

## GANSEVOORT PENINSULA

### **Responses to Comments Received During Significant Action Process for the Proposed Large Scale Donation, Installation & Maintenance Agreement between Hudson River Park Trust and Whitney Museum of American Art and Proposed Amendment to Hudson River Park General Project Plan**

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#### **A. OVERVIEW**

On June 20, 2018, pursuant to the Significant Action process mandated by the Hudson River Park Act (as amended, the “Act”), the Hudson River Park Trust (“Trust”) issued a public notice (the “Notice”) inviting public review and comment regarding the proposed donation, installation, and maintenance by the Whitney Museum of American Art (“Whitney”) of a large, site-specific, public sculptural work of fine art titled *Day’s End* to be installed along the southern portion of the Gansevoort Peninsula and within the Hudson River (the “Project”), as well as an amendment to the Hudson River Park Multi-Purpose Project General Project Plan (“GPP”) originally adopted on July 16, 1998 to reflect the proposed art installation at the Gansevoort Peninsula. The project’s Draft Environmental Assessment Form and Supplemental Studies (“the Draft EA”), the draft amendment to the GPP, and the draft proposed “Donation, Installation, and Maintenance Agreement” between the Trust and the Whitney (“Installation Agreement”) were all posted on the Trust’s website and made publicly available throughout the Significant Action process.

In accordance with the Act’s requirements, the Notice was published in the following places: the Trust’s website; the City Record Online; the New York State Contract Reporter; the New York Post; Chelsea Now and the Villager. Additionally, and as required by the Act, the Notice was circulated to Community Boards 1, 2 and 4; to the City Planning Commission; to the Hudson River Park Advisory Council; to local elected officials representing communities neighboring the Park; and to other interested community leaders, neighbors, partners and organizations. In addition to the public hearing, the Whitney and the Trust had also presented the proposed Project to the Manhattan Community Board 2 Parks and Waterfront Committee on October 4, 2017 and the full Community Board 2 adopted a resolution in support of the Project on October 19, 2017.

The Trust held a public hearing on July 23, 2018 at 6:30 pm at the Whitney Museum of American Art, 99 Gansevoort Street, New York, New York. The Trust’s comment period remained open through August 22, 2018. Thirteen persons provided oral testimony during the public hearing and the Trust received 11 comments in writing during the public comment period. The Whitney also received three comment letters prior to the Trust’s Significant Action process that the Whitney forwarded to the Trust during the Significant Action public comment period.

#### **B. LIST OF COMMENTERS**

##### **Oral Comments Made at July 23 Public Hearing:**

1. New York State Assemblymember Deborah Glick (Glick)

2. Elena Sorisi on behalf of New York State Senator Brad Hoylman; copy of oral statement received July 23, 2018 (Hoylman)
3. Patrice Comerford on behalf of New York City Council Speaker Corey Johnson; copy of oral statement received July 23, 2018 (Johnson)
4. Dan Miller (Miller)
5. Downtown Boathouse – Graeme Birchall, President (Birchall)
6. Judith Frost (Frost)
7. The Meatpacking Business Improvement District –Jeffrey LeFrancois, Director of Operations & Community Affairs; copy of oral statement received July 23, 2018 (LeFrancois)
8. George Cominskie; copy of oral statement received July 23, 2018 (Cominskie)
9. Clean Air Campaign, Open Rivers Project – Marcy Benstock, Director (Benstock)
10. New York City Water Trail Association – Rob Buchanan (Buchanan)
11. Warren Berger (Berger)
12. Florent Morellet (Morellet)
13. Vincent Inconiglios (Inconiglios)

**Written Comments:**

1. New York State Assemblymember Deborah J. Glick; written comment dated August 7, 2018 (Glick)
2. Hudson River Park Friends – Adam Glick, Associate Director, Annual Fund & Special Projects; written comment dated July 19, 2018 (Friends)
3. Natural Resources Protective Association - James Scarcella; written comment received August 11, 2018 (Scarcella)
4. Riverkeeper, Inc. – Richard Webster, Legal Director; written comment received on August 22, 2018 (Webster)
5. Shelley Seccombe; written comment received July 26, 2018 (Seccombe)
6. Brenda Woodward; written comment received July 26, 2018 (Woodward)
7. Hector L. Aponte III; written comment received June 28, 2018 (Aponte)
8. Jane Crawford, the Estate of Gordon Matta-Clark, written comment received August 14, 2018 (Crawford)

9. Ira Gershenhorn; written comment received August 17, 2018 (Gershenhorn)
10. Willis Elkins; written comment received August 21, 2018 (Elkins)
11. Tom Fox, Principal, Tom Fox & Associates, written comment received August 22, 2018 (Fox)

**Written Comments Sent to Whitney Prior to Significant Action Process:**

12. Greenwich Village Society for Historic Preservation – Andrew Berman, Executive Director; written comment dated December 14, 2017 (Berman)
13. Gansevoort Market, Inc. – John Jobbagy, President; written comment dated January 5, 2018 (Jobbagy)
14. Meatpacking District Management Association – Lauren Danziger; written comment dated February 6, 2018 (Danziger)

**General Comments on the Proposed Project**

**Comment 1:** I have lived in the West Village since the early 1970s and was here when the pier structures existed. It is important for the future of New York to have this skeletal representation of what existed here on the waterfront. The proposed structure enhances the Park. *Day's End* reflects the maritime history of the waterfront on Manhattan's west side, when shipping and trade drove the economy of New York City. (Glick)

**Response:** Comment noted.

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**Comment 2:** Greenwich Village is best known to New York City for hosting an enclave of artists. The Whitney was founded by sculptor Gertrude Vanderbilt Whitney on 8<sup>th</sup> Street and she paved the way for innovative, contemporary and modern artists. The proposed amendment to the General Project Plan and donation by the Whitney Museum will allow public art by David Hammons to be located directly across from the Museum so that it is evocative of the rich history of the New York City waterfront and enriches Gansevoort Park. (Hoylman)

**Response:** Comment noted.

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**Comment 3:** The sculpture would be an incredible homage to the Pier, Matta-Clark, and the community. *Day's End* would not only provide Park visitors with a beautiful sight to enjoy, it would be a time capsule to the many communities that lived and worked in the neighborhood. I am a strong supporter of the proposed Project and am aligned in the efforts with Community

Board 2 as well as local organizations including Westbeth Artists Residents Council, Meatpacking District Management Association, Greenwich Village Society for Historic Preservation, Riverkeeper, Waterfront Alliance, Hudson River Foundation, Visual AIDS, Gansevoort Meat Market Co-op and the SS Columbia Project. (Hoylman)

**Response:** Comment noted.

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**Comment 4:** The artwork will create an opportunity to share the waterfront's shipping, meatpacking and market history that helped make this New York's greatest marketplace. The sculpture, a thin outline of the former Pier 52, recognizes the waterfront's diverse history, particularly in the artistic and LGBTQ communities. It was on this Pier that served as an important gathering place for the LGBTQ community that Gordon Matta-Clark made *Day's End* (1975) by dramatically cutting gigantic openings into the pier shed. (Johnson)

**Response:** Comment noted.

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**Comment 5:** The Meatpacking BID supports the Whitney Museum's effort to install David Hammons' project, *Day's End*, on the Gansevoort Peninsula. The Whitney Museum's return downtown has been a part of the transformation of the Meatpacking District and has provided a cultural shift. Our neighborhood is now in the epicenter of art, fashion, hospitality and technology, with the Whitney Museum at its core. *Day's End* will stand as a living monument for New Yorkers and businesses alike to recall a not too distant past while enjoying all that is offered here today. (LeFrancois)

**Response:** Comment noted.

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**Comment 6:** I currently serve on the Westbeth Corporate Board. Westbeth encourages public art. David Hammons' work evokes memories of the piers many of the Westbeth residents recall from the early days of our founding. It evokes ghost of our maritime past. It blocks no views, it melts into the local environment, but when fully viewed, it represents so much. (Cominskie)

**Response:** Comment noted.

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**Comment 7:** I think this is a beautiful project and being in the water makes it magical and brings us back to the past. (Morellet)

**Response:** Comment noted.

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**Comment 8:** The sculpture would create an attractive nuisance as there are many acrobats and climbers in this city that would travel over the sculpture. (Frost)

**Response:** The Trust provides for security in the Park. Currently, the Trust has a contract with New York City’s Park Enforcement Patrol (“PEP”) that provides security throughout the Park, and part of PEP’s patrol would be to ensure persons are not climbing on the sculpture. Additionally, the Trust has reviewed the design of the structure and does not believe that the slender vertical structure lends itself easily to the type of risk-taking described by the commenter.

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**Comment 9:** What is the purpose of the lights on the piles for emergencies? What is the emergency? (Frost)

**Response:** The Whitney will be responsible for securing regulatory permits before the sculpture can be installed. If required by the US Coast Guard or other agencies during this process, the Whitney will install solar powered lights to ensure boaters/kayakers see the structure when traveling at night.

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**Comment 10:** The Installation would make a great addition to the Park, enhancing the public’s experience while referencing to the history of the site. We would appreciate being kept informed about its progress. (Weinberg, Berman)

**Response:** Comment noted. The Trust will post the final Installation Agreement, amended GPP and Environmental Assessment on its website after approved by the Trust’s Board of Directors. The Trust and the Whitney will also keep the public informed about the construction schedule prior to the commencement of construction.

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**Comment 11:** The sculpture is a welcome addition, and will offer an opportunity to reflect on the changes to the neighborhood, while memorializing the role the marketplaces and meatpackers had in building it. (Jobbagy)

**Response:** Comment noted.

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**Comment 12:** The Meatpacking BID works to support businesses and community by ensuring the district is kept clean, safe and beautiful while pushing initiatives that create forward momentum and drive healthy economic development. Bold public art, such as *Day’s End* furthers these ideals. (Danzinger)

**Response:** Comment noted.

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**Comment 13:** The art installation will serve the local community and visitors alike, both in accessibility and its enhancement of their engagement with the Park, while generating a new audience for the Park and its philanthropic and programmatic partners. It is an ideal public art

presentation given its siting, where there will be no disruption of the community activities or events. Moreover, the exhibit will increase visitorship to the Park for cultural and educational purposes, creating additional learning opportunities for children. (Hudson River Park Friends)

**Response:** Comment noted.

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**Comment 14:** *Day's End* would draw people to the waterfront who may otherwise have little contact with it. It provides proper homage to New York's maritime history. Mr. Hammons' proposal underscores the role waterfront life has played in creating one of the world's greatest cities in a neighborhood rich with the history of the city and our country's political and cultural heritage. *Day's End* can connect city and neighborhood residents to the past, present and future in a way that invites contemplation of these histories as well as the connection between land, water and life. (Webster, Aponte)

**Response:** Comment noted.

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**Comment 15:** *Day's End* is a homage to my late husband, Gordon Matta-Clark. It pays tribute to the waterfront, the neighborhood and our city's history honoring the past and looking forward to the future. It would be a fitting remembrance of Gordon and his work, a tribute by one "poet" to another. (Crawford)

**Response:** Comment noted.

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**Comment 16:** It's ironic that the work of art in question dates back to a time in the 1970s when artists were making do with what they had – in this case a dilapidated and abandoned pier shed, not brand new stainless steel rods anchored in the river. To hear the PR spin around this project and look around at all the glitzy streets surrounding the Whitney is to be reminded of the things that really matter and that are now in danger of being lost or destroyed. (Woodward)

**Response:** Comment noted.

### **Environmental Impacts**

**Comment 17:** The installation of the art work will not infringe on New York waterfront uses, the pipeline, or include any coverings that would provide shade to the water and thus would not affect the marine life in the river. (Hoylman)

**Response:** Comment noted.

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**Comment 18:** The sculpture should be located entirely on Gansevoort Peninsula and not partially in the water where it can potentially have an effect on the undersea environment. Construction will take four to five months and will create noise to sea animals and will disturb migration patterns. (Frost, Benstock, Berger)

**Response:** A full analysis of the potential impacts of the installation and maintenance of the sculpture is provided in Attachment C, “Natural Resources,” of the Environmental Assessment prepared for the proposed Project. As noted therein, (i) increases in suspended sediment resulting from in-water construction activities would be temporary and localized and would dissipate quickly; (ii) elevated underwater noise from pile driving would be intermittent, localized and short in duration; (iii) the prohibition of pile driving from November through April in the Hudson River would minimize potential impacts to striped bass and other overwintering fish; (iv) the minimal occupation of the river bottom by the piles (up to 0.002 acres) and minimal over-mudline coverage by the pile caps (up to 0.011 acres) would result in a minimal change to foraging habitat for striped bass and other fish species; and (v) if impact hammering is required, it would be conducted with a soft start and cushion block to minimize the effects of increased underwater noise. In sum, the installation and maintenance of *Day’s End* will not result in significant adverse impacts to the undersea environment.

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**Comment 19:** The sculpture is not truly water dependent. Non-water dependent projects should be kept out of the water whenever possible. (Benstock)

**Response:** The sculpture is a site specific skeletal representation of the original Pier 52 shed and provides historic information about the maritime uses of the waterfront. Moreover, the Hudson River Park Act specifically authorizes the construction of *Day’s End* within the original Pier 52 footprint. Accordingly, the project is a water dependent use.

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**Comment 20:** The aquatic impacts resulting from the installation of steel piles would come on top of multiple adverse impacts that the Trust and other structures are having. On critically important habitat in the river, the cumulative impacts on all these encroachments could be immensely harmful. (Benstock)

**Response:** Construction of Hudson River Park, which includes multiple piers and other in-water structures throughout an approximately four-mile length, has been previously analyzed, including with respect to cumulative impacts. The Environmental Assessment prepared for the Project examines the potential for impacts from construction, including pile driving, to fish and other aquatic life and concludes that the small scale of the project and short construction period would not result in significant adverse impacts, either individually or cumulatively with other construction projects occurring in the Park.

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**Comment 21:** The sculpture looks fine and evanescent but it will require six columns in the water, each with 30-inch piles and each will have a pile cap. And it is a big concrete thing that I think is between six to 14 feet wide and construction will take four to five months. (Frost)

**Response:** The sculpture would consist of 8-inch diameter stainless steel columns connected by horizontal beams to recreate the dimensions and shape of the original outline of the former Pier 52 shed building. This skeletal framework would be installed above narrow concrete columns supported by piles. Five of the columns would be supported by 12-inch diameter steel pipe piles driven on the southern edge of the Gansevoort Peninsula, all located above Spring High Water (SHW). The column at the southwest edge of Gansevoort Peninsula would be supported by 30-inch diameter steel pipe piles driven into riprap below SHW. The other six columns would be supported by 30-inch diameter steel pipe piles driven in the Hudson River south of the Peninsula. The sculpture has been designed to be supported with one pile per column; however, there is an option to install a second pile for each column should an unavoidable obstruction be encountered during pile installation. In such instance, a two-pile foundation would be installed. A pre-cast pile cap would be installed atop each pile (either 6-foot-4 inch diameter by 2-foot-6 inch deep pile cap for a single-pile foundation, or 14-foot-4 inch long by 6-foot-4 inch wide by 2-foot-6 inch deep for a double-pile foundation), located below the water line but above the mudline. Three additional 12-inch diameter piles would be installed in the river a short distance from the sculpture in order to hold solar-powered marine lanterns to serve as safety lighting, if required by regulatory agencies.

Also see Responses to Comments 18, 19, and 24.

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**Comment 22:** The sculpture would be vulnerable during a hurricane. The proposed installation would be in an area designated as the highest hurricane evacuation zone. Enormous damage and huge costs can be avoided by siting entire installation on dry land instead of partly in the water. The effects of climate change, including more hurricanes are all around us and we ought to take that much more seriously than we are. (Frost, Benstock, Berger)

**Response:** Both the in-water and land-based portions of the sculpture have been designed to withstand the effects of wind and storm surges. More specifically, the proposed installation has been designed for its location within the Special Flood Hazard Area of the FIRM Flood Insurance Rate Map. The steel portion of the structure is elevated on concrete columns above sea level rise projections for 2080 (per the New York Panel on Climate Change Report NPCC, 2015). Special studies were performed by leading experts in wind and marine engineering--RWDI Engineering and COWI Ocean and Coastal Consultants--to analyze the behavior of the structure in extreme weather events. The concrete and steel structure has been designed in accordance with future sea level rise to bear the impact of loads due to wind, ice, waves, and current.



*Day's End* is designed to withstand winds greater than the typical worst-case storm, exceeding the ASCE 50-year wind speed equivalent to the ultimate loading for a 700-year return period. Relative to hurricanes, the structure can also handle wave surges in a 100-year storm above the projected stillwater elevation (SWEL) for 2080.

The proposed materials for the structure will provide additional durability and corrosion protection. For the foundations, the reinforcing would be galvanized, and all pile cap hardware and bolts would be stainless steel. The piles would be epoxy-coated steel with self-healing admixtures and passive cathodic protection for durability. These features would be regularly inspected and maintained throughout lifespan of the sculpture. The concrete column which extends out of the water has an ultra-high performance concrete shell for additional durability. The superstructure would be made with a high-strength type of duplex stainless steel, which has one of the best corrosion resistance ratings on the market and is often used in a marine environment.

As analyzed in see Attachment B of the Environmental Assessment, "Land Use, Zoning and Public Policy," the proposed project would also be consistent with the New York City Waterfront Revitalization Program to minimize loss of life, structures, infrastructure, and natural resources caused by flooding and erosion.

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**Comment 23:** The *Day's End* project will engage the public with the historical uses of the Hudson River. However, any redesign of the natural shoreline by placement of permanent pilings which would in effect limit the public's ability to interact with the water should be discouraged. (Elkins) Renderings, drawings, paintings and photographs are better ways to preserve history rather than clogging rivers with more structures. (Woodward)

**Response:** Comment noted. As described in the Environmental Assessment, the art installation will occupy only a very small area of the Hudson River and thus will not interfere with other uses for the river. The construction and maintenance of the *Day's End* sculpture would not interfere with other Park uses on land or in the water. See also Responses to Comments under "Proposed Beach" below.

### **Proposed Beach and Timing of Proposed Project Construction**

**Comment 24:** It is important that the planned beach is still maintained if the sculpture happens and that boaters still get access to the beach. (Miller) The south side of Gansevoort Peninsula is an ideal location for a beach where people can touch the water with their toes, kids could play. Manhattan, which has 1.7 million people, has no beach. (Birchall, Scarcella)

**Response:** *Day's End* has been designed to occupy only a minimal footprint on both the southern edge of the Gansevoort Peninsula and in the water. Only six slender columns would be located on the land, with the other six columns located in the water. Spacing between each of these vertical columns is approximately 65 feet leaving ample space for small boats and the

public to reach and touch the Hudson River. Both representatives of the Trust and of the Whitney, including Whitney's engineering and design team, attended a meeting of the Arts and Institutions and Parks & Waterfronts committees of Manhattan Community Board 2 on September 5, 2018 to answer questions of the Community Board members and the public regarding the Installation. At that meeting, the Trust and the Whitney confirmed that the Installation would not impede future plans to develop a beach on the south side of the Gansevoort Peninsula.

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**Comment 25:** I am opposed to a Ghost Pier installation in the Hudson River because I don't think it belongs. There are many ghost piers already throughout our Harbor Estuary. The proposed location is more suitable for a swimming beach. (Scarcella)

**Response:** Comment noted. See also Response to Comment 26.

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**Comment 26:** I support *Day's End* but request it be coordinated with the soft edge and beach at Gansevoort which have been planned since 1995. Although there have been assurances by the Trust that the construction of the sculpture will have no impact whatsoever on transformation of the southern end of the peninsula to a soft edge natural area and beach to allow for kayaking, small boat launching, and/or emergency haul out, there are currently no written assurances and the Trust has been known to obfuscate its intentions in the past as shown by the private negotiations regarding the Pier 55 project and the 2013 amendment to the Hudson River Park Act. (Fox)

**Response:** Multiple planning documents including the 1998 Hudson River Park Environmental Impact Statement, the GPP, the Hudson River Park Estuarine Sanctuary Management Plan and regulatory permits from the Army Corps of Engineers and the NYS Department of Environmental Conservation identify the southern edge of the Gansevoort Peninsula as a "beach." None of these documents provide specific detail on the actual design or use program for the future beach; as with the rest of the Park's development process, detailed programming and design will occur in consultation with the community and regulatory agencies once a design team is hired. Now, that the NYC Department of Sanitation facilities that have long occupied the Gansevoort Peninsula have been removed, the Trust expects to commence the design team procurement process for the Gansevoort Peninsula, including the beach, in the Fall 2018. Once the design team is hired, the Trust will initiate discussions with the community about its design goals for the site. In the meantime, the Trust remains committed to creation of a beach in this location, and has determined, in consultation with its professional design and construction staff, that the sculpture will not impede construction of the beach. Further, the sculpture will not impact the future design plans for the Peninsula or the timing of construction after the design is developed.

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**Comment 27:** While the sculpture does not necessarily conflict with a beach, it is being put in before the Park is designed. If the art installation goes into riprap, which the rendering shows, how are we going to re-engineer that south edge to make it soft, to make it into the beach that has been promised and that the community wants? The soft edge and beach have been an element of the Park Plan since 1995 while the proposed sculpture is a new addition. By coordinating the construction of both, the Trust can ensure that the placement of the sculpture will not impede the construction of a natural soft edge and beach. (Birchall, Buchanan, Fox)

**Response:** The piles prepared by the Whitney that would be located in the riprap would go down to bedrock. The Trust's future construction of the soft edge would not be affected by the Whitney's piles. The Trust's soft edge can be engineered around the Whitney's piles. Standard construction equipment of the types that could be used to build a future beach can reach above or below the sculpture to install stones, sand, engineered concrete to support habitat or whatever other materials are ultimately selected to support the specific beach design once it is identified in consultation with the community and regulatory agencies, and with engineering consideration of existing conditions like tides and wakes. Construction of Gansevoort Peninsula will be primarily site work and will use different equipment than the Whitney's pile driving and other equipment for installation of *Day's End*, and thus there is a preference that the Whitney's work be completed before construction on the Gansevoort Peninsula commences. In sum, the Trust is committed to building a beach on the south side of Gansevoort.. In addition, based on public comments received during the Significant Action period for *Day's End*, additional language has been added to the Installation Agreement to clarify that the Trust will have access to both build and maintain a beach on the south side of the Peninsula. See also Response to Comment 26.

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**Comment 28:** With the structure overhead, there might need to be barges to lift up the riprap, so there should be a plan for the beach before the sculpture is installed. It would be a loss for the community to have the riprap edge live on forever. (Buchanan)

**Response:** Comment noted. Typical marine construction equipment of the sorts used to build other portions of Hudson River Park and other waterfront properties will be able to work above, beneath and around the sculpture given its dimensions. The proposed sculpture is not dependent on existing or future riprap for structural stability.

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**Comment 29:** In addition to boaters passing underneath the structure, this will also be a location for swimming. The harbor is clean enough to swim now. We can't have a situation where with the structure the lawyers state no swimming below because it could fall. There needs to be something in writing that says the Park supports the idea of public access. We need to work together for a solution. (Buchanan)

**Response:** Multiple official Trust documents already state in writing that the Trust intends to have a beach with public access at the south edge of the Gansevoort Peninsula. As noted in the Response to Comment 26, the specific mix of public activities and/or habitat enhancing activities

will be determined during the upcoming design process. The Installation Agreement requires the Whitney to maintain the sculpture in good condition and to inspect it on a regular cycle and make repairs as necessary. If relevant New York State and New York City agencies determine in the future that the Hudson River is safe for swimming, the commenter's safety concern would not be relevant.

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**Comment 30:** I am for the sculpture but it is also important for everyone to work together more thoroughly to address each other's concerns. It should be on the water partially but that calls for the right engineering and the right kinds of research. (Inconiglios)

**Response:** Comment noted. See Responses to Comments 24, 26 and 27 above.

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**Comment 31:** I have lived in the West Village for 48 years, and have seen many changes to the area. I support the proposed installation. The beach objection is not a strong one as David Hammons' art work will be there through all hours and all seasons, while the small strip of sand could not be used for many days a year, even if it were made accessible. Other boroughs have better places for creating beaches. (Seccombe)

**Response:** Comment noted.

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**Comment 32:** When presenting the project to the Hudson River Park Advisory Council, the Trust President did not sound encouraging about the future development of a natural soft edge and beach, stating that the Trust was: not sure about placing a beach on south side of Gansevoort; waiting for regulatory approval prior to anything being done; not sure about boats being able to use the beach to access the river; unsure of the location, size and use of the beach which would have to be determined as part of an overall design for the Gansevoort Peninsula; constrained by the limited amount of fill that could be placed in the river; unable to complete the community design process until late 2019; and convinced the Hammons sculpture will be installed before the community design of the Peninsula is completed and approved. (Fox)

**Response:** As noted above in Responses to Comments 24, 26 and 27, the Trust intends to construct a beach on the south side of Gansevoort, consistent with numerous planning documents that call for a beach in that location. Regulatory approvals govern the amount of fill that may be installed within a regulated water body such as the Hudson River; the amount that may be needed for the Gansevoort beach cannot be determined until there is a specific design for this area. Existing park permits from the Army Corps of Engineers and NYS Department of Environmental Conservation allow for some fill to be used to create a beach along the southern edge of the shoreline, but if additional fill were to be needed in order to achieve a desired slope or use, such request would have to be considered by these agencies in a new permit application. As the commenter notes, it is likely possible to excavate inland onto the peninsula to create portions of the beach, but existing safety restrictions created to protect an existing natural gas

pipeline that travels the length of the Gansevoort Peninsula near its southern edge will ultimately control the amount of existing fill that can be removed in the area beneath the pipeline. This is just one example of the types of existing conditions that will need to be considered by a design and engineering team in tandem with the community's desires for specific beach uses and other additional uses the community may feel are important. Other existing site conditions, such as waves and wakes that could wash away beach sand, will also need consideration. Ultimately, the design of the specific beach that will be proposed for the Gansevoort Peninsula must consider all of these factors. However, with its few and narrow structural supports, dimensions, and spacing between supports, *Day's End* will not be a consequential impediment to future beach planning or construction.

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**Comment 33:** Mobilizing heavy equipment to remove the rip rap in sections for placement of the piles for *Day's End*, demobilizing and remobilizing in the same location to remove the remainder of rip rap for the beach would seem to waste both time and money. It also sends the wrong signal to the boating community, Community Board 2 and the Advisory Council who want the projects to proceed in a coordinated fashion. (Fox)

**Response:** Only a small amount of riprap needs to be temporarily moved in order to install the sculpture in the six locations where columns would be located on the Peninsula, so the opportunities for construction efficiencies expressed by the commenter are limited because the Whitney and Trust would each retain their own construction teams to undertake work due to both different funding sources and dissimilar construction work (steel erection versus park-type earth moving and site work). The Installation Agreement obligates the parties and their contractors and consultants to coordinate with each other.

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**Comment 34:** Riverkeeper has been assured by the Whitney that *Day's End* will not impede other proposed important uses of the Hudson River shoreline at this location, such as wetland restoration, a beach, and water access for kayaks and other small craft. Riverkeeper believes that *Day's End* would be a positive addition to the area in many ways, including sparking a greater awareness of the waterways that New Yorkers are close to all the time and would echo historic uses. Riverkeeper hopes and expects that the Trust is equally committed to co-locating a diverse set of uses in this area in addition to *Day's End*. (Webster)

**Response:** Comment noted. The *Day's End* installation does not change any plans for the Gansevoort Peninsula as provided for in the General Project Plan and other park planning documents, and the Trust is committed to collocating the beach and other recreational uses planned for the Gansevoort Peninsula as requested by the commenter.

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**Comment 35:** Through thoughtful wetland and aquatic habitat planning, the sculpture could take an active role in restoring the Hudson River to once again support robust wildlife populations. Adding oyster cages, marshlands, submerged aquatic vegetation and/or other features would help

tie *Day's End* into the rich history of the oyster and fishing industries in Manhattan, dating from the first settlers through the early 20<sup>th</sup> Century. A public beach and boat launch would draw New Yorkers nearer to the sculpture, and *Day's End* could be an active driver in achieving the Hudson River as a fishable, swimmable waterway. (Webster)

**Response:** Comment noted. The Trust agrees that the opportunity to create a beach providing public access and enhanced habitat opportunities at the Gansevoort Peninsula is important and rare because most of Hudson River Park and the western edge of Manhattan is protected by a historic bulkhead that cannot be significantly modified or removed. New York City has just recently completed its work on the Gansevoort Peninsula so that possession of the land can be transferred to the Trust. The Trust will shortly commence a process to select a designer for the Peninsula, and one of the mandates for the designer will be to work with the community on planning for a beach consistent with the GPP and other planning documents.

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**Comment 36:** The Whitney's engineer consultant and Trust leadership have implied that since the footprint of the Installation is minimal, boating, kayaking, and water access can still happen under the sculpture. Barring periodic times when *Day's End* would need to be cleaned or serviced in some way, there seems to be no reason to bar interactions in the water from the public. Its open design and transparent appearance will complement the future plan for this portion of the Park. The installation is not a major development in the Park and it maintains goals outlined in previous plans and desires from the community. Direct water access on the south side of the Gansevoort Peninsula and a sand beach is still appropriate at this location amidst the *Day's End* project, and should be maintained in designs by the Trust. I strongly encourage the Trust to ensure that the beach is maintained in designs, and supportive uses for boaters and others are included in the Park plan at Gansevoort Peninsula. (Glick)

**Response:** The Trust concurs with the commenter's assessment that *Day's End* will be able to coexist with kayaking, water access and any other future uses of the beach in this area. Further, the Trust is committed to retaining the beach in park plans as has long been intended.

### **Public Process**

**Comment 37:** I commend the Whitney for coming to the elected officials early in the process to explain what they intended to do. (Glick)

**Response:** Comment noted.

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**Comment 38:** The public should be invited to comment on such projects earlier in the process. I object to this installation. (Woodward)

**Response:** The Whitney originally presented the Project to the local community board in October 2017 after which Community Board 2 adopted a resolution in support of the project.

The Whitney has also presented to various other community groups over the past year such as the Waterfront Alliance Conference. The Museum has also met individually with multiple stakeholders and experts to share project plans and solicit feedback, including Riverkeeper, Meatpacking Business Improvement District, and Greenwich Village Society for Historic Preservation among others. Once the draft Installation Agreement, draft Environmental Assessment and proposed amendment to the General Project Plan were prepared, the Trust provided the draft documents to the public for public review. Thus, the public has been able to participate in the process well before any decision is made to move forward with the project.

\* \* \*

**Comment 39:** I appreciate the Whitney's early engagement with the community. And I want to thank Assemblymember Deborah Glick and State Senator Brad Hoylman for introducing and passing the necessary State legislation to allow this artwork to be constructed. (Johnson)

**Response:** Comment noted.

\* \* \*

**Comment 40:** The Whitney has made every effort to vet the project through the appropriate public review and participation process, which is a refreshing change of pace from the Trust's past efforts to move major projects and legislative changes through without any or only a cursory public involvement. It seems clear that the Whitney is being advised by the Trust leadership that has a specious record of public participation. Failing to respond to community concerns will only pit the local community against the Whitney since the Trust has little credibility. Please coordinate the two projects so that public faith in the Trust can be strengthened and the two projects can proceed as smoothly as possible. (Fox)

**Response:** The Trust and the Whitney have worked closely to ensure the community has a full opportunity to comment on the proposed installation and to address community questions and concerns. Beyond the requirements of the Significant Action process, the Trust and Whitney have participated in meetings of Community Board 2 and the Hudson River Park Advisory Council. As noted in this Response to Comments document, the majority of commenters support the installation, even those who have expressed concerns about whether the new structure would impede future plans for a beach on the Peninsula. As explained in the Responses to Comments 24, 26, 27 and 28, constructing *Day's End* will not preclude or create significant construction challenges for the future beach that is still an important part of Hudson River Park's plans for Gansevoort. Beginning in Fall 2018, the Trust intends to commence the procurement process for a design team for the Gansevoort Peninsula, with the mandate that a beach be part of the design. The Whitney needs to commence construction in 2019 in order to help manage the costs of the project, notably by locking in the price of steel, and avoiding cost escalation that arises from delay. While *Day's End* is undergoing construction, the Whitney and Trust will continue to coordinate construction planning and construction activities closely, including for any construction efficiencies that may be possible as beach planning progresses.

### **Ownership of Sculpture/Costs to Taxpayers**

**Comment 41:** The Installation Agreement would transfer ownership of the art installation to the Trust after installation, which brings the high risk of indemnification provisions of the 2013 Amendment to the Hudson River Park Act. These would be especially risky for New York budgets if the installation is partially sited in the water, because storm damage is especially severe in these salty, corrosive, potentially turbulent waters. Taxpayers should not be picking up costs involved in potential damage to the sculpture due to storms. (Benstock, Woodward)

**Response:** While ownership of the structure will be turned over to the Park after construction is complete, the Installation Agreement requires the Whitney to maintain the structure into perpetuity, to provide a maintenance escrow fund for the benefit of the Trust, to procure and maintain sufficient insurance coverage during the term of the Installation Agreement, and to indemnify the Trust regarding any claims related to on-site work during the Whitney's installation or maintenance of the sculpture. The Agreement also addresses material damage to the sculpture, which requires the Whitney to pay all costs related to the removal of the damaged structure and the restoration of the Project area.