

Regulatory Framework

Decisions regarding the redevelopment of Lower Manhattan are likely to be subject to one or more of the environmental review processes that exist at the city, state, and/or federal level. The most critical of these decisions is, arguably, the adoption of a project plan by the Lower Manhattan Development Corporation. This chapter suggests how the environmental review process that will precede that decision, as defined by the State Environmental Quality Review Act (SEQRA), can be made more effective in addressing environmental and social concerns and more efficient in terms of the time required to reach a decision and allow redevelopment that reasonably addresses those concerns to proceed.

The Lower Manhattan Development Corporation (LMDC) has been charged by its parent body, the Empire State Development Corporation (ESDC), with primary responsibility for the redevelopment of Lower Manhattan. Similar ESDC efforts have been guided by a “project plan.” The adoption of this plan by LMDC is likely to be subject to SEQRA.

It is important to note that many of the other important decisions regarding development in Lower Manhattan will be subject to the National Environmental Policy Act and/or the City Environmental Quality Review Act and Uniform Land Use Review Process. For example the lead agencies,

planning requirements, timetable, and funding for any proposed mass transit projects (such as rebuilding and expansion of the PATH system or redesign of the subway stations) are different from those for redevelopment of the World Trade Center site itself. Thus, the federal, state, and/or city environmental review process for such transportation projects will probably be separate from that for the redevelopment of the World Trade Center site or other improvements solely under the aegis of the LMDC.

In considering the role of the LMDC and SEQRA in guiding Lower Manhattan redevelopment, the Regulatory Framework Committee of the Civic Alliance started with two primary and interrelated goals:

1. That an open, robust, transparent planning process with full opportunity for public participation is critical to the decision-making process. The future of Lower Manhattan is important to a very diverse community of public officials, civic organizations and private citizens. Many of these people feel that they have a stake in its redevelopment, and that their input and ideas should be part of a meaningful consideration of alternative environmental, social, and economic proposals for the site;
2. That a special effort should be made to minimize unnecessary delays in completing the administrative and judicial review processes associated with Lower Manhattan’s redevelopment. Lower Manhattan is an important center for the city, the region and the world. Making it whole, as quickly as possible, is vital to our economic, environmental, community, and psychological recovery.

These goals are fundamentally linked. A more robust review process offers the prospect of decisions that meet the needs and aspirations of a broader spectrum of stakeholders. For both logistical and political reasons, such a robust review process must be a precursor to any proposed judicial review improvements.

PROPOSAL

The means for achieving these twin goals are dictated by the nature, and the strengths and weaknesses, of the SEQRA process. There are two stages of environmental review – the administrative stage (including the environmental impact review and permitting processes) and the judicial stage (which can begin when final administrative action is taken, and does not definitively end until the New York Court of Appeals has either decided the case or refused to hear it). The administrative stage provides by far the most meaningful opportunities for public input. SEQRA creates a framework for the relevant governmental agencies to gather the relevant information, systematically analyze it, subject it to public scrutiny, and make reasoned decisions on its merits.

While the SEQRA process has many benefits, such as the public airing of potential impacts and proposed mitigation strategies, the process does not always achieve the desired substantive results. At the judicial stage, the courts usually focus on procedural defects and litigation that can often extend over a period of several years. Such court proceedings can delay projects where time is of the essence to developers. The best assurance that a court will not enjoin a project is that the lead agency fully complies with all SEQRA administrative procedures and incorporates environmental considerations early in its planning process.

Given the public importance of the reconstruction of the World Trade Center site and its environs, a conscious effort should be made through administrative change to provide for a fuller review process joined with a speedy judicial review process. This would provide a more meaningful opportunity to participate as well as a faster ultimate decision than could otherwise be achieved.

Two immediate actions should make this win-win scenario possible:

1. **Trigger SEQRA as Early as Possible by Drafting a SEQRA-Qualifying Scoping Document.**

Typically, SEQRA is triggered after a planning agency or private developer has developed a basic development plan for a site, and alternatives are seldom developed as thoroughly as the proposed action. However, given the unprecedented scope of Lower Manhattan redevelopment and the active engagement of the public through Community Board 1, the Civic Alliance, New York New Visions and other well-organized groups, it would be reasonable for the LMDC to initiate a SEQRA scoping process as early in the planning process as possible. This would allow for SEQRA review processes to be integrated with the LMDC planning process and initiated while the LMDC is still open-minded in the planning stage about basic alternatives.

In April the LMDC released a paper setting forth proposed principles and a blueprint for redevelopment, soliciting public input. Based in part on this draft blueprint and public comments, in late May the LMDC/Port Authority announced a successful RFP respondent to conduct a three-phase study of options for the World Trade Center site, adjacent areas and related transportation infrastructure. In mid-July, the LMDC and Port Authority released Phase I Options and has indicated it will release its Phase II options in late fall 2002. We would suggest that the LMDC use these Options and other alternatives presented at the Listening to the City sessions as a basis for a draft scoping document that would formally initiate SEQRA and would serve as a basic planning document that develops project alternatives and stipulates impacts of concern.

This document would provide a vehicle for public input relating to the basic component parts of the redevelopment efforts including issues such as: the size and location of the memorial; the street grid and pedestrian ways; air quality, including reliance on low sulfur fuels and fine particulate matter traps or comparable emissions reduction equipment for trucks and non-road equipment; public transportation improvements, including ferries, subways, buses and commuter rail; the amount of parks, civic spaces and connections to the waterfront and other civic amenities; building massing and design; primary and ancillary uses; green building principles and performance standards,

including energy efficiency and renewables; and environmental justice or equity concerns, including alternative ways of handling commercial and residential solid waste that minimize reliance on truck transport.

This draft scoping document should also outline the ways in which civic and community-based organizations will participate in the refinement of specific alternatives, the adoption of standards for data collection and analysis, the development of mitigation strategies, and the monitoring of their success. This should include the means by which LMDC will ensure that technical expertise and/or funding is made available for such activities, including the establishment of specific performance benchmarks (for example, for air quality, new car trips, or amount of park space) and the methods for monitoring of impacts and their mitigation.

2. **Make SEQRA Judicial Review More Efficient**

Administrative change is the most efficient approach to expediting the judicial review process. This administrative change would have to be linked to a robust and open SEQRA process.

The Court of Appeals should use its administrative power to designate any legal challenge to a final SEQRA decision of the LMDC or any other governmental entity involved in the redevelopment of the World Trade Center site and its surrounding area (and related transportation projects) as a priority, with a designated judge at the Supreme Court level and designated panel at the Appellate Division stage. This would entail expedited briefing schedules and scheduling of oral arguments on a priority basis. This process would save many months in completing the appellate review process.

Many basic SEQRA administrative questions must be addressed as planning for Lower Manhattan redevelopment proceeds. These include decisions about whether many EISs and/or a single programmatic EIS be prepared for Lower Manhattan redevelopment (e.g. what kind of segmentation of redevelopment activity should be countenanced) and the geographic scope of its analysis. The geographic focus of this proposal, however, is primarily the World Trade Center site and surrounding area and ancillary functions.

Regulatory Committee

The following individuals participated in discussions which led to the creation of the proceeding chapter; however do not necessarily endorse all of the views expressed within.

Co-chairs

Deborah Beck, **Real Estate Board New York**
Jim Tripp, **Environmental Defense**

Richard Aspinwall

Marcia Bystryn, **New York League of Conservation Voters**

Paul Elston, **New York League of Conservation Voters**

Eric Goldstein, **Natural Resources Defense Council**

Ashok Gupta, **Natural Resources Defense Council**

Steve Kass, **New York Bar Association Special Committee**

on Downtown Development

Richard Leland, **Kramer Levin Naftalis & Frankel LLP for REBNY**

Robert Paaswell, **CUNY Institute for Urban Systems**

David Paget, **Sive Paget & Riesel**

Robert Pirani, **Regional Plan Association**