

July 31, 2003

Kevin Rampe, President
Lower Manhattan Development Corporation
One Liberty Plaza
New York, NY 10006

RE: Comments on Scope of WTC Memorial and Redevelopment Plan Draft GEIS

Dear Mr. Rampe:

This letter is submitted on behalf of the Organization of Waterfront Neighborhoods (OWN), and Communities United for Responsible Energy (CURE) to comment on, and recommend changes to, the LMDC's Draft Scope for the World Trade Center Memorial and Redevelopment Plan ("WTC Redevelopment" or the "project") Generic Environmental Impact Statement ("GEIS"). Both CURE and OWN are citywide coalitions of community-based organizations from low-income communities and communities of color formed to address inequitable and harmful environmental practices in New York City.

OWN was formed in 1996 to address inequitable and environmentally harmful solid waste management practices in New York City. Of the 70 private truck-based solid waste transfer stations currently operating in New York City, the vast majority is clustered in predominantly low-income areas and communities of color. The South Bronx and Williamsburg-Greenpoint, Brooklyn, alone process almost 80% of the City's waste stream, both commercial and residential. Consequently, these neighborhoods are inundated with truck traffic and have some of the highest asthma rates in the country. There are no truck-based transfer stations in Manhattan; currently, all of Manhattan's waste is handled outside of the borough.

Organizations in CURE have been actively working on issues related to the State Energy Plan and power plant siting in low-income communities and communities of color. As with solid waste facilities, power plants built or proposed in New York City by the New York Power Authority (NYPA) and private energy developers have been sited almost exclusively in poor neighborhoods of color. A 2001 study by the New York Power Authority confirms the disproportionate siting of these facilities in neighborhoods already inundated with pollution sources, in violation of federal health-based standards and suffering from astronomical asthma rates.

Infrastructure decisions made in Lower Manhattan will necessarily affect residents in the communities represented by CURE and OWN, and have important environmental justice implications. The WTC Redevelopment will affect all large infrastructure systems, and

interaction between this project's projected impacts and those of other planned developments in Lower Manhattan must be analyzed to ensure that existing infrastructure problems are not exacerbated. Also, in its environmental review, the LMDC should aim to meet environmental, economic, and social justice goals laid out in the Blueprint for Renewal ("the Blueprint"). See Principles and Revised Preliminary Blueprint for the Future of Lower Manhattan, Lower Manhattan Development Corporation (April, 2003).

Infrastructure, Solid Waste and Sanitation, and Energy

Wastewater treatment and handling, solid waste generation and disposal, and energy production and transmission are networks that span industries, communities, and boroughs. For a project the size of the World Trade Center, any study of infrastructure 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. The Draft Scope must contain a cumulative impact statement that assesses impacts from related downtown development plans. The Mayor's Vision, for example, is mentioned only briefly in the Draft Scope but could impact the WTC Redevelopment, and vice versa. An EIS that fails to identify and adequately address cumulative impacts related to downtown development plans will underestimate, perhaps significantly, the project's true impacts.

In Task 11, the Draft Scope assumes that the infrastructure that once existed was sufficient to handle the demands of the businesses on the site. The Draft Scope states that the GEIS will identify steps needed to reconstruct this infrastructure and provide estimates of the amounts of water and energy to be consumed, and sewage and solid waste generated. However, the Draft Scope does not require an impact assessment of these aspects of the project, as required in every other task. Moreover, the Draft Scope assumes that all goods will be moved by truck. As noted in the Blueprint, "[i]dling trucks...cause traffic congestion, create pollution, and degrade the appearance of the historic streetscape." Blueprint, at 8. Alternatives should therefore analyze the least possible number of trucks needed for materials delivery and waste handling during construction and beyond. One way to do this is to evaluate the extent to which existing transportation systems (i.e. subway, ferry, or PATH trains) can be utilized to eliminate trucks.

While the Draft Scope states that the GEIS will "consider" green building and sustainability principles developed by the lead agency in cooperation with the Port Authority, the Scope should specifically analyze infrastructure-related alternatives in order to identify the best design with the least environmental impact. Council on Environmental Quality (CEQ) regulations state that "[t]he degree of analysis devoted to each alternative is to be substantially similar to that devoted to the 'proposed action'." Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,027 (Question 5(b) (1981)). As noted in Section 12 of the Blueprint, "[f]urther development must strive for the highest performance and sustainable design standards." Blueprint, at 11. Alternative analyses should therefore focus on high performance green building and high performance green design, and be compared with existing designs.

The Draft Scope also fails to identify a study area for Task 11. The identification of the impact area for infrastructure has significant environmental justice implications. In the Environmental Justice analysis, the Draft Scope considers only those minority and low-income communities within a ½ mile radius of the site to be potentially affected by the Proposed Action. The GEIS should identify the communities housing the solid waste management and energy production facilities needed for the redevelopment and operation of the project, and assess the impacts of the project’s solid waste and energy practices on these communities. As discussed above, virtually all waste transfer stations and power plants are currently located in low-income communities of color. The GEIS should include the likelihood that the WTC Redevelopment, in conjunction with other downtown redevelopment projects on the table, may eventually require construction of new facilities and where these might be located.

Environmental Justice guidance under the National Environmental Policy Act (NEPA) states that “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. The Environmental Protection Agency (EPA) further states, “[Environmental Impact Statements] and [Environmental Assessments] must also address indirect impacts [40 CFR 1502.16(b), 1508.8(b), 1508.9] 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.” Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses, April 1998, at 2.2.2.

This language is particularly relevant to the discussion in Task 11 of energy needs, as it is likely that new power sources that may be needed by 2009 or 2015 would be targeted for neighborhoods similar in composition to those currently housing power sources. Identification of existing power sources should include a primary and cumulative health assessment of communities surrounding the power source, including an assessment of other major developments that have been proposed that would further tap the city’s energy needs. Energy efficiency and distributed energy should be identified as alternatives to be studied.

The GEIS should similarly analyze potential community impacts related to the transfer of solid waste, including emissions from transporting vehicles during transport and unloading in the communities where the solid waste might be handled. 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.¹

¹ We are aware that the Port Authority has sponsored several “focus groups” to discuss issues related to waste management and goods delivery. The stated goal was to develop environmentally sound waste management and goods delivery systems for the WTC Redevelopment. While we appreciate that the Port

Compliance with NEPA: The Statement of Purpose and the Alternatives Analysis

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). In fact, the Council on Environmental Quality (CEQ) regulations pronounce the alternatives analysis “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. While we recognize that NEPA is procedural and not substantive, the statute nevertheless requires rigorous analysis. NEPA, through CEQ regulations, requires a lead agency to “briefly 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. Therefore, the adequacy of the alternatives analysis in any EIS can only be quantified against the project’s Statement of Need. See Natural Resources Defense Council v. Morton, 458 F.2d 827 (1972). The LMDC’s Draft Scope contains no Statement of Need as required under NEPA. The presence of alternatives in the Draft Scope without a Statement of Need renders the alternatives analysis flawed because sound alternatives, including infrastructure alternatives as outlined above, may be ignored.

In the absence of a Statement of Need, we assume that proposed actions must comport with the Blueprint, and that when a Statement of Need is incorporated it will draw from the principles stated in the Blueprint. Given the Blueprint’s goals, the Draft Scope’s alternatives analysis, specifically related to “environmentally sensitive development” (Blueprint, at 3), is insufficient.

Alternatives concerning solid waste, traffic congestion and related air pollution, and energy conservation should be part of a comprehensive alternatives analysis under NEPA. The enhanced green building alternative is included in the Draft Scope but not defined, and is therefore inadequate. An EIS need not consider every imaginable alternative, but must consider every *reasonable* alternative. Simmons v. United States Army Corps. of Engineers, 120 F. 3d 664 (7th Cir. 1997). “When the proposed action is an integral part of a coordinated plan to deal with a broad problem, the range of alternatives that must be evaluated is broad.” Morton, 458 F.2d at 835. Although CEQ guidelines do not state that an EIS must include a predetermined number of alternatives, “[t]he 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).² Therefore, the Scope must address all reasonable alternatives to the infrastructure-related impacts outlined above.

Authority is undertaking this planning process, it is precisely this analysis that must be made part of the environmental review process subject to public review. Without this piece, the GEIS will be inadequate.

² Environmental groups have challenged the adequacy of an alternatives analysis on many occasions, sometimes taking the challenge to the United States Supreme Court. 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). Although the plaintiffs in the above listed cases were not successful in invalidating an EIS for inadequate alternatives, each case contributed valuable statements from the courts regarding the bounds of alternative analyses.

Environmental Justice

New York City's low-income neighborhoods and communities of color have historically been shut out of the political wrangling and planning processes that shape the development of their neighborhoods. As a result, these communities house a disproportionate share of the City's incinerators, landfills, sludge and sewage treatment plants, power plants, and solid waste transfer stations. Agencies must take on the responsibility of analyzing impacts in these neighborhoods through a comprehensive environmental justice analysis. The LMDC must analyze the WTC Redevelopment Proposed Action and appropriate alternatives as required by NEPA in light of environmental justice concerns to prevent further environmental burdens from being placed upon already-burdened communities.

In Task 18, the Draft Scope states that it will include an assessment of environmental justice. However, the Scope outlines a method for evaluating environmental justice that is vague, narrow, and seemingly illogical. First, the Draft Scope proposes to limit the environmental justice analysis to those communities "within approximately ½ mile of the project." This arbitrary limitation conflicts with established environmental justice policy. The first step of a proper environmental justice analysis must be to identify all communities that could potentially be affected by the project. Setting a restriction on which areas will be considered that is not based on actual projections of impact is inappropriate. The ½ mile boundary is particularly troubling considering the fact that other tasks in the Draft Scope analyze potential impacts in neighborhoods beyond the ½ mile radius. See Tasks 2, 3, 7, 8, 12, and 13; in addition, many tasks should reconsider the analysis area based on a more comprehensive view of impacts, such as the areas potentially impacted by infrastructure development (discussed in comments under Task 11 above) or by air emissions (e.g. PM 2.5).

Furthermore, the process for evaluating potential disproportionality of impacts outlined in the Draft Scope is confusing. The Draft Scope indicates that "environmental impacts identified in other analysis areas" will be evaluated and compared to impacts in the areas identified with low-income and minority residents. This is extremely vague. How will those other analysis areas be selected? How will disproportionality be measured?

Indicating that the GEIS will rely the guidance of the CEQ, EPA, and the Department of Environmental Conservation (DEC) does not further clarify the analysis. To date, DEC has not devised a method for evaluating whether significant adverse impacts may disproportionately affect low-income communities or communities of color. See DEC EJ Policy, April 29, 2002. The brief outline of the proposed environmental justice analysis in the Draft Scope does not accurately reflect the environmental justice policies and guidance documents from the CEQ or EPA. Also, CEQ and EPA guidance documents do not squarely address instances in which the project site is a foregone conclusion. Thus, if followed, these guidances must be adapted for the unique circumstances surrounding the project at hand. For instance, the basis for selecting the reference community against

which the community of concern would be analyzed for disproportionality must be tailored to the fact that the project area is finalized.

Given the difficulties in selecting a reference community, in lieu of an analysis to determine disproportionality, we recommend that the Scope should: (1) identify areas potentially affected by the project; (2) determine whether those areas are primarily low-income communities or communities of color; (3) review the existing levels of environmental burden on those environmental justice communities as well as their health profile; and (4) if there are high levels of environmental burdens and/or poor health prevalent in those communities, then the agency should avoid or mitigate impacts associated with the project specifically in those neighborhoods.³

Conclusion

CURE and OWN urge the LMDC to give more attention to issues of environmental justice and discussion of green building alternatives. A more detailed environmental justice analysis is called for by the magnitude and eminence of this project. Just as the LMDC aims to “bring disparate communities together” through this project (Blueprint, at 7), the environmental review should recognize and honor the well-being of New York City’s many diverse communities throughout the boroughs. Recognition of waste and energy impacts outside of Lower Manhattan is a crucial element to this Environmental Impact Statement.

Thank you for this opportunity to provide comment in this important matter.

Respectfully submitted,

E. Gail Suchman
Gail H. Miller

On behalf of OWN and CURE

³ This suggestion comports with EPA’s guidance that advises, “An evaluation of potential environmental justice issues should be conducted for all reasonable alternatives. In addition, for each alternative that may result in potential environmental justice concerns, mitigation measures aimed specifically at those impacts should be identified and analyzed.” Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Guidance Analysis, April 1998, at 3.2.5.