

Making NEPA Work: Rebuilding the World Trade Center

by Stephen L. Kass

Stephen L. Kass is a partner in the New York office of Carter Ledyard & Milburn LLP.

While environmental lawyers recognize that there is no contradiction between meaningful environmental review and timely completion of important public projects, there has been widespread concern that compliance with the National Environmental Policy Act (NEPA),¹ and in particular NEPA's requirement for an environmental impact statement (EIS), will frustrate or even derail the major infrastructure projects that are central to President Barack Obama's stimulus program and the nation's economic recovery. However, one well-known project for which we served as environmental counsel—the redevelopment of New York's World Trade Center (WTC) site following the September 11, 2001, terrorist attacks—demonstrates that it is feasible to complete even a highly complex environmental review, including a comprehensive EIS, within a one-year period that matches, or even precedes, the project's construction schedule.

As the attached NEPA compliance schedule shows, the lead agency for the WTC's NEPA review was actually a New York State agency (the Lower Manhattan Development Corporation (LMDC)) wearing a “federal” hat as a grant recipient from the Department of Housing and Urban Development (HUD) under the Community Development Block Grant (CDBG) program, which makes the recipient responsible for both NEPA reviews and the historic preservation requirements of §106 of the National Historic Preservation Act (NHPA). Because New York also has its own EIS and historic preservation statutes, LMDC was actually operating under four separate environmental review statutes (NEPA, NHPA, the State Environmental Quality Review Act, and the State Historic Preservation Act), as well as the project planning requirements of the New York State Urban Development Corporation Act and the condemnation requirements of New York's Eminent Domain Procedure Law.

Despite this array of federal and state statutory requirements and the intense worldwide interest in the WTC redevelopment plan, LMDC managed to carry out fully coordinated NEPA and §106 reviews with other cooperating agencies (both federal and state), complete public scoping, prepare a comprehensive draft EIS, hold well-attended public hearings, respond to thousands of oral, written, and e-mail public comments, prepare an expanded final EIS, negotiate a §106 Programmatic Agreement with state and federal preservation officers, and issue a Record of Decision (ROD) (as well as the corresponding state EIS findings) in *13 months* from the start of involved agency discussions.

As the attached schedule shows, even a highly complex and controversial environmental review, such as the WTC redevelopment, can be completed in a reasonable time in full compliance with NEPA and a broad array of other federal and state laws, so long as the lead federal agency is committed to that end, has full support from cooperating and involved agencies, involves the public from the outset, and allocates the required resources to the technical, legal, and management demands of the EIS and related environmental reviews.

1. 42 U.S.C. §§4321-4370f, ELR STAT. §§2-209.

World Trade Center Memorial and Redevelopment Plan Summary Schedule of Environmental, Historic, and Regulatory Reviews

This schedule was designed to assure compliance with:

- (1) National Environmental Policy Act (NEPA);
- (2) National Historic Preservation Act (NHPA);
- (3) New York State Environmental Quality Review Act (SEQRA);
- (4) New York State Urban Development Corporation Act (UDC Act);
- (5) New York State Historic Preservation Act (SHPA);
- (6) New York State Eminent Domain Procedure Law (EDPL); and
- (7) other applicable laws.

by LMDC as lead agency, HUD, and other cooperating or involved agencies in connection with the review and approval of the WTC Memorial and Redevelopment Plan, including preparation of a generic environmental impact statement (GEIS) under both NEPA and SEQRA and a Programmatic Agreement under NHPA

DATE	ACTIONS
Scoping Period May 2003	Circulate among governmental entities: (1) Proposed memorandum of understanding (MOU) (NEPA) (2) Proposed Lead Agency Letter (SEQRA) (3) Part I of Environmental Assessment Form (EAF)
June 2003	<ul style="list-style-type: none"> • Lead Agency Declaration • NEPA Determination of Potentially Significant Impact & SEQRA Positive Declaration • Draft Scope for GEIS
July 2003	<ul style="list-style-type: none"> • Public Meeting on Draft Scope
September 2003	<ul style="list-style-type: none"> • Approve Final Scope for GEIS • Approve General Project Plan (GPP) under UDC Act
Environmental Impact Statement Review September-December 2003	<ul style="list-style-type: none"> • LMDC and consultants prepare Draft GEIS (DGEIS) • In consultation with the State Historic Preservation Office (SHPO), identify historic properties and evaluate their historic significance under NHPA • Commence NHPA §106 process with federal agencies • In consultation with SHPO and cooperating agencies, identify and invite other parties entitled to participate as consulting parties • Letter to the Advisory Council on Historic Preservation (ACHP) under NHPA regarding coordinated review • Commence acquisition of street access rights and adjacent sites (appraisals, offers, negotiations, and documentation)
January 2004	<ul style="list-style-type: none"> • Meeting of consulting parties (including SHPO) regarding historic properties affected by the undertaking • LMDC, as lead agency, approves DGEIS for public review • Notice for early public review of proposal in the 100-year floodplain
February 2004	<ul style="list-style-type: none"> • Consultation with SHPO and §106 consulting parties to identify historic properties and adverse effect to historic properties • Distribute coordinated determination of National Register Eligibility for WTC Site • Proposed Finding of No Adverse Effect under §106 of NHPA • Public Hearings on DGEIS & GPP • Consultation meeting with SHPO and §106 consulting parties with respect to Proposed Finding of No Adverse Effect under NHPA
March 2004	<ul style="list-style-type: none"> • LMDC and consultants respond to comments on DGEIS and prepare Final GEIS (FGEIS) • LMDC distributes Draft Programmatic Agreement under NHPA • Coordinated Determination of National Register Eligibility for WTC Site
April 2004	<ul style="list-style-type: none"> • LMDC, as lead agency, approves FGEIS and notices public comment period • Execute Programmatic Agreement under NHPA • Issue Draft Conformity Determination under Clean Air Act
May 2004	<ul style="list-style-type: none"> • Notice of Intent to Request Release of Funds • Public Hearing on Condemnation
Project Approval June 2004	<ul style="list-style-type: none"> • Adopt NEPA/SEQRA ROD and Findings Statement • Affirm GPP Findings and GPP, as modified, and override NYC Zoning • Adopt Determination and Findings pursuant to UDC Act and EDPL • Final Conformity Determination