



**EAST RIVER WATERFRONT ESPLANADE AND PIERS PROJECT**

Record of Decision  
and  
Lead Agency Findings Statement

November 2007

**Record of Decision and Lead Agency Findings Statement for the  
East River Waterfront Esplanade and Piers Project in the  
Borough of Manhattan, New York County, New York**

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**1.0 DESCRIPTION OF THE PROJECT**

**1.1 Overview**

This document is a Record of Decision (ROD) and Findings Statement for the East River Waterfront Esplanade and Piers Project (Esplanade Project). The Lower Manhattan Development Corporation (LMDC) has prepared this ROD and Findings Statement pursuant to the National Environmental Policy Act and its implementing regulations<sup>1</sup> (NEPA), Section 106 of the National Historic Preservation Act and its implementing regulations<sup>2</sup> (Section 106), the New York State Environmental Quality Review Act<sup>3</sup> and its implementing regulations<sup>4</sup> (SEQRA),<sup>5</sup> as well as other applicable laws, regulations, orders and guidelines.<sup>6</sup>

LMDC is a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York). Pursuant to 42 U.S.C. § 5304(g), LMDC is responsible as the recipient of U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant program funds for conducting environmental reviews of projects receiving HUD funds in accordance with 24 CFR Part 58 as well as other laws and regulations.

This ROD and Findings Statement draws upon facts and conclusions in the Final Environmental Impact Statement (FEIS), approved by LMDC in cooperation with HUD, the City of New York (City) and other cooperating and involved agencies; comments on the FEIS; and related documents and submissions. This ROD and Findings Statement attests to LMDC's compliance with applicable procedural requirements, including those found in the NEPA, HUD, and SEQRA regulations identified herein.

The ROD and Findings Statement is the final step in the NEPA and SEQRA processes for the Esplanade Project.

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<sup>1</sup> 40 CFR Parts 1500-1508.

<sup>2</sup> 36 CFR Part 800.

<sup>3</sup> Article 8 of the New York State Environmental Conservation Law.

<sup>4</sup> 6 NYCRR Part 617.

<sup>5</sup> The Esplanade Project is a Type 1 action for purposes of SEQRA. This designation is not applicable to NEPA.

<sup>6</sup> These include Executive Order 11988 (Floodplain Management) and Executive Order 12898 (Environmental Justice).



## 1.2 Project Purposes and Need

### 1.2.1 LMDC Funding

The attacks on the World Trade Center and the continuing recovery have had a profound impact on Lower Manhattan's residents, businesses and communities. In addition to the planning currently under way for the World Trade Center site, a series of projects that address short-term and long-term solutions to challenges facing Lower Manhattan's neighborhoods in the wake of September 11, 2001 are integral parts of LMDC's efforts to revitalize Lower Manhattan. The City has therefore asked LMDC to consider providing financial support for the Esplanade Project.

### 1.2.2 East River Waterfront Esplanade and Piers Project

The Esplanade Project is an essential component of the ongoing revitalization of Lower Manhattan. It represents a bold and ambitious plan for an important stretch of the East River waterfront that suffers from weak connections, a profound lack of amenities, and underutilization of the waterfront. The purpose of the Esplanade Project is to enhance connections, improve the function and appearance of the waterfront and provide amenities - open space as well as appropriate retail, cultural and community uses - to facilitate access to and use of the waterfront by adjacent communities and neighborhoods.

The Esplanade Project will also address the rapidly increasing residential population of Lower Manhattan. These new residents, as well as the traditional office population of Lower Manhattan, create a heightened demand for open space. The specific goals of the Esplanade Project are as follows:

- Provide open space amenities to Lower Manhattan communities currently underserved by the City's parks;
- Create a vibrant, active and welcoming water's edge;
- Improve public access to the waterfront;
- Find new uses for the waterfront by providing basic infrastructure to support waterfront and community activities;
- Open certain piers to community uses;
- Provide a place for recreational, community, and maritime activities;
- Enhance maritime activities along the traditional working waterfront;
- Claim the space under the FDR Drive for community, cultural, and limited commercial development;
- Replace the outmoded New Market Building;
- Improve access to and around the Battery Maritime Building ("BMB"); and
- Expand the existing esplanade between the BMB and Old Slip to provide a larger and safer connection between the BMB and Battery Park to the south and the esplanade improvements and existing East River Park to the north.

### 1.3 Description of the Selected Project

After considering a variety of alternatives, including a no-action alternative, LMDC has selected the Esplanade Project as defined in the FEIS. LMDC will fund some components of the Esplanade Project as it is defined below. But other components are dependent on additional funding that the City is seeking; these include the BMB plaza and the urban beach at Pier 42. The City will develop the replacement New Market Building at a later date; LMDC is not funding this building as part of the Esplanade Project. Finally, although they are analyzed as part of the Esplanade Project, LMDC will not fund various improvements to South Street.

#### *1.3.1 Project Site*

The Project Site encompasses the waterfront, upland adjacent to and under the elevated FDR Drive, and South Street extending from Whitehall Ferry Terminal and Peter Minuit Plaza on the south to East River Park on the north. Piers 15, 35 and 42, as well as the New Market Building Pier and a portion of Pier 36, are included within the Project Site. The total land area is approximately 17 acres, all of which is in the 100-year floodplain.

#### *1.3.2 Project Description*

The Esplanade Project will consist of a Program Zone under the FDR Drive for pavilions and temporary outdoor activities; a Recreation Zone along the edge of the water with seating, play spaces and planting; and a uniform bikeway and walkway along South Street. The Esplanade Project will include improvements to Piers 15, 35, 36 and 42 as well as the New Market Building pier.

The Esplanade Project analyzed in the FEIS also includes the construction of a new pedestrian plaza in front of the BMB, replacement of the New Market Building, the urban beach on Pier 42, and the reconstruction of South Street, although these elements will not be funded by LMDC.

The Esplanade Project is further described below. The City plans to develop an entity that will be responsible for the maintenance of the open spaces and pavilions created by the Esplanade Project.

#### *The Program Zone*

Up to 14 pavilions totaling up to 150,000 square feet may be built in the Program Zone under the FDR Drive. They will be programmed and built for community, cultural, and commercial uses. Each program will correspond to the unique local needs of its location and surrounding community. Examples of such programs include a flower market, dance studio, martial arts studio, day care center and community center. Although their exact locations have not been determined, the pavilions will be placed between Pine Street and Clinton Street and positioned to avoid blocking view corridors.



As envisioned, the pavilions will have glass skins to promote transparency and openness. However, other materials may be examined in the course of the design process.

The City will design the Program Zone in and immediately adjacent to the South Street Seaport Historic District with elements that are appropriate to the context of the district.

The open space under the FDR Drive could be programmed for temporary uses, such as farmers' markets, performances, exhibitions, active and passive recreation, and community events.

Portions of the underside of the FDR Drive may be improved with cladding to reduce noise from the overhead roadway and improve the appearance of the viaduct. However, as set forth in the Programmatic Agreement (Appendix B to this Record of Decision and Findings Statement), LMDC and the City will consult the State Historic Preservation Office regarding any cladding of the FDR and any pavilions constructed within the South Street Seaport Historic District.

### *The Recreation Zone*

Plantings and seating will be provided to enhance passive recreation opportunities in the Recreation Zone. Components will include benches, railings, and planters. The railing will include enhanced lighting, fishing rod holders, and brackets for attaching historic placards and viewfinders for sights of interest. Different types of planters will be used to address different soil conditions.

Elements of the Recreation Zone are described from south to north.

*Battery Maritime Building to Pier 11:* Between the BMB and Old Slip, the existing narrow esplanade (approximately 1,140 linear feet) will be widened to approximately 35 feet with a new, approximately 15- to 25-foot-wide structure built out over the water. The expansion area is expected to be an independent structure on pilings rather than a cantilever. The new overwater esplanade structure may pull away from the existing bulkhead line between the BMB and the area north of Pier 6, creating an archipelago with gaps where the historic bulkhead structure will be visible. The total overwater coverage associated with this expansion is expected to be approximately 34,400 square feet (0.79 acres).

*Pier 11 to Fulton Street:* Between Pier 11 and the Brooklyn Bridge, the existing esplanade is approximately 58 feet wide, as it has been extended beyond the bulkhead except in the area of Pier 15. To take advantage of the greater width, larger plants and trees in planter boxes will be interspersed between the seating. Within the boundaries of the South Street Seaport Historic District, elements of the esplanade and pier design will be developed to be appropriate to the context of the district.

The City will rebuild Pier 15, demolished in 2002/2003, within its original footprint (approximately 559 feet long and 80-82 feet wide), now outlined by four remaining piles. It is expected that the new piles will be spaced approximately 25 feet apart. Reconstruction of Pier 15 has already been permitted by the New York State Department of Environmental Conservation (DEC) and the U.S. Army Corps of Engineers. It is not considered new overwater coverage.

The pier could be a deep truss structure with two levels and enclosed uses. It will be designed to allow vessels to dock along both sides. The *Wavertree* may be moved to this location and, if so, it is anticipated that dredging will be required in this area. Similar to the portion of the esplanade within the boundaries of the South Street Seaport Historic District, the design of this pier will be developed to be appropriate to the context of the historic district.

Bus parking perpendicular to South Street under the FDR Drive structure will be eliminated.

*Fulton Street to Brooklyn Bridge:* Directly north and west of Pier 17, the New Market Building will be demolished as part of the Esplanade Project and a new structure of approximately 40,000 square feet is envisioned. Although it is analyzed in the FEIS for the Esplanade Project, the design and construction of a replacement New Market Building will occur at a later date.

The New Market Building pier will also be reconstructed as part of the Esplanade Project. A new transient marina using floating platforms, wave attenuation structure, and a breakwater supported on piles will be created to provide opportunities to temporarily berth small- to mid-sized vessels. The width of the floating platforms will range from 5 to 8 feet for the piers and 8 to 12 feet for the main docks. Approximate overwater coverage associated with the marina will be 34,483 square feet (0.79 acres).

Neither Pier 17 nor the Tin Building is part of the Esplanade Project.

*Brooklyn Bridge to Pier 35:* From the Brooklyn Bridge to Pier 35 north of the Manhattan Bridge, the esplanade is approximately 24 feet wide and does not extend beyond the bulkhead. The Esplanade Project will enhance the esplanade while keeping it upland of the bulkhead; the esplanade will not be widened north of the Brooklyn Bridge.

*Pier 35 to Montgomery Street:* At Pier 35 the Esplanade Project could provide a two-tiered open space. The existing pier structure is sound with the exception of the upland portion, which has sunk due to the failure of the relieving platform and will be replaced. Depending on final design, some reinforcement of piles may be necessary. A multilevel landscape could be created to enhance the open space and block the view of the existing adjacent building on Pier 36, which will continue to be used by the New York City Department of Sanitation. A gently sloping path could rise to an elevated platform at the southeastern end of the pier. Public open space will be created at the northern end of Pier 36. This open space on Pier 36 will require the relocation of the



facility used by the Division of Roadway Repair and Maintenance of the New York City Department of Transportation (NYCDOT) for the storage of equipment used for resurfacing Manhattan's roadways. While a new site has not yet been identified, the facility will not be relocated until a suitable new location for NYCDOT's roadway resurfacing operations is secured.

At the south end of Pier 42, a cove will be created for public enjoyment and temporary mooring of small boats. A protected open water area with a small craft launch will be created at the northern end of Pier 42.

The Esplanade Project is being designed so there will not be a net increase in the amount of overwater coverage that is not associated with water-dependent activities, to preserve the extent and quality of marine habitat within its bounds and to minimize any potential impacts to marine ecology. Approximately 20,000 square feet of existing overwater structure will be removed in this area to create the cove and open water area to compensate for over-water coverage added elsewhere on the Project Site.

### *Design Elements*

Designers of the esplanade and piers have envisioned a system of components that will create a consistent yet unique identity. These components share material and form and can be placed to best meet community needs and to take advantage of local conditions. Components will include benches, railings, and planters. A modular reinforced concrete paving system will run the length of the esplanade, providing a continuous material identity from the BMB to Pier 36.

For the portion of the Project Site within the South Street Seaport Historic District, designers will develop project components to be appropriate for the Historic District. These project components include the reconstruction of Pier 15 and the New Market Building pier, the redevelopment of the New Market Building site, and the creation of pavilions between Maiden Lane and Fulton Street and between Peck Slip and Dover Street. They are the subject of a Programmatic Agreement that has been developed by LMDC, the New York State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation, which is discussed further in Sections 1.5 and 3.2.5 below.

The Esplanade Project, including the various in-water actions, has been designed to address public health and safety considerations. In particular, the marina at the New Market Building pier will provide a safe location for recreational boating and will be designed with input from relevant regulatory agencies.

### *South Street Improvements*

The Esplanade Project will narrow South Street between Old Slip and Montgomery Street and create a uniform sidewalk and bikeway along the east side of the street. The street improvements will be designed generally as follows:

- Between Old Slip and Robert F. Wagner Sr. Place (Wagner Place) just north of the Brooklyn Bridge, South Street will accommodate a single through-lane in each direction and a center turn lane. Drop-off and pick-up lanes will be provided at strategic locations.
- Between Wagner Place and Montgomery Street, South Street will consist of a striped median with left-turn bays for northbound traffic, a single through-lane in each direction, and parking on the west side of the street. The City has secured the funds needed to carry out the planned improvements to South Street north of the Brooklyn Bridge.

The South Street improvements will remove on-street public automobile parking south of the Brooklyn Bridge. The East River Waterfront access projects, which are independent projects being undertaken by the City, will add on-street parking north of the Brooklyn Bridge. (For analysis purposes the FEIS assumes that without the Esplanade Project, the City will reconstruct South Street south of the Brooklyn Bridge in its current configuration.)

The Esplanade Project will displace buses currently permitted to lay-over along South Street and under the elevated FDR Drive between Old Slip and Burling Slip. The displacement totals up to 45 bus layover spaces in this area. Approximately 20 additional bus layover spaces will be displaced along South Street near the Manhattan Bridge.

#### *Battery Maritime Building Plaza*

Although it will not be funded by LMDC, the construction of a new BMB pedestrian plaza is analyzed as part of the Esplanade Project because the City is currently seeking additional funding for this important component. If funding is obtained, the BMB Plaza will be built along with the Esplanade Project. As the southern gateway to the new esplanade, the current roadway and sidewalk configuration in front of the BMB creates an unpleasant and potentially unsafe pedestrian experience as well as a difficult connection from the East River waterfront to Peter Minuit Plaza and Battery Park. The BMB, which has recently been restored, is currently the gateway to Governors Island. It has suffered for some years with a perilously narrow sidewalk fronting South Street.

When funding is available, the entrance to the Battery Park Underpass will be moved approximately 350 feet to the northeast, creating the space for a new  $\frac{3}{4}$ -acre pedestrian plaza at the entrance of the BMB above the existing entrance to the underpass and highway (the BMB Plaza). The plaza will connect the bikeway/walkway from the esplanade to Peter Minuit Plaza and will use design elements that will be appropriate to the context of the historic BMB. A pedestrian bridge over the tunnel entrance in front of the BMB may be constructed as an interim solution until the BMB Plaza is completed.

The new plaza will also create additional vehicular access to both the BMB and Whitehall Ferry Terminal via a pick-up/drop-off lane. Some reconfiguration of the traffic flow is proposed to minimize pedestrian-vehicular conflicts at the BMB and Whitehall



Ferry Terminal and improve traffic flow along Water Street and South Street, such as reconfiguring South Street between Whitehall Street and Broad Street to be one-way in the northeasterly direction with three lanes of northbound traffic and providing a drop-off lane to the west of the plaza. This drop-off lane will create additional access to Whitehall Ferry Terminal. Final design of the BMB Plaza will also consider access needs for Governors Island. The BMB Plaza extension will be designed consistent with existing agreements between the City and the Triborough Bridge and Tunnel Authority. All necessary ventilation, lighting, drainage, and fire suppression systems will be evaluated as part of the design process and incorporated into the final design. The design of the plaza and any interim pedestrian bridge will be submitted to NYCDOT's Division of Bridges for approval prior to construction. The pedestrian bridge, if constructed, will be designed in accordance with the New York State Department of Transportation (NYSDOT) Bridge Manual in order to ensure adequate vertical clearance.

### *Pier 42 Beach*

The Pier 42 pier shed will be removed and the existing pier reinforced. The shed will be replaced by a new "urban beach" above the East River, with berms reminiscent of dunes separating the continuing esplanade and the beach. Beach volleyball courts could be included on the pier.

Although it is analyzed in the FEIS for the Esplanade Project, the construction of a new beach at Pier 42 is dependent on additional funding that is currently being sought by the City. If funding is obtained, the Pier 42 beach will be built along with the Esplanade Project. The level of LMDC funding for this component of the Esplanade Project has not yet been determined. The site of the Pier 42 beach is in Community District 3.

### *New Market Building Replacement*

At approximately the site of the existing New Market Building, a new building of up to approximately 40,000 square feet is envisioned, potentially housing a mix of uses. The new building will be situated to allow a view corridor through to the water along the north side of Pier 17. It is expected to have an open floor plan for community, cultural, and/or commercial uses. Like the beach at Pier 42, the replacement building is being analyzed as part of the Esplanade Project but the City is seeking alternate funding for this structure and may construct it at a later date.

The goals of the redevelopment at this site are to create a highly visible and exciting node along the East River waterfront, to draw people to and encourage them to move along the waterfront, and to create community interest, while complementing the East River Esplanade and Piers Project. For the purposes of environmental review, the Department of City Planning developed physical design parameters to ensure that the New Market Building will be surrounded by open space, allow ample circulation, and provide public access to the waterfront. The height of the building is assumed to be approximately 50 feet, with a footprint of roughly 20,000 square feet. The assumed



building height and footprint will require a special permit from City Planning Commission.

## **1.4 Project History and Public Participation**

### *1.4.1 Concept Plan for the East River Waterfront*

The plan for the Esplanade Project builds on many years of planning in Lower Manhattan, which are referenced in Chapter 1 of the FEIS, Project Description. In 2004, as a result of the *Vision for a 21st Century Lower Manhattan*, the Department of City Planning, Economic Development Corporation, NYCDOT, and Department of Parks and Recreation, with funding from LMDC, undertook a year-long study of the East River waterfront in Lower Manhattan. The design team, which included architects, urban designers, landscape architects, and engineers, working closely with the local community, area elected officials, City and State agencies, and civic associations, developed a waterfront concept plan. The planning was an extraordinary participatory and interactive process comprising over 70 separate meetings with community boards, tenant associations, civic leaders, maritime experts, and local elected officials.

During development of the concept plan, a wide variety of alternatives were carefully considered, including alternative scenarios for development of the esplanade and the BMB Plaza. All of these as well as other alternatives are examined in Chapter 19 of the FEIS, "Alternatives."

### *1.4.2 Public Participation in Coordinated Environmental Review*

The following actions have been taken pursuant to all applicable laws, regulations, orders and guidelines regarding the coordinated environmental review process.

- March 9, 2006 - LMDC Board approved Lead Agency status, authorized the Notice of Intent to Prepare an Environmental Impact Statement, approved the Draft Scope and authorized Section 106 review and review under other applicable laws and regulations.
- March 22, 2006 - A joint notice, entitled "Notice of Intent to Prepare Draft Environmental Impact Statement; Notice of Public Scoping Meeting and Public Comment Period; Notice of National Historic Preservation Act Review; Notice of Early Public Review of a Proposal in the 100-Year Floodplain," was published in newspapers of general circulation on March 22 and March 23 and DEC's Environmental Notice Bulletin on March 22.
- LMDC also made the Draft Scope available on its website. LMDC circulated the notice and the Draft Scope to a number of cooperating/involved agencies, elected officials and other potentially interested persons and made it available to the public.
- April 11, 2006 - LMDC held a public scoping meeting that allowed the public to submit comments on the Draft Scope and regarding historic

resources and Section 106 review. The public comment period remained open until April 27, 2006.

- June 8, 2006 - LMDC Board adopted the Final Scope, which reflected public comments on the Draft Scope and other considerations. LMDC made the Final Scope available to the public and on its website.
- October 12, 2006 - LMDC Board adopted the DEIS.
- January 2006 - LMDC circulated the DEIS to cooperating/involved agencies, elected officials and other potentially interested persons<sup>7</sup> and made it available to the public and on its website.
- January 24, 2007 - A joint notice, entitled “Notice of Availability of a Draft Environmental Impact Statement for the East River Waterfront Esplanade and Piers Project in the Borough of Manhattan, City of New York, New York; Notice of Public Hearing; and Notice of Availability of National Historic Preservation Act Draft Programmatic Agreement” was published in newspapers of general circulation and DEC’s Environmental Notice Bulletin.
- January 26, 2007 - U.S. EPA published the notice of availability of the DEIS in the Federal Register. The public comment period on the DEIS began.
- February 9, 2007 - HUD published the joint notice in the Federal Register.<sup>8</sup>
- March 5, 2007 - LMDC held a public hearing that served as an opportunity for the public to comment on the DEIS and draft Programmatic Agreement.
- March 19, 2007 - Deadline for comments on the DEIS and draft Programmatic Agreement.
- May 18, 2007 - LMDC Board adopted the FEIS, proposed final Programmatic Agreement and Draft Conformity Determination prepared pursuant to the Clean Air Act.
- May 22, 2007 - LMDC distributed the FEIS, proposed final Programmatic Agreement and Draft Conformity Determination to a number of cooperating/involved agencies, elected officials, Native American tribes and other potentially interested persons. LMDC also made the FEIS available to the public and on its website.
- May 25, 2007 and May 30, 2007 (respectively) - The joint notice, entitled “Notice of Availability of Final Environmental Impact Statement; Notice of Availability of National Historic Preservation Act Final Programmatic Agreement; Notice of Proposed Activity in the 100-Year Floodplain; Notice of Draft Clean Air Act Conformity Determination” (FEIS Notice),

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<sup>7</sup> LMDC also invited several Native American groups to comment on the DEIS and draft Programmatic Agreement.

<sup>8</sup> HUD’s notice was entitled “Notice of Availability of a Draft Environmental Impact Statement for the East River Waterfront Esplanade and Piers Project in the Borough of Manhattan, City of New York, New York; Notice of Intent to Prepare Draft Environmental Impact Statement; Notice of Public Hearing; and Notice of Availability of National Historic Preservation Act Draft Programmatic Agreement.”



was published in and newspapers of general circulation and the Environmental Notice Bulletin.

- June 2, 2007 - U.S. EPA published the notice of availability of the FEIS in the Federal Register. The public comment period on the FEIS began.
- July 2, 2007 - The public comment period on the FEIS, Draft Conformity Determination and final floodplain notice ended.
- July 27, 2007 - HUD published the notice entitled "Draft Conformity Determination for the Proposed East River Waterfront Esplanade and Piers Project, City of New York, New York County, NY" in the Federal Register.
- August 3, 2007 - LMDC, SHPO and the ACHP executed the Programmatic Agreement.

LMDC will distribute this ROD and Findings Statement, make it available on its website and publish a notice of its availability in a newspaper of general circulation (or newspapers). LMDC and HUD will also publish a notice of the Final Conformity Determination in the Federal Register.

The FEIS and its supporting documentation and appendices are incorporated by reference into this ROD and Findings Statement. The DEIS and FEIS, with all exhibits include the Programmatic Agreement, are on file at LMDC at One Liberty Plaza, 20th Floor, New York, New York. Additional information on the Esplanade Project can be obtained on LMDC's website, [www.renewnyc.com](http://www.renewnyc.com), in the "Planning, Design & Development" section, or by contacting Christina Hynes, Lower Manhattan Development Corporation, One Liberty Plaza, 20th Floor, New York, NY, 10006; telephone: (212) 962-2300; fax: (212) 962-2431.

### **1.5 Review Under Section 106 of the National Historic Preservation Act**

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties. The Project Site for the Esplanade Project includes portions of New York City's South Street Seaport Historic District, which is also listed on the State and National Registers of Historic Places. A number of other historic properties are located adjacent to the Project Site and archeological remains may exist. As envisioned by Section 106, LMDC carried out a coordinated NEPA and Section 106 review of the Esplanade Project, as described above and in Chapter 2 of the FEIS, Methodology. SHPO and the City were consulting parties. Through the coordinated review LMDC also provided Native American tribes, a number of potentially interested persons and the public with an opportunity to participate and comment on the Esplanade Project.

Because the designs for some project components are not yet complete and because the actual presence of archaeological resources cannot be confirmed without field testing, LMDC and SHPO concluded that it was appropriate to enter into a Programmatic Agreement pursuant to Section 106. The FEIS concludes that any adverse effects on historic resources, including archeological resources, that are identified as the



design process moves forward will be minimized or avoided to the maximum extent possible as set forth in the Programmatic Agreement, which the Advisory Council on Historic Preservation is also a party to. The Programmatic Agreement provides continued opportunities for public involvement. The executed Programmatic Agreement is an appendix to this ROD and Findings Statement.

The execution and implementation of the Programmatic Agreement evidences LMDC's compliance with its Section 106 responsibilities under the National Historic Preservation Act, that the Advisory Council on Historic Preservation has had a reasonable opportunity to comment and that LMDC has taken into account the effects of the Esplanade Project on historic resources and properties. Further, LMDC has complied with its obligations under the State Historic Preservation Act through the Section 106 review process.

## 1.6 Other Statutory Reviews

### 1.6.1 Conformity Review under the Clean Air Act

The Clean Air Act, as amended in 1990, defines a non-attainment area (NAA) as a geographic region that has been designated as not meeting one or more of the National Ambient Air Quality Standards (NAAQS).

The Esplanade Project is located in New York County, which has been designated by the U.S. Environmental Protection Agency as a moderate NAA for PM<sub>10</sub>, a NAA for PM<sub>2.5</sub>, and a moderate NAA for ozone.

The area is in attainment for all other criteria pollutants, including nitrogen dioxide (NO<sub>2</sub>), lead (Pb), sulfur dioxide (SO<sub>2</sub>), and carbon monoxide (CO). EPA had re-designated New York City as in attainment for CO on April 19, 2002 (67 FR 19337). But the CAA requires that a maintenance plan ensure continued compliance with the CO NAAQS for former NAAs.

A State Implementation Plan (SIP) is a state's plan on how it will meet the NAAQS under the deadlines established by the Clean Air Act. In November 1998, New York State submitted its *Phase II Alternative Attainment Demonstration for Ozone*, which addressed the path to attainment of the 1-hour ozone NAAQS by 2007 (New York submitted subsequent filings to EPA in subsequent years). On February 4, 2002, EPA approved New York's 1-hour ozone SIP (67 FR 5170).

The general conformity requirements in 40 CFR Part 93, Subpart B, apply to those federal actions that are located in a non-attainment or maintenance area<sup>9</sup> where (1) the action's direct and indirect emissions have the potential to emit one or more of the criteria pollutants (or precursors, in the case of ozone and PM<sub>2.5</sub>) at emission rates equal to or exceeding the thresholds at 40 CFR § 93.153(b), or where (2) the action

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<sup>9</sup> And which are not subject to transportation conformity requirements at 40 CFR Part 51, Subpart T, or Part 93, Subpart A.

encompasses 10 percent or more of a NAA or maintenance area's total emissions inventory for that pollutant.

In the case of New York County, the prescribed thresholds are 50 tons of VOCs and 100 tons of NO<sub>x</sub> (ozone precursors in moderate 8-hour ozone NAA and PM<sub>2.5</sub> precursors in PM<sub>2.5</sub> NAA), 100 tons of CO (CO maintenance area), 100 tons of PM<sub>10</sub> (moderate PM<sub>10</sub> NAA), 100 tons of PM<sub>2.5</sub> (PM<sub>2.5</sub> NAA), and 100 tons of SO<sub>2</sub> (PM<sub>2.5</sub> precursor in PM<sub>2.5</sub> NAA).

LMDC has determined that the total annual direct and indirect emissions of all such criteria pollutants from the Esplanade Project are less than the *de minimis* thresholds prescribed in 40 CFR § 93.153(b), as currently in effect, that will trigger the requirement to conduct a general conformity determination. Therefore, a general conformity determination is not necessarily required by current federal regulations.

Nonetheless, temporarily, during construction, annual NO<sub>x</sub> emissions are predicted to exceed the threshold of 25 tons per year that applies to a severe ozone non-attainment area under the former 1-hour ozone NAAQS, which previously applied in New York. Accordingly, LMDC prepared a Draft Conformity Determination to demonstrate the Esplanade Project's conformity with the ozone SIP. LMDC provided an opportunity for 30-day public review and comment on the Draft Conformity Determination as described above in "Public Participation in Coordinated Environmental Review" section of this ROD and Findings Statement.

Following the adoption of this ROD and Findings Statement, LMDC will prepare a Final Conformity Determination and publish notice of it in the Federal Register. The proposed Final Conformity Determination is Appendix C to this ROD and Findings Statement.

#### *1.6.2 Determinations on Floodplain Management*

Executive Order 11988 requires federal agencies to consider alternatives to avoid adverse effects and incompatible development in the floodplain. 24 CFR Part 55, "Floodplain Management," establishes an eight-step process to evaluate the potential effects of any action in the floodplain, including minimizing the Esplanade Project's impact on floodplains and examining practicable alternatives. Article 36 of the Environmental Conservation Law and its implementing regulation, 6 NYCRR Part 502, "Floodplain Management Criteria for State Projects," also requires an alternatives analysis and effort to minimize flood damage for projects within hazardous areas. Further, 6 NYCRR Part 502 requires that no project be undertaken unless it is shown that the cumulative effect of the proposal, when combined with all existing development, will not cause any material flood damage to such existing development.

LMDC satisfied both federal and state floodplain management requirements through preparation of the DEIS and FEIS and the public process described above in



“Public Participation in Coordinated Environmental Review.” The analysis of floodplain impacts in the FEIS is further discussed in Section 3.2.7.

### *1.6.3 Coastal Zone Consistency Determination*

The Coastal Zone Management Act of 1972 (CZMA) delegates authority and responsibilities to individual states to determine compliance with both CZMA and approved state management plans. Under New York’s Waterfront Revitalization of Coastal Areas and Inland Waterways Act, the New York State Department of State is responsible for administering the Coastal Management Program. New York’s law authorizes the State to encourage local governments to adopt local Waterfront Revitalization Program that incorporate the state’s policies. New York City has adopted a Waterfront Revitalization Program and the Department of City Planning administers it. The FEIS analyzes the Esplanade Project pursuant to the ten policies of New York City’s Waterfront Revitalization Programs. The Consistency Assessment Form of the New York City Waterfront Revitalization Program is Appendix D to this ROD and Findings Statement.

### *1.6.4 Environmental Justice*

Executive Order 12898 requires federal agencies to conduct an environmental justice analysis that identifies and addresses any disproportionate and adverse impacts on minority or low-income populations. The FEIS complies with this order, the federal Council on Environmental Quality’s “Environmental Justice Guidance Under the National Environmental Policy Act” (December 1997) and New York State Department of Environmental Conservation’s guidance on environmental justice.

### *1.6.5 Other HUD Regulations*

LMDC reviewed the Esplanade Project in conformance with all other applicable HUD regulations and environmental criteria and standards, including those set forth in 24 CFR Part 58.

## **1.7 Required Permits and Approvals**

LMDC is the lead agency for the environmental review, which was coordinated with review pursuant to Section 106 and other project reviews required by federal, state and local laws as well as HUD regulations. The FEIS serves as the basis for LMDC’s ROD pursuant to NEPA and Findings Statement pursuant to SEQRA. The Esplanade Project may require or involve, among others, the following regulatory agency actions, permits, and/or approvals.

### *Federal*

- U.S. Army Corps of Engineers (USACE): The improvements proposed for the in-water components of the Esplanade Project require permits and approvals from



USACE and DEC. The City already has a permit from the DEC and USACE for rebuilding Pier 15 for the uses contemplated by the Esplanade Project. Other project components that may require permits or review include the archipelago, marina and mitigation for new over-water coverage.

- U.S. Department of Housing and Urban Development: The Esplanade Project requires HUD's approval of LMDC's request for release of funds. LMDC coordinated its review of the Esplanade Project with the various laws, regulations, orders and guidelines referenced in HUD's regulation 24 CFR Part 58.
- Advisory Council on Historic Preservation: The Advisory Council on Historic Preservation is a party to the Programmatic Agreement and will have a continuing role in the consultation process that the agreement provides.

#### *State*

- New York State Department of Environmental Conservation: As described above, the City requires permits from USACE and DEC for in-water actions.
- State Historic Preservation Office of the New York State Office of Parks, Recreation and Historic Preservation: LMDC consulted with SHPO through the Section 106 process.<sup>10</sup> SHPO is a party to the Programmatic Agreement and will have a continuing role in the consultation process that the agreement provides.
- Lower Manhattan Development Corporation: Project and funding approvals; Coastal Zone Consistency determination.

#### *New York City*

The City, as the entity that will carry out the Esplanade Project, will require various local approvals. Some elements of the Esplanade Project were subject to the City's Uniform Land Use Review Procedure (ULURP). Based on the FEIS and other relevant portions of the environmental review record, on July 25, 2007, the City Planning Commission made its SEQRA and CEQR findings and voted to approve the ULURP application for the Esplanade Project.

Additional City reviews and approvals are described below:

- New York City Department of City Planning:
  - Disposition for the lease of marginal streets for pavilions and possible dispositions or concessions related to other program elements of the Esplanade Project.
  - Special Permit for bulk and use changes on New Market Building pier and Pier 15.
  - Changes to the City Map related to the creation of the BMB Plaza.
  - Site selection for new uses created by the Esplanade Project.
  - Waterfront Zoning certification pursuant to Zoning Resolution § 62-711.

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<sup>10</sup> The City of New York was also a consulting party in the Section 106 process and has a continuing role as set forth in the Programmatic Agreement.

- Concurrence of consistency with the Waterfront Revitalization Program.
- New York City Department of Transportation: NYCDOT may review proposed traffic and roadway changes.
- Uniform Land Use Review Procedure (ULURP): ULURP, mandated by Sections 197-c and 197-d of the City Charter, is a process specifically designed to allow public review of proposed projects at four levels: Community Board, Borough President, CPC, and City Council. The procedure sets time limits for review at each stage to ensure a maximum total review period of approximately seven months. (Completed)

## 1.8 Schedule

For the purposes of the FEIS, LMDC assumed that construction of the Esplanade Project will begin in the fourth quarter of 2007 and will be completed at the end of 2009. While funding for the BMB Plaza and the beach on Pier 42 has not been identified yet, the City will construct them concurrently with the Esplanade Project if possible. The FEIS therefore presents a conservative analysis of the Esplanade Project, with construction of all project elements occurring concurrently. The use of a condensed construction schedule in the environmental review tends to maximize a project's projected impacts.

## 2.0 ALTERNATIVES

In addition to the Esplanade Project, LMDC and the City considered a broad range of alternatives to the Esplanade Project, including a no action alternative. Some of the alternatives include components other than those included in the Esplanade Project (the "Esplanade Development Alternatives"). These include the construction of residential buildings and bringing the FDR Drive to grade. Other alternatives consist simply of the Esplanade Project as described above, but without certain components like the BMB Plaza and the Pier 42 Beach.

A concise summary of the alternatives follows. A more thorough discussion of the alternatives and their potential for impacts is included in Chapter 19 of the FEIS.

### 2.1 No Action Alternative

Under the No Action Alternative, the project area would remain as it is in its current condition. LMDC would not provide funding, and the City would not take any of the necessary land use actions.

If LMDC selected the No Action Alternative, the numerous benefits associated with the Esplanade Project would not occur and land use policies designed to encourage improvements to the Project Site would not be complied with. The Esplanade Project will benefit views, neighborhood character, open space, the waterfront, and the context of



historic resources. The Esplanade Project is therefore the preferable means of meeting the goals described in Section 1.2 above. Neither the Esplanade Project (except as explained in Section 3 below regarding noise, traffic and construction) nor the No Action Alternative, however, are expected to result in significant adverse impacts.

## 2.2 Esplanade Development Alternatives

Other esplanade developments that were considered as part of the planning process for the Esplanade Project included an alternative with residential buildings built over the elevated FDR Drive south of the Brooklyn Bridge and an alternative with the FDR Drive at grade south of the Brooklyn Bridge.

### 2.2.1 Residential Buildings over the FDR Drive

This alternative would allow for the development of new residential buildings west of the East River bulkhead and above the FDR Drive. The new buildings would be elevated on columns above the FDR Drive, potentially requiring the removal of two lanes of roadway. The buildings would be constructed through the middle of the roadway, requiring a reconfiguration of the roadway structure. The lobbies for the building would be located below the FDR Drive viaduct. Pavilions could still be constructed beneath the FDR Drive north of the Brooklyn Bridge.

For every square foot of residential use development, one square foot of park space would be developed. The parkland would be created on a new structure that would cantilever out from the bulkhead, creating more overwater coverage. The revenue stream from the residential development would create a source of funding for the construction and future operations of the enhanced esplanade and parkland. The new residential development within the FDR Drive alignment would be designed to respect higher-level views from existing buildings along South Street, and would respect the South Street Seaport Historic District and Extension by limiting the development area to south of the historic district's southern boundary at Maiden Lane.

Nonetheless, this alternative is not viable for several reasons, primarily the difficulty of construction above and around the FDR Drive, the potential adverse effects of creating additional overwater coverage, and obstruction of existing views. In addition, there is currently no identifiable funding strategy for this alternative.

The alternative would have a number of positive impacts that are similar to the Esplanade Project's benefits, such as improvements to open space, revitalization of the waterfront, improved urban design and visual resources, and respect for historic resources. But this alternative would also have a number of adverse impacts that the Esplanade Project would not have, some of which could be significant adverse impacts, as detailed in Chapter 19 of the FEIS. These significant adverse impacts could occur for community facilities (schools), historic resources, natural resources, traffic, transit and pedestrians, air quality, and construction. Because this alternative is not viable for the



reasons discussed above and because of these potential impacts, the Esplanade Project is the preferred alternative.

### *2.2.2 FDR Drive at Grade South of the Brooklyn Bridge*

This alternative would dismantle and remove the elevated FDR Drive from the Brooklyn Bridge to Broad Street and create a green, tree-lined boulevard on South Street. The elevated section of the FDR Drive north of the Brooklyn Bridge would transition to an at-grade intersection just north of Robert F. Wagner Sr. Place. The South Street/FDR Drive roadway south of the resulting intersection to Broad Street would be 10 lanes wide with five lanes in each direction. The roadway would exceed the available space between the building lines on the west side of South Street and the bulkhead line of the East River. Therefore, the roadway would cantilever over the existing bulkhead, potentially requiring its reconstruction.

This alternative would require a significant reconfiguration of the existing South Street roadway as well as considerable modifications to the existing ramp structures that connect the FDR Drive to the Brooklyn Bridge. A number of existing intersections along the South Street/FDR Drive alignment would also have to be reconfigured and/or signalized to accommodate the new roadway. No pavilions would be developed in this alternative. As with the Esplanade Project, public parking and commuter and tour bus parking that currently exists under the FDR Drive would be eliminated. At present, there is no identifiable funding for the roadway reconfiguration.

The FDR Drive at Grade South of Brooklyn Bridge alternative would have a few of the same positive effects that the Esplanade Project would have. These include positive effects on land use and visual resources. But the FDR Drive at Grade South of Brooklyn Bridge alternative would have a number of adverse impacts beyond those of the Esplanade Project, some of which could be significant. These might include reduced open space, blocking access to the waterfront, obscuring and requiring reconstruction of the historic bulkhead, potential demolition of the landmark Tin Building, impacts on neighborhood character, shade over the East River, disruption of traffic flow, pedestrian safety, impacts on air quality, increased noise levels, greater potential for impacts on archaeological resources, and more complicated construction. For these reasons, LMDC is not selecting this alternative and the Esplanade Project is the preferred method of achieving the project goals.

### **2.3 Battery Maritime Building Plaza Alternatives**

Two alternatives, a Stepped Ramp and a Partial Stepped Ramp, were considered as alternatives to the inclusion of the BMB plaza in the Esplanade Project. They would still help remove pedestrian-vehicular conflicts at the BMB entrance. A third alternative would simply carry out the Esplanade Project without any change to the BMB Plaza.

Because the BMB Plaza would create important benefits for the Project Site that the BMB Plaza alternatives would not, the Esplanade Project including the BMB Plaza is

the preferred alternative. But the FEIS explores these Battery Maritime Building Plaza Alternatives because of the funding considerations described in Section 1.3 above.

### *2.3.1 Stepped Ramp Alternative*

The Stepped Ramp Alternative would provide a ramped pedestrian plaza connecting Peter Minuit Plaza, the East River Esplanade, and Broad Street through a stepped ramp that would elevate pedestrian traffic over the Battery Park Underpass. This alternative would create an Americans with Disabilities Act (ADA)-compliant, grade-separated connection for pedestrians while providing the feel of an esplanade. The southern boundary of the stepped ramp would consist of an at-grade landing, approximately 110 feet wide, at the northern curb line of Whitehall Street between One New York Plaza and Marginal Street. The stepped ramp would rise from this landing at a rate that is consistent with that of the Battery Park Underpass until it reaches an elevation of approximately 24 feet, which corresponds to the northernmost point of the BMB. At this elevation, the stepped ramp would connect to a bridge/platform, which would span from the southwest corner of the intersection of South and Broad Streets and the East River Esplanade. Access from the intersection of Broad and South Streets to the elevated bridge/platform would be provided from the southern sidewalk of Broad Street via a staircase, while access from the East River Esplanade would be provided through a ramp. The entrance to the Battery Park Underpass would remain in its existing location under this alternative. This alternative would result in similar impacts as compared with the Esplanade Project. Figure S-2 of the FEIS is a diagram of this alternative.

This elevated ramped plaza would interfere with views of the BMB, a historic resource. However, this alternative would also involve the construction of an overwater esplanade structure from which the East River bulkhead, also a historic resource, could be viewed. In this regard, this alternative would have a positive effect on historic resources.

The obstructed views of the BMB would result in a significant adverse impact on visual resources. However, the elevated ramp structure in front of the BMB and over the East River would create new views of the harbor and would in this way have a beneficial effect on visual resources.

This alternative, like the Esplanade Project with the BMP Plaza, would result in no significant adverse impacts on natural resources and water quality.

The Stepped Ramp Alternative would require the closure of South Street between Broad and Whitehall Streets and a number of other changes to traffic patterns. These changes would have the potential to result in significant adverse impacts on traffic.

The Stepped Ramp Alternative would be expected to improve pedestrian circulation between the Whitehall Ferry Terminal/Peter Minuit Plaza and Broad Street, as well as the East River Esplanade, by creating a bridge between the three locations. It would, however, require pedestrians to cross Whitehall Street at a signalized location. In addition, this alternative lacks a connection to the BMB and thus does not address



pedestrian circulation to and from the BMB. Therefore, pedestrians accessing the BMB from either the Whitehall Ferry Terminal/Peter Minuit Plaza or the East River Esplanade would have to walk along the Marginal Street sidewalk, which is currently four feet wide, not programmed for reconstruction, and broken by curb cuts for vehicle access to the BMB.

The construction of the Stepped Ramp Alternative would require a significant support structure on the west curb line of Marginal Street, which would reduce the effective pavement width and adversely affect pedestrian circulation as well as bicycle operations. The Stepped Ramp Alternative does not accommodate bicyclists, and therefore would not significantly alter existing bicycle operations along the East River Esplanade. Traveling southbound along South Street between Broad and Whitehall Streets, bicyclists would be rerouted to Water Street until they can enter Battery Park. Along Marginal Street northbound, bicyclists would be accommodated as in existing conditions until they reach the East River Esplanade bikeway.

Unlike the Esplanade Project, this alternative would not involve the relocation of the entrance to the Battery Park Underpass. The over two-year-month period of excavation and construction of the portion of the FDR Drive leading into the underpass would not occur under this alternative, nor would the potential significant impacts with respect to traffic and air quality during that construction period. It is expected that disruption of traffic through the Battery Park Underpass would be minimal during the construction of the stepped ramp in front of the BMB.

### *2.3.2 Partial Stepped Ramp Alternative*

Similar to the Stepped Ramp Alternative, the Partial Stepped Ramp Alternative would provide a connection between Peter Minuit Plaza, the East River Esplanade, and Broad Street through a stepped ramp that elevates pedestrian traffic over the Battery Park Underpass. Like the Stepped Ramp Alternative described above, this Alternative would create an ADA-compliant, grade-separated connection for pedestrians while providing the feel of an esplanade. However, the ramp in front of the BMB would not extend as far north as it would under the Stepped Ramp Alternative. The southern boundary of the partial stepped ramp would consist of an at-grade landing, approximately 65 feet in width, at the northern curb line of Whitehall Street between South and Marginal Streets. The partial stepped ramp would rise from the landing at a rate that is consistent with that of the Battery Park Underpass until it reaches an elevation of approximately 24 feet, which corresponds to the northernmost point of the BMB. At this elevation, the partial stepped ramp would connect to a bridge/platform, which would span between the southwest corner of the intersection of South and Broad Streets and the East River Esplanade. Access from the intersection of Broad and South Streets to the elevated bridge/platform would be provided from the southern sidewalk of Broad Street via a staircase, while access from the East River Parkway would be provided through a ramp. Figure S-3 of the FEIS is a diagram of this alternative.

Under this alternative, the potential impacts would be the same as those identified above under the Stepped Ramp Alternative with the exception of open space and traffic and parking. A slightly smaller amount of open space would be provided on the elevated ramped plaza in front of the BMB under the Partial Stepped Ramp Alternative. The Partial Stepped Ramp Alternative would not require the closure of South Street between Broad and Whitehall Streets; but would require a number of other potentially disruptive changes to traffic patterns.

### *2.3.3 Alternative Without Changes in Front of the Battery Maritime Building*

Although this environmental review takes into consideration the plaza in front of the BMB, this project component is dependent on funding that is currently being sought by the City of New York. This alternative, therefore, considers a scenario in which the proposed changes to the BMB Plaza do not receive funding and are not implemented. The current roadway and sidewalk configuration in front of the BMB, which creates an unpleasant pedestrian experience as well as a difficult connection from the East River waterfront to Peter Minuit Plaza and Battery Park, would be maintained. The ramp to the Battery Park Underpass and the multiple at-grade traffic lanes surrounding the ramp on the south, east, and west would continue to pose constraints to pedestrian and vehicular movement to and around the BMB. No additional vehicular access to the BMB and Whitehall Ferry Terminal would be created via a pick-up/drop-off lane.

Under this alternative, the area in front of the BMB would not be enhanced to become a landscaped plaza, and access to the BMB would not be improved as it would by the Esplanade Project with the BMP Plaza. This alternative would therefore not have the numerous benefits of the Esplanade Project associated with the planned BMB Plaza. It would not have some of the adverse effects either, primarily the impacts associated with construction of the BMB Plaza.

## **2.4 Alternative Without the BMB Plaza and the Pier 42 Beach**

This alternative considers the differences in impacts if both the BMB Plaza and the Pier 42 Beach and small craft launch area are not constructed. All other portions of the Esplanade Project would remain the same.

Without the BMB Plaza and the Pier 42 Beach, the substantial land use benefits associated with the Esplanade Project would be reduced. (Although at least one of the significant adverse impacts of the Esplanade Project, temporary construction impacts associated with the BMB Plaza, would be avoided.) The project would affect a smaller geographic area, the linkages to other open spaces to the south and the north would not be improved. Pier 42 would remain vacant, but Pier 35 would still be redeveloped and the cove would be created at the south end of Pier 42. But the setting of the cove would be less attractive without the Pier 42 Beach. This alternative would be less supportive of public policies that call for increased open space and public access to the waterfront and the overall beneficial impacts would be substantially less with this alternative than with the Esplanade Project with the BMB Plaza and Pier 42 Beach.



## **2.5 Alternative In-Water Configurations South of Pier 15**

The Esplanade Project would add some new overwater coverage in the locations outlined in this ROD and Findings Statement. The project offsets this new coverage on a one-to-one basis, including through the creation of a cove at Piers 36 and 42. The DEC may, however, require the City to offset this new overwater coverage on a two-to-one basis. It may therefore be necessary to further reduce the overwater coverage south of Pier 15. LMDC analyzed alternative in-water configurations south of Pier 15 to address this situation.

Since the City already plans to demolish Pier 14 as part of an independent project, the City may agree to mitigate the Esplanade Project's new overwater coverage (and provide a two-to-one compensation) by agreeing not to rebuild Pier 14 in the future. This alternative and the Esplanade Project have different impacts only with regard to land use and natural resources.

The Esplanade Project assumes that the City will eventually demolish and rebuild Pier 14 as part of an independent project. In the build year for the Esplanade Project, 2009, the FEIS assumes that the City would already have demolished but not rebuilt Pier 14. In this alternative, the City would agree not to rebuild Pier 14 or the retail and/or maritime uses that might have been developed on it. Neither this alternative nor the Esplanade Project would result in a significant adverse impact on land use.

Compared with the Esplanade Project, this alternative would result in a smaller net amount of overwater coverage. This alternative would therefore not have the potential to result in additional impacts on natural resources or water quality.

## **2.6 Alternative Retaining a Portion of Automobile Parking**

This alternative assumes that approximately half of the automobile parking under the FDR Drive is retained. This would reduce the amount of recreational open space and the number, and possibly size, of pavilions created by the Esplanade Project. All other parts of the Esplanade Project are assumed to remain unchanged.

This alternative could reduce impacts in several minor ways. Since this alternative would construct fewer or smaller pavilions, it would involve less subsurface disturbance, and therefore could affect areas of potential archaeological sensitivity to a lesser extent than the Esplanade Project. Retaining these parking spaces would reduce the parking shortfall anticipated with the Esplanade Project.

This alternative may have some additional adverse impacts, although none are anticipated to be significant. For example, the context of surrounding historic resources, neighborhood character and urban design and visual resources would not be improved under this alternative as much as by the Esplanade Project, as views from and around the esplanade would still include parking below the FDR Drive. A portion of the vehicle trips that would be diverted to off-site facilities by the Esplanade Project would remain on the Project Site. As a result, delays at some of the traffic analysis locations may increase as compared with the Esplanade Project, but it is not expected that the proposed mitigation would need to be substantially different.

In summary, this alternative would reduce the benefits of the Esplanade Project, which is the preferred alternative. But this alternative would not have significant adverse environmental effects, other than those the FEIS identifies for the Esplanade Project with regard to noise, traffic and construction.

### 3.0 ENVIRONMENTAL IMPACTS

#### 3.1 Methodology<sup>11</sup>

LMDC served as lead agency pursuant to both NEPA and SEQRA for the environmental review of the Esplanade Project. Because SEQRA does not require a separate EIS to be prepared under SEQRA when a federal EIS is prepared, LMDC prepared the FEIS pursuant to NEPA. But SEQRA and CEQR, and their implementing regulations, were referenced as appropriate. Because the Esplanade Project is entirely within New York City and will involve actions by the City Planning Commission, the CEQR Technical Manual generally served as the guide for methodologies and impact criteria. The analysis in each substantive area of impact assessment is consistent with federal, State and City requirements and guidelines, which are identified in the FEIS as applicable.

The City served as a cooperating and involved agency through its relevant departments such as the NYCDOT, Department of Parks and Recreation and Department of City Planning.<sup>12</sup> The New York City Economic Development Corporation is working with the City in connection with the Esplanade Project.

##### 3.1.1 Current Conditions Scenario

The environmental review followed the customary approach to presenting an impact analysis under NEPA, SEQRA and CEQR starting with a baseline of existing

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<sup>11</sup> The FEIS does not include chapters on shadows, community facilities or public health because no impacts in these categories are anticipated. The FEIS does not have a chapter on "cultural resources" for similar reasons, although this issue is generally addressed in Historic Resources and throughout the FEIS.

<sup>12</sup> LMDC also invited the U.S. Army Corps of Engineers, DEC and New York State Department of Transportation to serve as cooperating agencies although LMDC did not receive responses from these agencies.



conditions in the relevant study areas and then forecasting those conditions forward to a time in the future that is appropriate for assessing project impacts. The FEIS compares future year conditions with and without the Esplanade Project. The reference point of conditions without the project is established by adjusting existing conditions to account for other known developments, policy initiatives, and trends that are expected to influence future conditions in the study area. This future condition without the project is then modified by overlaying the development and activity expected from the Esplanade Project to assess future conditions with the project in place. This comparison of future conditions with and without the project identifies the project impacts and the need, if any, for mitigation.

### *3.1.2 Analysis Year*

The City expects to complete construction of the Esplanade Project by 2009, which results in a conservative analysis in the FEIS that fully considers air, construction and other impacts. The peak construction year will be 2008.

The City's reconstruction of South Street between Whitehall and Dover Streets, a component of the Esplanade Project, will be timed to correspond with the esplanade improvements. While funding for the BMB Plaza and the beach on Pier 42 has not yet been identified, the City is seeking funding for those elements and will pursue them concurrently with the Esplanade Project, if possible. (The City will construct the replacement New Market Building at a later date.) They are therefore analyzed in the FEIS with the other elements of the Esplanade Project. The FEIS also considers the cumulative effects of the Esplanade Project and a number of other independent projects in Lower Manhattan, as fully addressed in Chapter 2 of the FEIS, "Methodology."

## **3.2 Environmental Impacts of the Esplanade Project**

LMDC fully considered potential environmental impacts of the Esplanade Project as set forth in the FEIS. Potential adverse environmental impacts, most of which will not be significant, are summarized below. Mitigation measures are also described below. Chapters 18 and 20 of the FEIS also describe necessary mitigation measures and unavoidable significant adverse impacts in greater detail.

### *3.2.1 Land Use, Zoning and Public Policy*

With its improvements to the existing esplanade and new recreational, cultural, and retail uses, the Esplanade Project will contribute to the revitalization of Lower Manhattan and will provide amenities needed to sustain a growing mixed-use neighborhood. The Esplanade Project will also help to fulfill the City's long-range vision of a revitalized Harbor District.

Overall, the Esplanade Project represents an important step in achieving the public policy goals relating to the revitalization of Lower Manhattan and the reclamation

of the City's waterfront for public use. Therefore, the Esplanade Project will result in no significant adverse impacts with respect to public policy.

#### *Land Use*

The Esplanade Project will greatly improve land use on the Project Site and is generally consistent with zoning and public policy for Lower Manhattan. The proposed improvements to the existing esplanade and bikeway on the Project Site will create new opportunities for recreational use in addition to making the area more attractive visually. New recreational space created on piers and cultural and retail space created in pavilions under the FDR Drive will draw visitors to the area and add activity to this section of the Lower Manhattan waterfront that is currently underutilized despite its dramatic views and recreational potential. Therefore, the Esplanade Project will result in no significant adverse impacts on land use on the Project Site. The Esplanade Project will also be consistent with land uses and trends in adjacent areas, will complement existing and planned open space and recreation uses, and will not result in any significant adverse impacts on land use in the primary study area or the secondary study area.

#### *Zoning*

The Esplanade Project will not result in any changes to zoning districts on the Project Site. The construction of a new building on the site of the New Market Building will require a special permit to modify the height and bulk provisions of the waterfront zoning regulations that govern the site. A special permit may also be required for use and bulk changes on the reconstructed Pier 15. Because the Project Site is located on waterfront blocks, a waterfront zoning certification pursuant to Zoning Resolution section 62-711 is required. In order to create the proposed pedestrian plaza in front of the BMB, the Esplanade Project will require a change to the City Map.

The Esplanade Project will introduce land uses compatible with the primary study area and will not result in any zoning actions beyond those described for the Project Site, above. The FEIS therefore anticipates no significant adverse effects on zoning.

#### *Public Policy*

The Esplanade Project will be consistent with the public policies that apply to the Project Site and the surrounding areas and will help to achieve longstanding policy goals relating to waterfront access and open space. The Esplanade Project will improve access to an underutilized waterfront and create new recreational, cultural, and retail spaces that will draw activity to the waterfront area. The Esplanade Project will therefore be consistent with waterfront policies as outlined in the New York City *Comprehensive Waterfront Plan*, the *Plan for the Manhattan Waterfront*, the *Manhattan Waterfront Greenway Plan*, and the *City Vision for a 21st Century Lower Manhattan*. The Esplanade Project is also consistent with the City's policies focused on improving public access to the waterfront and with the Brooklyn Bridge Southeast Urban Renewal Plan, which



governs the East River waterfront area from Whitehall Ferry Terminal to the Manhattan Bridge.

### *3.2.2 Socioeconomic Conditions*

Overall, the Esplanade Project is not expected to have any significant adverse impacts on socioeconomic conditions and will, instead, substantially improve the Project Site.

The Project Site does not contain any residential units. The Esplanade Project also does not have a residential component nor will it introduce more than 200,000 square feet of commercial development. Accordingly, no direct or indirect residential displacement is expected.

The Esplanade Project will directly displace several privately-operated parking lots located under the FDR Drive, which include 617 parking spaces. Given the availability of alternative parking garage facilities in close proximity to the Project Site as well as south of Canal Street, the parking facilities that will be displaced do not have a substantial economic value to the City or regional area. The parking businesses that will be directly displaced are not subject to regulations or publicly adopted plans to preserve, enhance, or protect them. The existing parking facilities do not contribute to the character of the neighborhood, nor do they define or substantially contribute to defining the neighborhood. No significant impact will result from the loss of the existing parking businesses. The displaced parking business is not critical to any industry or category of business and the Esplanade Project will therefore not cause significant adverse impacts for any specific industries within or outside the study area.

### *3.2.3 Open Space*

The Esplanade Project will improve existing open space and create new public open space. It will thus help alleviate the shortage of open space in Lower Manhattan. The Esplanade Project therefore does not pose a potential for adverse effects on open space or recreational resources.

### *3.2.4 Historic Resources and the Section 106 Programmatic Agreement*

Because the designs for some project components are not yet complete and because the actual presence of archaeological resources cannot be confirmed without field testing, LMDC, SHPO, and the Advisory Council on Historic Preservation concluded that it is appropriate to enter into a Programmatic Agreement pursuant to Section 106 of the National Historic Preservation Act. Any adverse effects on historic resources that are identified as the design process moves forward will be minimized or avoided to the maximum extent possible as set forth in a Programmatic Agreement.

The SHPO and City are consulting parties in the Section 106 process. LMDC, SHPO and the Advisory Council on Historic Preservation are parties to the Programmatic

Agreement. LMDC has made a number of commitments in the Programmatic Agreement and the executed version is Appendix B to this ROD and Findings Statement. These commitments are summarized below. Overall, LMDC finds that the Esplanade Project will enhance the Project Site and the surroundings of the historic resources, which are identified in Chapter 6 of the FEIS.

The following is a summary of the Programmatic Agreement.

#### *Design Review and Consultation*

LMDC, the City and SHPO will consult regarding designs for project components that are located within the New York City-designated South Street Seaport Historic District and the State and National Register-listed South Street Seaport Historic District ("Historic Districts"). The components include the rebuilt Pier 15, design of the Program Zone and Recreation Zone within the Historic Districts (including any cladding for the FDR Drive), designs of any pavilions within the Historic Districts, and design of the Esplanade Project on or around the historic bulkhead. LMDC and the City will provide SHPO with preliminary (35%) and pre-final (75%) designs for these components of the Esplanade Project. SHPO may elect to review final designs at the time it reviews pre-final designs.

Although LMDC is not providing funding for the BMB Plaza, the City is seeking additional funding. If funding is obtained, the City will construct the plaza with the other elements of the Esplanade Project. The City or its designee may construct the New Market Building at a later date. For both the plaza and the New Market Building, however, LMDC and the City will provide preliminary (35%) and pre-final (75%) designs to SHPO and will consult. SHPO may elect to review final designs at the time that it reviews pre-final designs.

(See Sections 2, 5 and 6 of the Programmatic Agreement for further details.)

#### *Archeological Resources*

LMDC and the City are preparing Phase 1A archeological studies for the Project Site, which will recommend locations where further monitoring or testing is recommended.

The Programmatic Agreement provides for consultation among LMDC, the City and SHPO regarding the Phase 1A studies and the further steps necessary to address impacts on archeological resources. It states:

Subsequent to the review of the Phase 1A by SHPO, LMDC and the City will cooperate in the preparation of a protocol ("Archaeology Monitoring and Testing Protocol") to define which portions of the Archaeological APE would be monitored during construction or would undergo Phase 1B field testing prior to construction, depending on the nature of the potential resources identified in the



Phase 1A and the extent of construction that would take place in specific locations. The protocol will include an assessment of the feasibility and utility of monitoring versus field testing for all potentially sensitive archaeological areas that would be affected by the Esplanade Project. The protocol will also outline any areas to receive monitoring or field testing and will set forth the methodology. SHPO will have 30 days to submit comments or recommendations to LMDC and the City with respect to the adequacy of the Archaeological Monitoring and Testing Protocol. LMDC and the City will work to carry out any necessary archaeology work in advance of the start of construction of each project component that could potentially affect archaeological resources.

If LMDC and SHPO agree that construction may result in adverse effects on archeological resources, they will prepare an "Archeological Mitigation Plan." If they disagree on the effects, the dispute resolution procedure set forth in Section 17 of the Programmatic Agreement will apply.

LMDC and the City will also prepare an "Unanticipated Discoveries Plan for Archeological Resources," which SHPO will have 30 days to comment on. See Section 3 of the Programmatic Agreement.

#### *Finding of Effects.*

Following review and consultation regarding designs and archeological resources, as set forth above, LMDC, in consultation with SHPO and the City, will propose a finding on effects and document that finding as required by Section 106 regulations.

- LMDC may find, after consultation with SHPO and the City, that the Esplanade Project will not effect historic properties. SHPO will have 30 days to submit any objections on this finding to LMDC.
- LMDC may find, after consultation with SHPO and the City, that the Esplanade Project will have no adverse effects on historic resources. SHPO shall have 30 days to object to this finding and, if it does, LMDC (1) may accept a finding of adverse effect, (2) consult with SHPO and the City to resolve the objection, or (3) consult with SHPO and the City and involve ACHP pursuant to Section 106 regulations.
- LMDC may find, after consulting with SHPO and the City, that there will be adverse effects on historic resources that cannot be avoided. In this case LMDC would develop a "Plan for Mitigation of Adverse Effects" as required by the Programmatic Agreement.

See Section 4 of the Programmatic Agreement.

### *Unanticipated Discoveries*

LMDC and the City will prepare an Unanticipated Discoveries Plan for effects other than those addressed by the Unanticipated Discoveries Plan for Archeological Resources. See Section 8 of the Programmatic Agreement.

### *Construction Protection Plan.*

If the Esplanade Project will require construction within 90 feet of the Brooklyn Bridge or Manhattan Bridge, which is not expected at this time, LMDC and the City will develop a construction protection plan for the bridges. LMDC and the City will also develop a construction protection plan for locations where construction will occur within 90 feet of a known architectural resource. See Section 8 of the Programmatic Agreement.

### *Public Participation.*

LMDC will make the following documents available to the public: executed Programmatic Agreement, final designs for specified project components, final findings on effect, the Plan for Mitigation of Adverse Effects (if any), the final Archeology Mitigation Plan (if any), and the final Unanticipated Discoveries Plan for Archeological Resources. LMDC will also make these materials available on its website. The Programmatic Agreement includes a process for the public to submit comments or objections to LMDC. See Section 9 of the Programmatic Agreement.

### *3.2.5 Urban Design and Visual Resources*

The Esplanade Project is expected to have a positive effect on urban design and visual resources. No significant adverse effects on urban design and visual resources will result.

- The City will site up to 14 pavilions at locations that do not block view corridors to the water from perpendicular streets. Most pavilions will have glass skins to promote transparency. Within the vicinity of the South Street Historic Districts, LMDC and the City will consult with SHPO to ensure that the pavilions blend with or complement historic resources.
- The Esplanade Project may include cladding for the FDR, which will reduce noise and improve urban design and visual character.
- The Project Site will include improved pavement, landscaping, planters, seating, railings and other amenities as appropriate. Designs within the Historic Districts will be developed in consultation with SHPO to be appropriate for the district.
- The City will design Pier 15 in consultation with LMDC and SHPO to be appropriate for the context of the Historic Districts.



### *3.2.6 Neighborhood Character*

The Esplanade Project will substantially improve the neighborhood character of the Project Site and the surrounding neighborhoods. No significant adverse effects will result on neighborhood character from the Esplanade Project.

However, the removal of up to 45 commuter and tour bus parking spaces beneath the FDR Drive adjacent to Piers 13 and 14 and up to 20 spaces near the Manhattan Bridge could potentially have an adverse effect on the neighborhood if bus operators were to seek parking in the adjacent Lower Manhattan neighborhoods. Bus operators will be expected to seek alternative parking locations for layover periods both within and outside Lower Manhattan. The FEIS recognizes that increased bus circulation as well as legal and illegal bus parking elsewhere in Lower Manhattan could result in limited adverse effects on neighborhood character. The wide distribution of buses over areas adjacent to the two-mile esplanade and outside Lower Manhattan, however, will minimize the adverse effects of bus displacement. The City's enforcement of existing parking regulations will further disperse buses and minimize adverse effects.

NYCDOT is conducting a study for Bus Management in Lower Manhattan from Canal Street to the Battery as part of a larger study for Lower Manhattan Street Management. If an alternative bus parking location is not identified, operators will need to seek alternative parking, which could increase bus circulation as well as legal and illegal bus parking elsewhere in Lower Manhattan and other areas of the City. Absent an off-street location for these buses, the City may adopt management strategies to require that operators park buses outside of Lower Manhattan in other areas of the City that are deemed appropriate by NYCDOT.

Even if some of the buses that now park on the Project Site beneath the FDR Drive and near the Manhattan Bridge continue to circulate or idle within the adjacent neighborhoods, this will not constitute a significant adverse impact on neighborhood character. Traffic conditions are one of several components of neighborhood character, and the potential for an increased presence of buses in the adjacent neighborhoods at some periods will not significantly impact overall neighborhood character.

### *3.2.7 Natural Resources and Floodplain*

The Esplanade Project is not expected to result in any significant adverse impacts on natural resources or the floodplain.

- During grading and excavation activities associated with the construction of the Esplanade Project, any hazardous materials encountered will be handled in accordance with federal, state, and local requirements to minimize potential impacts on groundwater.
- The Esplanade Project will comply with applicable New York City Building Codes and the Federal Emergency Management Agency requirements regarding

non-residential structures within the 100-year floodplain to reduce exposure to flood hazards.

- In addition, the bottom material to be dredged from the East River will be required to undergo testing for contaminants in accordance with DEC specification in order for DEC and USACE to authorize dredging within the site.
- The reconstructed pier, archipelago and esplanade expansion will be designed with wider pile spacing or to otherwise minimize the potential for sediment deposition and the potential for adverse impacts on littoral zone wetlands.
- Implementation of erosion and sediment control measures and stormwater management measures during construction of the Esplanade Project will minimize potential impacts on water quality and aquatic biota of the East River associated with stormwater runoff during land disturbing activities that will occur in upland areas and on the piers.
- Any hazardous materials encountered during these construction activities will be handled and removed in accordance with local, state, and federal requirements to minimize potential adverse impacts to water quality. Any groundwater recovered through dewatering activities will be treated, as necessary, prior to discharge to the combined sewer system and are not expected to result in adverse impacts on surface water quality.
- In-water construction activities may result in temporary sediment disturbance. But no in-water activities will be conducted during the period established by regulatory agencies to protect certain species of overwintering fish within the East River.
- Although marina activities present a small increase in the potential for accidental petroleum or sewage spills to the river because there will be no fueling facilities at the marina, the likelihood of a large-scale accidental discharge is small.
- In addition, the design of the marina and small craft launch area will allow sufficient flushing (exchange of an amount of water within a region of interest) to occur to minimize potential water quality impacts.

The City is designing the Esplanade Project with no net increase in the amount of overwater coverage that is not associated with water-dependent activities such as the marina or small boat basin (i.e., the approximately 34,400 square feet (0.79 acres) of overwater coverage due to the archipelago and expansion of the esplanade), to minimize potential adverse impacts on existing marine resources due to shading. In order to achieve this, the proposed cove between Piers 36 and 42 will be developed through the removal of approximately 20,000 square feet (0.46 acres) of the southern portion of Pier 42. The remaining area of overwater coverage to be removed to complete the offset for the overwater coverage added for the archipelago and expansion of the esplanade



(approximately 14,400 square feet [0.33 acres]) will also be located within the project area. Therefore, the Esplanade Project will not be expected to result in significant adverse impacts on aquatic habitat due to shading. Furthermore, many of the overwater structures associated with the water-dependent recreational activities that will be added as a result of the Esplanade Project (i.e., marina finger piers, docks, gangways, floating wave attenuator, and breakwater; and small craft launch area wave attenuator/breakwater) are narrow (less than 15 feet wide) and will permit some light to reach the water under them. Therefore, these narrow water-dependent structures will not be expected to result in significant adverse impacts on aquatic habitat due to shading.

### *3.2.8 Hazardous Materials*

With the implementation of a variety of measures prior to and during construction, including both testing and health and safety procedures, no significant adverse effects related to hazardous materials, if any remain, are expected.

### *3.2.9 Waterfront Revitalization Program*

The Esplanade Project will not result in any significant adverse effects on the waterfront. It is also consistent with New York City's Waterfront Revitalization Program. The Consistency Assessment Form of the New York City Waterfront Revitalization Program is attached to this Record of Decision and Findings as Appendix D.

### *3.2.10 Infrastructure, Solid Waste and Energy*

The Esplanade Project is not expected to result in any significant adverse impacts on infrastructure. It is expected to result in incremental increases in water usage, sanitary sewage, solid waste, energy consumption, which will be met by existing capacity.

### *3.2.11 Traffic and Transportation*

Based on travel demand estimates, the Esplanade Project is not expected to exceed CEQR analysis thresholds for transit (subways and buses) services but will exceed thresholds for vehicular traffic and pedestrians. The FEIS therefore considers the Esplanade Project's impacts on vehicular traffic and pedestrians.

The Esplanade Project will result in the direct displacement of public parking facilities and commuter and tour bus parking. The FEIS therefore includes a parking analysis.

#### *Traffic*

The Esplanade Project will result in significant adverse traffic impacts at eight intersections, which can be fully mitigated as discussed in the Mitigation chapter of the FEIS and below. These impacts are attributable to geometric changes along South Street

and the reconfiguration of access to the Battery Park Underpass through construction of the BMB plaza. Additionally, the reconstruction of the Brooklyn Bridge ramps, an independent City project, which is expected to be completed in 2013 or 2014, will also substantially improve operations on South Street by diverting Brooklyn-bound vehicles from local streets in Lower Manhattan.

The City will implement the following traffic mitigation measures to ensure that the Esplanade Project does not result in significant adverse impacts:

- *South Street between Montgomery Street and Robert F. Wagner Sr. Place*

The Esplanade Project will result in the reconfiguration of South Street from two to one southbound lane, which will result in significant adverse impacts at its intersections with Pike Street, Market Slip, and Catherine Slip. To mitigate these impacts it is recommended that parking be prohibited to allow for an additional southbound travel lane through this section of South Street. In addition, a signal timing adjustment will be required at the intersection of South and Pike Streets.

- *South Street and Fulton Street*

The Esplanade Project's PM peak hour impact at this location will be fully mitigated by transferring signal time from the pedestrian-only phase to the north-south traffic phase. This timing adjustment will not adversely affect pedestrian circulation, since a wide crossing area is provided and the remaining signal time will be adequate to safely cross South Street.

- *Water Street and Broad Street*

The Esplanade Project's traffic impacts in the AM and PM peak hour at Water and Broad Street will be fully mitigated by transferring 10 seconds of signal time from the north-south signal phase to the east-west signal phase. There will be adequate capacity for the north-south approach to accommodate a shorter signal phase without resulting in adverse impacts to its operation.

- *Water Street and Whitehall Street*

The Esplanade Project's impact at this location will be mitigated with a combination of lane striping and signal timing and phasing. The existing northbound approach is unmarked and operates as a wide, single traffic lane. This approach could, however, accommodate two lanes within the existing alignment of the roadway, which has been recommended as mitigation for the proposed project. In addition, a new signal timing plan is suggested for the AM peak hour. Although not required as mitigation, the signal plan will also be used for PM peak hour operations.

- *Pearl Street and Broad Street*

The Esplanade Project's AM peak hour impact at this location will be fully mitigated by transferring 1 second of green time from the southbound phase to the east-west phase. Although this will reduce the green time for southbound traffic, this approach will operate at Level of Service (LOS) D during the AM peak hour. Mitigation is not required at this location during the PM peak hour.



- *State Street and Broad Street*

The Esplanade Project's AM peak hour impact at this location will be fully mitigated by transferring 7 seconds of green signal time from the east-west phase to the southbound phase. Although this will reduce the green time for eastbound and westbound traffic, these approaches will operate at LOS D or better during the AM peak hour. Mitigation is not required at this location during the PM peak period.

#### *Parking*

The Esplanade Project will remove commuter and tour bus parking in some locations. But as explained above under Neighborhood Character, this will not result in significant adverse impacts.

The removal of parking and the potential for a parking shortfall within the Manhattan Central Business District (the area south of 60th Street) is not considered a significant adverse impact on traffic or parking pursuant to the CEQR Manual.

The Esplanade Project will remove authorized City vehicle parking and public parking facilities from beneath the FDR. But these actions will not result in significant adverse impacts. The lots for authorized City vehicles do not serve emergency vehicles. Although the removal of public parking lots will create a parking shortfall, vehicles will either (1) use facilities outside the study area with excess capacity, or (2) shift their mode of travel in the future.

#### *Pedestrian Safety*

The Esplanade Project will create new pedestrian trips in the study area but it will not cause significant adverse impacts on crosswalks within the Project Site. The Esplanade Project will also improve pedestrian circulation.

#### *3.2.12 Air Quality*

The Esplanade Project will not result in significant adverse effects on air quality.

#### *Mobile Sources*

The main pollutant of concern from new vehicles trips generated by the Esplanade Projects is carbon monoxide (CO). The highest 8-hour average carbon monoxide (CO) concentration adjacent to the Water Street and Broad Street intersection in 2009 was predicted to be 3.6 parts per million (ppm) in the No Build condition, and was predicted to increase to a maximum of 3.9 ppm in the Build condition due to the traffic diversion related to the Esplanade Project. The total concentration of 3.9 ppm will be lower than the relevant National Ambient Air Quality Standards (NAAQS) level of 9 ppm, and the maximum increment of 0.5 ppm will be lower than the *de minimis* level of 3.0 ppm that is recommended by the CEQR Technical Manual. Since this location and time period exhibited the highest predicted traffic volume increments under the worst predicted level

of service of any of the peak time periods and intersections, impacts at other locations or during other peak periods are expected to be even lower. The open spaces that will be created or enhanced as part of the Esplanade Project will not experience significant adverse impacts with respect to air quality because traffic volumes will not be high enough to cause impacts with respect to mobile sources.

### *Heating Systems*

The FEIS evaluates the heating system from the proposed replacement New Market Building, which will likely use steam, electric, natural gas or No. 2 fuel oil, with a stack 3 feet above roof height. Based on the initial screening, there will be no significant adverse air quality impacts for the heating system at buildings located at a distance of 65 feet or more from the stack. Since there will be no residential or other sensitive buildings at such a close proximity to the New Market Building, the heating system will not cause any significant adverse air quality impacts.

### *Battery Park Underpass*

When funding is available, the Battery Park Underpass portal at BMB Plaza will be moved approximately 350 feet to the northeast by extending the tunnel and moving the ramp. This will extend the overall length of the tunnel, and increase the associated overall quantity of pollutants emitted from the tunnel ventilation systems, by approximately 15 percent. This change will not be expected to have a significant adverse impact on air quality, since the tunnel ventilation will be expanded proportionately, and therefore, although the overall quantity of pollution traveling through the ventilation system will increase, the dilution of pollutants will increase as well, and the ensuing concentrations will remain the same.

### *Air Conformity*

As the recipient of HUD funding, LMDC is subject to the federal Clean Air Act general conformity rules. The purpose of the rules is to ensure that federal agency actions do not cause or contribute to a violation of the National Ambient Air Quality Standards promulgated under the Clean Air Act or interfere with a State Implementation Plan (SIP), which states adopt to comply with those standards. The Esplanade Project will not create any permanent sources of emissions, but construction-related emissions are expected. LMDC therefore evaluated construction-related emissions to determine if federally-funded elements of the Esplanade Project will require a conformity analysis.

LMDC has concluded that a conformity analysis is not required because construction-related emissions from the Esplanade Project will be below de minimis thresholds that trigger the general conformity rules.

The maximum predicted annual nitrogen oxides emissions, one of the pollutants subject to general air conformity, however, will exceed the de minimis threshold that formerly applied to New York City. But even under this conservative analysis, the



Esplanade Project will conform to the New York's State Implementation Plan for 1-hour ozone.

Appendix C includes the proposed Final Conformity Determination.

### *3.2.13 Noise*

The Esplanade Project will not significantly increase noise levels at the Project Site. Noise levels within some of the new open space areas created as part of the Esplanade Project, however, will be above the 55 A-weighted decibel (dBA)  $L_{10}$  noise level for outdoor areas requiring serenity and quiet contained in the *CEQR Technical Manual* noise exposure guidelines. Noise levels within some of the new open space areas will also exceed the HUD goal of a maximum  $L_{dn}$  noise level of 55 dBA for exterior noise levels with the intention of achieving 45  $L_{dn}$  within residences (HUD does not have noise standards pertaining specifically to outdoor public open space).

Based on HUD noise standards, the noise levels at these new open space areas will result in potentially significant adverse noise impacts on their users. Because of safety and aesthetic considerations, there are no practical and feasible mitigation measures that could be implemented to reduce noise levels to below the 55 dBA  $L_{10(1)}$  guideline within the open space areas. Although noise levels in some of these new areas will be above the 55 dBA  $L_{10(1)}$  guideline noise level, they will be comparable to noise levels in a number of open space areas that are also located adjacent to heavily trafficked roadways, including the Hudson River Park, the East River Drive Park, Central Park, Riverside Park, and other urban open space areas.

### *3.2.14 Construction*

#### *Traffic*

Construction of the Esplanade Project may be disruptive of the surrounding area for limited periods of time throughout the construction period. The possible closure of the Battery Park Underpass during construction of the BMB Plaza could result in temporary significant adverse impacts with respect to traffic circulation. To avoid or mitigate such impacts to the extent practical, LMDC and the City will coordinate construction with the Lower Manhattan Construction Command Center (LMCCC). Whenever possible, deliveries and other construction activities will take place during off-peak travel hours. As much work as practical will take place from the water side. But temporary significant adverse impacts may still occur.

#### *Air*

Temporary significant adverse impacts on air quality due to changes in traffic conditions cannot be ruled out during construction of the Battery Park Underpass extension for the BMB Plaza, should closure or partial closure of the tunnel be necessary.

LMDC and the City will coordinate construction activities with LMCCC to minimize potential adverse effects of the closure to the greatest extent practicable.

### *Cumulative*

Because the Esplanade Project is located south of Canal Street and within the jurisdiction of LMCCC, all construction documents will specify adherence to the most recent version of the Environmental Performance Commitments utilized by LMDC for minimizing construction impacts on air quality and noise during construction. The City will coordinate construction of the Esplanade Project with construction of an improved connection to the East River Park planned as part of the City's East River Access Projects.

The current Environmental Performance Commitments are Appendix A to this document.

#### *3.2.15 Environmental Justice*

The Esplanade Project will be in compliance with applicable NEPA, HUD and other requirements related to environmental justice protections. The Esplanade Project will have a positive effect on neighboring communities and no adverse effects with regard to Environmental Justice are expected.

#### *3.2.16 Growth-Inducing Aspects*

The Esplanade Project is not expected to produce significant development.

#### *3.2.17 Irreversible and Irrecoverable Commitment of Resources*

The Esplanade Project involves the irreversible and irretrievable commitment of resources such as construction and building materials, energy, and human effort (time and labor.)

## **4. MONITORING AND ENFORCEMENT**

### **4.1 Construction**

The City will bid and construct the Esplanade Project in accordance with this ROD and Findings Statement and the commitments made herein. As noted above, LMDC will continue to participate in the LMCCC.

### **4.2 Historic Resources**

LMDC, SHPO and the Advisory Council on Historic Preservation have entered into a Programmatic Agreement to address any unanticipated or adverse effects of the Esplanade Project on historic resources or properties. The City will carry out the



Esplanade Project in conformance with the Programmatic Agreement. The Programmatic Agreement will also provide further opportunity for consultation among LMDC, SHPO, Advisory Council on Historic Preservation and the City in order to minimize any potential for adverse effects on historic resources to the maximum extent feasible.

#### **4.3 Traffic**

The City will implement the mitigation described above, or other comparable measures, to address any potential for significant adverse impacts on traffic from the Esplanade Project.

#### **4.4 Natural Resources**

The City will obtain, and comply with, any required federal or state permits for in-water actions as part of the Esplanade Project.

### **5.0 FEIS COMMENTS AND RESPONSES**

LMDC received three comment letters on the FEIS. A letter from the EPA indicated that the FEIS addressed all EPA's previously-submitted comments regarding the DEIS. The Governor's Island Preservation and Education Corporation sent an additional letter that concerned the BMB and the BMB Plaza. LMDC's response to comments document is Appendix E and the three comment letters are Appendix F.

### **6.0 FINDINGS AND DECISION**

The basis for LMDC's decision includes its review of the project purpose and need, as described in Section 1.2; the environmental impacts of the Esplanade Project and its ability to satisfy the purpose and need as described in Section 3.0; the ability of the alternatives to meet the project purpose and need and the environmental impacts of such alternatives as described in Section 2.0; and public comments received on the DEIS, FEIS, and during the planning processes described above.

The Esplanade Project will revitalize the waterfront on the Project Site and continue to revitalize and enhance the Lower Manhattan community. The Esplanade Project has been designed and is expected to achieve these goals while minimizing the potential for adverse environmental impacts. Nevertheless, the Esplanade Project may result in significant adverse impacts with regard to noise, traffic (which can be mitigated) and temporary significant adverse impacts from construction. While LMDC has committed to a broad program of measures to mitigate or avoid any adverse impacts, some adverse impacts are inevitable if the significant benefits of the Esplanade Project are to be realized.

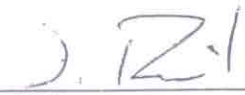
LMDC finds that, on balance, the Esplanade Project will best realize the underlying purpose and need set forth in Section 1.2 and LMDC's overall goals and

objectives. LMDC has carefully considered the various reviews contained in the environmental review record, including the DEIS and FEIS, the input received from other agencies, organizations, elected officials and the public, and the factors and project commitments and mitigation measures outlined above in this ROD and Findings Statement. In accordance with 40 CFR § 1505.2, LMDC has adopted all practicable means to avoid or minimize environmental harm from the Esplanade Project and adopted monitoring and enforcement programs as discussed above in Section 4 and throughout this ROD and Findings Statement. LMDC approves the Esplanade Project as defined in this ROD and Findings Statement.

LMDC has also weighed and balanced relevant environmental impacts with social, economic and other considerations. LMDC has considered the DEIS and FEIS, and considered the above written facts and conclusions relied upon to meet the requirements of 6 NYCRR § 617.11. LMDC certifies that, consistent with social, economic and other essential considerations, from among the reasonable alternatives available, the Esplanade Project is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to this decision those mitigative measures that were identified as practicable.

Based on the foregoing determinations and the entire environmental review records herein, LMDC hereby approves the Esplanade Project in accordance with the applicable statutory and regulatory requirements that are referenced above in order to revitalize the waterfront in the Project Site and continue the revitalization of Lower Manhattan.

The Board of Directors of the Lower Manhattan Development Corporation approved and adopted the above ROD and Findings Statement on 11/8/07.

  
\_\_\_\_\_  
David Emil  
President  
Lower Manhattan Development Corporation

  
\_\_\_\_\_  
Date