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SPECIAL TASK FORCE ON DOWNTOWN REDEVELOPMENT

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Kevin Rampe, President
Lower Manhattan Development Corporation
One Liberty Plaza
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RE: Comments on Draft Scope of WTC Memorial and Redevelopment Plan GEIS

Dear Mr. Rampe:

In the aftermath of the tragedy of the September 11 attacks, the President of the Association of the Bar of the City of New York established a Special Task Force on Downtown Redevelopment to inform the legal and institutional processes to be followed by the City, State and Federal agencies involved with the rebuilding of the World Trade Center ("WTC") and the revitalization of Lower Manhattan. This letter is submitted on behalf of the Task Force and provides comment on the Draft Scope for the World Trade Center Memorial and Redevelopment Plan ("WTC Redevelopment") Generic Environmental Impact Statement ("GEIS"), prepared by the Lower Manhattan Development Corporation ("LMDC").

There has been much discussion among the members of the Task Force regarding the appropriate environmental and land use review procedures to be followed by public agencies for decisions relating to downtown redevelopment. The Task Force believes these review processes should be expeditious, yet inclusive and comprehensive. The decision-making process should be transparent and provide opportunities for robust public participation. Adhering to this general philosophy during the process will help to avoid protracted litigation.

Thus far, the Task Force has issued two reports, "Principles for Public Participation" and "Principles for Environmentally Sustainable Development." We enclose copies of these documents for the administrative record. The brief comments

made herein on the Draft Scope for the GEIS build on these important principles. We thank the LMDC for providing this opportunity to voice these recommendations.

Public Participation and Coordination with Other Processes

We commend the LMDC for its extraordinary efforts to provide venues for meaningful public comment.¹ Moreover, the LMDC has demonstrated its willingness to be flexible and responsive to the public's needs and desires. For the last 18 months, however, the comments solicited have been primarily on issues related to the overall plan for the WTC site. Now, we are entering into a formal statutorily mandated process for environmental review governed by State and Federal law.² This environmental review process is the appropriate place in which environmental, health and socioeconomic impacts of the proposed project must be fully identified, evaluated and explained to the public. While the Task Force recognizes the social and economic pressures for proceeding expeditiously toward construction at the WTC site, the LMDC must nevertheless make sure that the involved public understands this new phase of public participation and what is expected of it during the process.

The "Principles for Public Participation" drafted by the Task Force suggest that statutory and regulatory reviews not be isolated from other aspects of the planning process for the redevelopment of Lower Manhattan. The Scope for the GEIS should more clearly state the goals and limitations of the LMDC's review of the WTC Redevelopment and how this review interacts with many other related activities. In addition, to the extent feasible, the LMDC, in its preparation of the GEIS, should recognize and consider relevant public comment in other ongoing processes. As this is hardly a routine development project, the environmental review process should not be viewed as routine.

Currently, there are several environmental reviews and studies already or soon to be underway that relate to downtown redevelopment. There are the environmental reviews of the Fulton Street Transit Hub, the Permanent WTC PATH Terminal reconstruction, and the South Ferry Terminal, as well as studies on potential Route 9A reconstruction, the Fulton Street Corridor and the Mayor's Vision for Lower Manhattan. These reviews and studies are being undertaken by a variety of City, State and Federal Agencies. The Draft Scope is vague as to how the potential impacts from these related downtown development plans will be factored into the decision-making for the WTC Redevelopment. These projects, only briefly mentioned in the Draft Scope, could impact the WTC Redevelopment significantly, and vice versa. If the LMDC fails to identify and adequately address cumulative effects of the various development scenarios currently on

¹ In addition, a number of privately-sponsored coalitions contributed greatly to the public outreach such as the Municipal Art Society with its "Imagine New York" project, the Civic Alliance to Rebuild Downtown New York, which assisted the LMDC with the "Listening to the City" project, and New York New Visions.

² I.e., the State Environmental Quality Review Act ("SEQRA"), found at Article 8 of the Environmental Conservation Law, and the National Environmental Policy Review Act ("NEPA"), found at 42 U.S.C. § 4321 *et seq.*

the table, this environmental review could underestimate, perhaps significantly, the impacts of the WTC Redevelopment.

Infrastructure, Solid Waste and Sanitation, and Energy

Solid waste management, the provision of energy, the movement of goods, and other significant operations at the WTC site will rely on infrastructure networks that extend beyond not only the WTC site, but Lower Manhattan as well. Therefore, any study of infrastructure associated with the WTC Redevelopment should look at what happens beyond the boundary of the site, assess both direct and indirect impacts, and account for depletion or misdirection of City resources.

In Task 11 concerning the assessment of impacts associated with infrastructure at the WTC site, the Draft Scope fails to identify appropriate primary and secondary study areas. The identification of the impact area for infrastructure is critical and may have environmental justice implications.³ Infrastructure decisions made in Lower Manhattan will affect residents in communities outside of the immediate area. The GEIS should identify the communities currently housing infrastructure needed for the redevelopment and operation of the project, and recognize the potential impacts of the project's operations, such as its solid waste and energy practices, on these communities.

Furthermore, the interaction between this project's projected impacts and those of other planned developments in Lower Manhattan should be analyzed to ensure that existing infrastructure problems are not exacerbated. The GEIS should also evaluate the likelihood that the WTC Redevelopment, in conjunction with these other downtown redevelopment projects, may eventually require construction of new facilities and where these might be located. The preparation of the GEIS is the appropriate mechanism for addressing future infrastructure needs and identifying reasonable alternatives that will result in the least environmental impact.

The LMDC, in its environmental review, should incorporate the environmental, economic, and social justice goals identified in its Blueprint for Renewal ("the Blueprint"). See Principles and Revised Preliminary Blueprint for the Future of Lower Manhattan, Lower Manhattan Development Corporation (April 2003). For example, the Draft Scope assumes that all goods will be moved by truck. As noted in the Blueprint, trucks and buses "cause traffic congestion, create pollution, and degrade the appearance of the historic streetscape." Blueprint, paragraph 7. Alternatives that rely on the least possible number of trucks needed for materials delivery and waste handling during

³ An environmental assessment under NEPA must address indirect impacts which are characterized as those that are caused by the action and are reasonably foreseeable, but that occur later in time and/or at a distance. 40 CFR 1502.16(b), 1508.8(b), 1508.9. Moreover, "agencies should consider...multiple, or cumulative effects, even if certain effects are not within the control or subject to the discretion of the agency proposing the action." Environmental Justice Guidance Under the National Environmental Policy Act, December 1997, at 9. See also Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses, April 1998, at 2.2.2.

construction and operation should be identified and analyzed (e.g., the WTC site is ideally located to encourage use of waterborne transport).

While the Draft Scope states, in Task 11, that the GEIS will “consider” green building and sustainability principles developed by the LMDC in cooperation with the Port Authority of New York & New Jersey (“Port Authority”), it is unclear whether the GEIS will specifically analyze infrastructure-related alternatives in order to identify the best design with the least environmental impact. The “Enhanced Green Construction Alternative” needs to be better defined. As noted in paragraph 12 of the Blueprint, “development must strive for the highest performance and sustainable design standards” and “[e]nsure that all buildings utilize 21st Century technological infrastructure....” Alternative analyses should therefore focus on high performance green design and operation as suggested by the Task Force’s Principles for Environmentally Sustainable Development.⁴

The language in the Blueprint is particularly relevant to the discussion in Task 11 of energy needs, as it is likely that new power sources will be needed by 2009 or 2015. The WTC Redevelopment together with other major development projects that have been proposed for Lower Manhattan could certainly increase the City’s energy needs. The potential for energy efficiency and distributed generation should be identified clearly in the alternatives to be studied.

The GEIS should similarly analyze potential impacts related to the transfer of solid waste, including emissions from transporting vehicles. Vehicle-miles-traveled for any collection and disposal trucks should be evaluated. Alternatives and mitigation measures should prioritize reduction of solid waste through recycling, re-use, and source reduction at all phases of construction and operation, as well as consider the handling of solid waste at or near the project site, avoiding the burdens placed on other communities in the City.

NEPA: The Statement of Purpose and the Alternatives Analysis

The LMDC is the designated lead agency for both SEQRA and NEPA. NEPA requires the lead agency to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). The Council on Environmental Quality (CEQ) has labeled the alternatives analysis “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. While courts have found NEPA to be procedural and not substantive, the statute nevertheless requires rigorous analysis. Under NEPA, a lead agency must “specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13. See Natural Resources Defense Council v. Morton, 458 F.2d 827 (1972). “When the proposed action is an integral part of a coordinated plan to

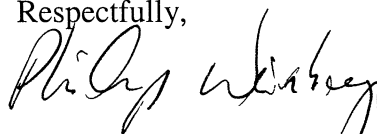
⁴ We commend the Port Authority for sponsoring several “focus groups” to discuss issues related to waste management and goods delivery, however, it is important that the results of these discussions be incorporated into this environmental review process.

deal with a broad problem, the range of alternatives that must be evaluated is broad.” Id. at 835.

One of the LMDC’s Principles For Action is to achieve “sustainability and excellence in design, for environmentally sensitive development” in Lower Manhattan. The WTC Redevelopment is but one, albeit a significant, project in a larger plan to revitalize downtown. If sound alternatives, including infrastructure alternatives discussed above, are ignored, the alternatives analysis in the GEIS may be insufficient to comply with NEPA. See Simmons v. United States Army Corps. of Engineers, 120 F. 3d 664 (7th Cir. 1997). “The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” Citizens for a Better Henderson v. Hodel, 768 F. 2d 1051, 1057 (9th Cir. 1985).⁵ Therefore, the Scope should reflect that the GEIS will address all reasonable alternatives as viewed in the context of the broader redevelopment of Lower Manhattan.

The Task Force on Downtown Redevelopment would again like to thank the LMDC for this opportunity to provide comment in this important matter. We hope to continue to work with the LMDC and the Port Authority as environmental review of the WTC Redevelopment and other downtown redevelopment projects proceeds.

Respectfully,



Philip Weinberg, Chair
Downtown Redevelopment Task Force

Attachments

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⁵ Although plaintiffs have often been unsuccessful in invalidating an EIS under NEPA for an inadequate alternatives analysis, the cases have nevertheless provided guidance on the requirements for an adequate alternative analyses. *See City of New York v. U.S. Dept. of Transp.*, 715 F.2d 732, 742 (C.A.2., 1983); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council Inc.*, 435 U.S. 519 (1978); *County of Suffolk v. Secretary of Interior*, F. 2d 1368 (2d Cir. 1977); *Natural Resources Defense Council v. Morton*, 458 F.2d 827 (1972).

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