sup> St.
- 16 W. 32<sup>nd</sup> St.
- 22 W. 32<sup>nd</sup> St.

- 34 W. 32<sup>nd</sup> St.
- 39 W. 31<sup>st</sup> St.
- 35 W. 31<sup>st</sup> St
- 31 W. 31<sup>st</sup> St
- 25 W. 31<sup>st</sup> St
- 19 W. 31<sup>st</sup> St
- 320 5<sup>th</sup> Ave
- 335 5<sup>th</sup> Ave
- 341 5<sup>th</sup> Ave
- 1 E. 33<sup>rd</sup> St
- 3 W. 34<sup>th</sup> St
- 17 W. 34<sup>th</sup> St.
- 40 W. 35<sup>th</sup> St.
- 31 W. 34<sup>th</sup> St.
- 902 6<sup>th</sup> Ave
- 960 6<sup>th</sup> Ave.
- 35 W. 35<sup>th</sup> St.
- 29 W. 35<sup>th</sup> St.
- 3 W. 35<sup>th</sup> St.
- 402 5<sup>th</sup> Ave
- 20 W. 37<sup>th</sup> St.
- 35 W. 36<sup>th</sup> St.
- 19 W. 36<sup>th</sup> St.
- 7 W. 36<sup>th</sup> St.
- 1 W. 37<sup>th</sup> St.
- 5 W. 37<sup>th</sup> St.
- 13 W. 37<sup>th</sup> St.
- 49 W. 37<sup>th</sup> St.
- 878 6<sup>th</sup> Ave
- 886 6<sup>th</sup> Ave
- 875 6<sup>th</sup> Ave
- 871 6<sup>th</sup> Ave
- 129 W. 29<sup>th</sup> St.
- 134 W. 29<sup>th</sup> St.
- 307 7<sup>th</sup> Ave
- 120 W. 28<sup>th</sup> St.
- 44 W. 28<sup>th</sup> St.

#### Section 106

- We concur with the draft scope's determination that the Area of Potential Effects for Section 106 review will include the Farley Post Office and the entire Moynihan Station Subdistrict.
- Federal agencies must initiate Section 106 review *early* in the planning process to ensure that a broad range of alternatives are considered. 16 U.S.C. § 800.1(c). When Section 106 and NEPA processes are coordinated, the Section 106 process should be

initiated in a manner that allows for the alternatives and mitigation developed through the Section 106 process to be detailed in the DEIS.

- We concur with the findings of the National Trust regarding NEPA and Section 106.
- At this time, the Municipal Art Society formally requests consulting party status in Section 106 Review.

#### Role of New York City Landmarks

- While outside of the environmental review process, we believe the project must also go through review by the City Landmarks Preservation Commission, as the original Moynihan Station project did in the late 1990's.
- While designation of any of the resources by the city's Landmarks Preservation Commission is not formally part of the environmental review process, we urge the city to designate eligible buildings and districts prior to approval of the rezoning, including the subdistrict's one National Historic Landmark, Macy's.

#### Modification of Special Moynihan Station Sub-District

- In order to ease potential development pressure on city-regulated historic districts, the boundaries of the subdistrict ought to be modified so as not include the Madison Avenue North Historic District.
- If other concentrations of historic resources are found, the subdistrict's boundaries ought to be modified to avoid them if it is found that transfer of development rights would have a significant adverse impact.

#### Boundaries of Study Area

- According to the CEQR Technical Manual, for actions that are highly visible and can be perceived from more than 400 feet, the study area may be extended beyond 400 feet. Given that the amount of square footage being proposed for development, the Expanded Moynihan Station Development Plan could allow for very tall buildings that will be visible from more than 400 feet. Therefore, there is a potential for adverse visual impacts to historic resources and for shadows outside of the 400 foot perimeter. It is therefore necessary to identify resources beyond the 400 foot perimeter in order to assess any impacts. The study area should be extended from 400 feet to ½ mile.

### **Chapter 9: Urban Design/Visual Resources**

The scope does not mention the study of signage, in either the subdistrict or on the stations. It is critical that the any signage allowances being envisioned in either the subdistrict or on the stations be analyzed for its impact on the visual and historic resources and neighborhood character.

The zoning for the proposed Moynihan Station Subdistrict is C6-4. A C6-4 zone does not allow advertising signage, only accessory signage. The draft scope does not deal with the impact of advertising signage on the surrounding neighborhoods, historic buildings and open space. Based on the draft scope we conclude that there will be no additional

advertising signage in any of the newly created subdistrict. The Penn Station block falls within the proposed Moynihan Station Subdistrict boundary. The Farley Complex does not fall within this zone and will not be subject to C6-4 zoning.

In the CEQR Manual it states that when considering the Urban Design/Visual resources you must consider building use, as it relates to visual character. The Moynihan Scope states under its chapter on Urban Design/Visual Resources that the analysis should consider the building use, as well as the building arrangement; block form and street pattern; streetscape elements; and street hierarchy.

The Moynihan Scope goes to great pains to document potential impacts from the new project sites, but the analysis seems to be based on the building bulk and view corridors in the study area. Even though the scope mentions that they will have to consider the “use” of the buildings there is no further mention of the “use.” With a potential of 1.1 million square feet of retail projected for the Penn East area the scope needs to include an analysis of how this projected retail will affect the Urban Design and Visual resources of the study area.

#### **Chapter 10: Neighborhood Character**

The Draft Scope states that it will “[a]ssess and summarize the proposed project’s impacts on neighborhood character using the analysis of impacts as presented in other pertinent EIS sections.” The studies conducted in the other impact categories were not analyzed in light of neighborhood character—they were analyzed in light of that impact category. Therefore, it is insufficient to rely upon the “key findings” in the analyses of other impact categories. The EIS should analyze the project’s impact upon neighborhood character in light of that impact category, and should not simply be a summary of other impact category analysis.

#### **Chapters 12 and 13: Infrastructure; Solid Waste and Sanitation**

The EIS should include a calculation of cumulative impact of the proposed development, new construction in the study area, and proposed construction in the study area. When examining Combined Sewer Overflow (“CSO”) events, the EIS should explore how the CSOs in the immediate area can be reduced or eliminated through enhanced stormwater management, green roofs and other sustainability strategies.

#### **Chapters 15 and 16: Traffic and Parking; Transit and Pedestrians**

The Hudson Yards Rezoning, Hudson Yards East and the proposed Moynihan Station Subdistrict will create nearly 55 million square feet of potential development rights between Sixth Avenue and the river – an amount of square footage larger than downtown Seattle. There are currently no transportation systems to connect Penn Station to the new city that will rise to the east. While the number 7 line expansion will offer some relief, it offers no connection to more than half a million people a day who travel through Penn Station. This is a historic opportunity for the city and state to plan for a significant east-west transportation system. We urge the lead agency to study as an alternative the feasibility and the environmental and economic benefits of a surface or subsurface public

transportation system between Herald Square and the Hudson River's ferry terminal. Furthermore, an underground pedestrian linkage should be studied that would connect the Herald Square subway complex to the Moynihan/Penn station complex. A spacious new eastwest concourse should be centered midblock between 33rd Street and 32nd Street.

Truck docks on the periphery of the Farley Building or within the building

These raise issues of air pollution, noise, interruption of pedestrian traffic and pedestrian environment, traffic congestion, etc. It appears from the scope that, especially considering Madison Square Garden, the number of docks would be substantially increased above the present situation. The degree of impact will presumably itself be impacted by changes in the neighborhood as part of the total project: e.g. more population present in office buildings, commercial and retail space, and on the streets; increased pedestrian usage of the area, especially cross- town streets as people come out of the station and walk to destinations farther west.

Similarly, the new development and increased pedestrian traffic, especially east-west, will radically change the pedestrian environment. The Farley Building is now, and will be, a very large monumental building. Its style now has probably relatively little impact on pedestrian environment because there are relatively few pedestrians. If pedestrian traffic is sharply increased, especially east-west, what can now be addressed as simply a monumental façade along the streets can become a pedestrian unfriendly Coliseum-like inactive street wall – unless, that potential adverse impact is favorably addressed.

Concerns regarding the further analysis of the environmental impact of traffic are discussed in the “Climate Change” section below.

**Task 18: Air Quality**

Concerns regarding the analysis of the environmental impact upon air quality are discussed in the “Climate Change” section below.

**Task 22: Alternatives**

These alternatives are in addition to the suggested study of alternatives and suggested mitigation measures listed within the body of these scoping comments.

1. We recommend studying an alternative in which Madison Square Garden is moved to an alternate location outside of the Farley Post Office, the existing Penn Station site and the Moynihan Station subdistrict. In order to achieve the goal of building a sufficiently large and functional public train station, ESDC should study whether it would be appropriate to use their power of eminent domain should MSG opt to stay in its current location.
2. The draft scope outlines two alternatives for the distribution of bulk, and MAS supports the “Moynihan Station Subdistrict” alternative. It is critical to keep excess bulk off the Moynihan East block, in order to ensure adequate space for the train station and to limit major train disruptions during construction. MAS is

deeply concerned that the amount of retail contemplated for the Moynihan East block is excessive and will occupy such a large area that it will not allow for space to fulfill the 14 design principles set forth in the Proposed Development Program. The scope anticipates 1.1 million square feet of retail to be constructed on the 7th to 8th Avenue block. That's an amount 9 times greater than the square footage of retail at Grand Central Terminal and slightly larger than the square footage of Madison Square Garden itself. As an alternative, the scope ought to study having substantially less retail square footage on the Moynihan East site. To that end, there are two conceivable alternatives; allowing the transfer of more retail to the subdistrict, or our preferred option of finding an alternate financing mechanism from the state or federal government that would negate the purported financial need to transfer potentially damaging amounts of development rights on the train station site.

## **OTHER CONSIDERATIONS**

### **Climate Change**

Global climate change is a real environmental concern that is currently being raised and discussed at the international, national, statewide, and local level. While climate change is of global concern, we can act environmentally responsible on a local level in order to not exacerbate a growing problem.

Through PlaNYC 2030, the City has positioned itself to be a leader in the fight to curb the effects of global climate change by articulating the lofty goal of a 30 percent reduction in the City's "carbon footprint" by 2030. In a recent speech, Mayor Michael Bloomberg stated that "we soon realized that you can't formulate a land use plan without thinking about transportation and you can't think about transportation without thinking about air quality. You can't think about air quality without thinking about energy and you certainly can't think about energy – or any of this – without thinking about global warming." Clearly, the Mayor believes that any good land use plan should consider the impacts a project may have upon climate change. This is especially true in New York City, where, according to the New York Greenhouse Gas Emissions Inventory, citywide carbon dioxide equivalent emissions were approximately 58 million metric tons in 2005, with an astounding 79 percent coming from buildings. Therefore, when we plan, we must simultaneously assess a project's impact upon climate change and how best to reduce such impact. With regard to this scope and an environmental review, an EIS under SEQRA/CEQR is required to examine a proposed project's effect upon energy, natural resources, air quality and air pollution. The main contributor to global climate change, carbon dioxide, was recently declared by the United States Supreme Court in the landmark case, *Massachusetts v. EPA*, to be an air pollutant. Under the current structure and mandate of SEQRA/CEQR, the lead agency not only has the ability to examine a project's impact upon climate change, but is under obligation to do so.

While the tools and methods for measuring 1) a building's output of greenhouse gases and 2) that output's impact on global climate change are still under development, the lead agency can nonetheless quantify the direct and indirect carbon dioxide emissions 10

resulting from a project by using existing energy modeling software. The inventory thus created can either be measured against the City's goal of reducing our carbon footprint by 30 percent or another defined goal for reducing a project's environmental impact.

Regardless of how the carbon dioxide emissions are measured, however, by disclosing the greenhouse gas emissions of a project, the lead agency can identify the opportunities to economically and practicably reduce such emissions through simple mitigation measures. Other mitigation measures can include reducing the traffic impacts, working with MTA early in the process to develop a better and more comprehensive transit system to serve this area, and working with Con Edison to provide the cleanest energy possible.