

Comments on the Proposed Finding of No Adverse Effect under Section 106



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March 15, 2003

Lower Manhattan Development Corporation
Attention: Comments on WTC Memorial and Redevelopment Plan/Section 106 Review
One Liberty Plaza, 20th Floor
New York, NY 10006

RE: Proposed Finding of No Adverse Effect Under Section 106 of the National
Historic Preservation Act—World Trade Center Memorial and Redevelopment
Plan

Ladies and Gentlemen:

The economic vitality of Lower Manhattan was dealt a significant blow on September 11, 2001. Downtown's commercial businesses, workers, and residents are still facing the impacts of the terrorist attacks on a daily basis. It is critical for the future health and vitality of Lower Manhattan, New York City and New York State that redevelopment of the World Trade Center Site proceed expeditiously.

We recognize that this development process must maintain an appropriate balance between the community's need to rebuild and move forward and the victims' families' need to grieve and commemorate the site. The Lower Manhattan Development Corporation's ("LMDC") Proposed Action addresses both of these concerns in a thoughtful manner. Though the Proposed Action does not leave the site exactly as it is now, maintenance of the status quo is not the goal of this historic preservation effort. Rather, the LMDC's Proposed Action allows for the preservation and incorporation of historically significant materials in an appropriate manner allowing the community, and indeed the world, to move forward.

As stated by the LMDC in the Proposed Finding of No Adverse Effect, the "Proposed Action was developed with due consideration of the uses that existed on the WTC Site prior to September 11, 2001, the events of September 11, the compelling need to remember those who were lost on that day and the urgent need to rebuild the WTC Site and revitalize the community of which it is part." We agree. For these reasons, the Downtown Alliance strongly supports the LMDC's Proposed Finding of No Adverse Effect.

Attached, for your consideration, are our specific comments on the Proposed Finding text. Please let me know if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Oberlander", written over a horizontal line.

Jill Oberlander
General Counsel

III. CONSIDERATION OF POTENTIAL ADVERSE EFFECTS

The significance of the transcending events of September 11 and ~~its~~the aftermath clearly does not depend on the presence of the original, or even the damaged, buildings and structures that existed on the site in order to portrayed the horror or meaning of that day or period. The terrorist attacks on September 11 and the resulting destruction resulted in enormous piles of material and debris at the WTC Site, 2,749 fatalities, grieving families and friends, and devastated communities. The WTC Site, where most of the remains of those killed were found, does not require the presence of any physical elements to be considered eligible for listing on the National Register. Although the site has been altered through the critical rescue and recovery efforts that occurred from September 11, 2001 through June 2002, these necessary physical changes have not affected the importance of the events of September 11 or the significance of the site, because it is not the physical materials that gave the site its historic significance.

The following discussion considers the potential effects of the Proposed Action on those elements at the WTC Site that retain integrity.

Location—The Proposed Action would not change the location of the WTC Site.

Setting—The Proposed Action would not adversely affect the historic resources that are the setting for the WTC Site. It would replace the former parking lot on the south side of Liberty Street between Route 9A and Washington Street (now a staging area) and the former plaza at 130 Liberty Street (now an excavated area) with a park that would also provide a setting for a rebuilt St. Nicholas Church. Tower 5 would replace the damaged office building at 130 Liberty Street. The park, commercial office building, and church are all being planned and designed to contribute to the urban fabric of the site while maintaining its integrity. Overall the proposed Action would not adversely affect the setting of the WTC Site.

The Proposed Action would set aside for a permanent WTC Site Memorial an approximately 4.4-acre area where the Twin Towers, a hotel, and connecting plaza areas were located. The proposed Memorial would include elements that pay tribute to recognize the history of September 11 by delineating the previous location of the Twin Towers (the footprints) and introduce would features that would represent the former location of the Twin Towers. ~~The proposed Memorial would recognize the area both at from grade level at to at least 30 feet below grade the symbolic space occupied by the Twin Towers. The openness of the site plan for the Memorial would recall the openness of the WTC Site as it now exists after the recovery efforts and the openness of the Austin J. Tobin Plaza that was at the center of the WTC. The size and the location of the Memorial reflect LMDC's commitment from the very beginning of its planning efforts to leave open the space at grade level where the Twin Towers once stood.~~ The appropriateness of recognizing the footprints in this manner was expressed in the Memorial Competition Guidelines and supported by the consulting parties, one of whom observed that "a footprint can be something that is written on the psyche or in the soul and on the heart and not necessarily always in steel and cement and concrete." The very purpose of the Memorial and museum is to commemorate and honor what was lost on September 11 and to recognize the heroic rescue efforts on that day and in its aftermath. The Memorial will provide adequate space for millions of visitors who will undoubtedly come to the WTC Site each year because of the historic significance the site now has.

Materials—Where possible, existing materials that contribute to the historic significance of the WTC Site are being incorporated into the development plans.

Some physical remnants on the WTC Site possess integrity of materials. The original, ~~now truncated~~, box beams outlining portions of the footprints of the Twin Towers, which are now truncated, are among the elements most frequently identified by the consulting parties and many others as important physical reminders of the site's history. Because of the significance of these structures, the Proposed Action would grant public ~~would allow access to these important artifacts, bedrock and truncated box beam columns.~~

The slurry wall was also frequently ~~mentioned~~ identified as an important material by the consulting parties and many others. It was heavily damaged on September 11 and was never designed or built to be exposed to the elements as it now is. This wall was extensively altered during the recovery process in order to stabilize it as the bathtub was excavated. Further, the recovery effort never contemplated the long-term exposure of the slurry wall. Because the slurry wall is recognized as an important physical remnant of the World Trade Center, the Proposed Action would allow public access to a portion of the west slurry wall via a ramp descending from grade to bedrock. Exposing this portion of the slurry wall and making it accessible to the families and the public would avoid an adverse effect. The integrity of this physical reminder would be preserved and commemorated by this exposure. Further, the proposed access ramp would recall the temporary ramp, which has provided access to the bedrock since the bathtub was excavated by the recovery efforts.

The Hudson Tube that is visible on the eastern basement wall of the bathtub (but actually crushed behind the wall by the collapse of Tower Two), the remnants of the parking and service levels under 6 WTC at the north end of the bathtub, the heavily damaged stair and escalator platform on Vesey Street, and a specific elevator pit at the base of each tower were also identified by the consulting parties as important physical remnants of the site. However, none of these remnants are considered character-defining in relation to the WTC as a symbol of American commerce, ~~or to the attacks,~~ or to the rescue and recovery efforts. The fact that they exist is not sufficient to grant these elements historical significance. In fact, ~~they~~ they each lack functional integrity, and the remnants of the parking and service levels under 6 WTC also lack structural integrity. They were left in place during the recovery efforts for short-term practical reasons. It was the intent of the recovery operations to remove them. They were not intended to be returned to use or functional condition. All of these elements can be photographically recorded for use in the proposed Memorial Center. It is also possible that a portion of the Hudson tube could be retained for use in the Memorial Center.

Feeling—The WTC Site has been found to retain integrity of feeling. The surviving physical features at the site—including the bathtub area, slurry wall, and bases of the box beam columns—convey the tragedy and destruction that took place on September 11 ~~because they have been revealed by the rescue and recovery efforts~~ are symbolic reminders of the Twin Towers and their role as monuments to American commerce. These elements are what remain of those important buildings. However, as stated above, the importance of the transcending events of September 11 and in its aftermath the heroic rescue and unprecedented recovery efforts do not depend on the presence of the actual structures in and around which they took place.

~~The proposed action seeks to redevelop the entire destroyed WTC Site with history in mind, and the proposed Memorial has been designed to outline and establish at grade level the ground floors of the Twin Towers. One of our most important planning goals is to assure the commemoration of the victims. To this end, a~~At the bedrock level a special enclosure would be created to preserve the more than 12,000 human remains of victims of the WTC attacks that the Office of the Chief Medical Examiner has not been able to identify. The return of these human remains to rest at the WTC Site where these innocent individuals died would contribute to the feeling of the WTC Site as a historic resource. Further, as stated above, the Proposed Action would allow access to bedrock, the truncated box beam columns, and a portion of the slurry wall, thus avoiding an adverse effect on those elements that are considered to contribute to the feeling. Historic preservation has been at the forefront of the planning process, and the Proposed Action seeks to redevelop the site in such way that is respectful to the historic significance while at the same time mindful of the urban environment in which the site is located.

~~Association—The WTC also retains i~~ntegrity of association, ~~which is the direct link between an important historic event and a historic property, is critical to the determination that the World Trade Center Site qualifies as a historic property. The destruction of the WTC was t~~The objective of the events of September 11 attacks was to attack American commerce and the American people in a profound and significant way, ~~but despite the severity of the destruction and the thorough recovery and removal efforts, the WTC Site retains its quality of association with the profound events of that day. That is a key reason why the Twin Towers in Lower Manhattan were targeted. The Towers were located on the World Trade Center site, and therefore it is that space that will always be most closely associated with these historic events. The Proposed Action has been designed specifically to reinforce that association.~~

David E. Stanke
BPCUnited
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New York, NY 1006
March 15, 2004

Lower Manhattan Development Corporation
Attention: Comments - WTC Memorial and Redevelopment
Plan/Section 106 Review
One Liberty Plaza, 20th Floor
New York, NY 10006

Re: Comments of Consulting Party in WTC Section 106 Review

Ladies and Gentlemen of the LMDC:

It has been an honor and a privilege to participate in the Section 106 Historic Preservation proceedings for the WTC. Thank you for providing this forum and listening to our discussions on the future of the WTC site. Best wishes in your continuing efforts to move the rebuilding process forward and we look forward to further opportunities to participate in this process.

I would like to begin this statement with a clarification of intent. The most active participating parties in the 106 process are representatives of 9/11 family member organizations. In the following statements, I will address their arguments and demands in a straightforward manner and challenge their tactics as well as their conclusions. My lack of sympathy for the positions or demands as stated in these meetings, is not indicative of the great sympathy I have for their losses, and for the manner in which they experienced them. I simply do not believe that the positions they have stated in the 106 hearings have any bearing on their personal losses. Nor do I believe that all 9/11 families, certainly not to the degree expressed, support their positions. By undertaking a broad campaign to lobby for land on the WTC to be set aside for their expressed purposes, they have entered a public debate of concern to a broad range of parties. As such, it is the responsibility of other interested parties to respond, despite the emotional difficulty of such endeavor. I have from early on been dedicated to the importance of memorialization and the historical significance of the WTC site. I simply disagree with their approach to this objective.

I do not believe in using my own or others' pain or grief to promote personal causes. That said, a number of 9/11 family members have expressed sympathy with our positions on the WTC memorial and the relative importance of rebuilding versus historic preservation. I mention this not to turn family member against family member, but simply as an indication that the statements made in the meeting by family representatives are not universally held by all victims' families. They are simply one set of opinions by people with the time and resources to actively pursue their ends.

Attached at the bottom is an article published in the WSJ, written by a 9/11 family member. It states a number of issues in dealing with representatives of 9/11 families. It discusses the overwhelming political power and access to media available to 9/11 groups. It also points out that there is no unanimity among family members, despite declarations at our recent meeting to the contrary. The participation in the 106 meetings is based on individual interest, and many of those from the families who attend have chosen as their cause to resist any use of WTC property other than as memorial. Other family members have chosen other causes, such as resistance to war, investigation of the causes of 9/11, and support for orphaned children, to name a few.

In terms of unity of support for positions stated at the recent meeting, the unity was among a few of those present. Many family members, as I say above, disagree with the positions stated, and

more don't even care. Many have taken their grief into their homes and live and heal on their own without expectations of public display or sacrifice.

Overall Conclusion:

We agree with the LMDC findings of no adverse affect. The plans as presented contain a generous degree of preservation of materials and certainly preserve the feeling of the site through the Reflecting Absence Memorial. The additional items suggested for historic consideration fail to meet any reasonable criterion for historic integrity. One family member stated that the primary artifacts of importance to most family members are the WTC facades and the Koenig Sculpture. We agree with this sentiment and believe these components should be integrated into the site. There is nothing in the proposed course of action that would limit this integration. Design of the surrounding areas should therefore be finalized so that restoration of the WTC site can begin.

If there are items of personal importance to family members that would add great cost to redevelopment plans, we recommend that the LMDC look for ways to remove these elements so they can be respectfully integrated into the memorial in a less prohibitive way. If buildings can be moved for the footprints, some footprints can be removed for rebuilding. Such action would enhance both the vitality of the site and the historic resonance of the memorial.

1) On the finding of inclusion of the recovery as part of the history of 9/11

We are deeply sympathetic with the emotions of the recovery, but appose consideration of this period as historic on the same level as the day of 9/11. The recovery should be treated historically in the museum center, but materials left at the end of the recovery have no historic significance in their own right. Most of what exists on the site is there because it can serve a useful purpose. Simply being left by the recovery does not justify historic consideration.

What was left was spurious based on a variety of considerations. Most of the remains left at the site exist simply because they continue to perform their pre-9/11 functions. We support the preservation of items that continue to serve a function, and can be restored to pre-9/11 functionality. This is an important part of the integrity of the site. Specifically, the bathtub wall protects a large underground area to make it suitable for buildings and infrastructure. The bathtub should be repaired and returned to this purpose. Similar reasoning has been applied to the PATH Train and its components.

The "recovery" did not end 9 months after 9/11. It will not be complete until the WTC is fully rebuilt and operational. The "recovery" from 9/11 is typically defined as the end of the search for remains of the deceased. This stage of the recovery reflected the loss of human life, and our sympathy for that loss. The broader recovery did not end 9 month's after 9/11. The attacks of 9/11 were on the center of our city, the city being defined as downtown. It destroyed the heart of our city from a commercial, residential, and transportation perspective. The recovery is not over until all of these losses are recovered. To define the recovery as completed when one party's specific needs have been fulfilled is an indication of imbalance in the public discourse to date. It was right to give family members first consideration at the site, but they should not have exclusive consideration. The order of precedence for the recovery should be:

- 1) Saving of lives (Completed)
- 2) Recovery of remains of the victims (As complete as humanly possible)
- 3) Restoration of destroyed function of the WTC (In early stages of planning)
- 4) Preservation of historical artifacts and memorial design (In late stages of planning)

To reverse the priority of items 3 and 4 is to place the interests of preservation over the concerns of the living.

Acceptance of the recovery period as historic has allowed individuals associated with the recovery to define as historic items that have primarily personal importance. These items include especially the box beams that were severed at the cement at the lowest level of the WTC. The recovery was a period where those involved received an out flowing of public support and love. These participants became celebrities for their role. The extent of the imbalance of treatment during this period is such that I was able to get pictures of my home from firemen in New Jersey before I was even able to approach the site myself and even as I was

prohibited from taking my own pictures. The recovery was a period of special entitlement, which participants have been unwilling to relinquish. Preservation of the beams remaining in concrete seems an odd demand, when the beams above the concrete were cut off and destroyed without much concern toward the end of the 9-month recovery.

2) On the basis for preservation of footprints as stated in the meetings

The discussion of historic significance in the hearings has not resulted in a rigorous definition that allows us to distinguish historical significance. The arguments for preserving items or areas have fallen back on a few generic statements with little ability to resolve differences of value. Specifically, if we accept the reasons stated for selecting the historically significant, every piece of scrap removed from the WTC is historic. We believe we have reached this state because nearly everything of importance was completely destroyed on 9/11 and appropriately removed and disposed of (exceptions considered later). With a lack of truly important artifacts, spurious remains have been attributed with unjustified significance.

One basis for historic preservation is that the item is still present. Consider the elevator structure on the East of the site. This structure was left during the recovery because there was no need to remove it at the time. It is in substantially different condition than it was post 9/11, having enduring the demolition of all surrounding buildings. No one ever considered all of the structures that once existed around this stairwell as historically significant as they were slowly and methodically demolished and removed. To now determine that this one remaining structure is important when nothing around it qualified, is spurious. It is not based on the inherent integrity of the item itself.

Another stated reason to preserve an item is if it provokes a connection to 9/11 for someone. Such a definition is completely subjective, and allows individuals to demand the preservation of any specific items that are personally important. The accumulation of personal feelings for individual items would result in an unlimited definition of artifacts. The participants in the hearings have focused on a series of items that could stand in the way of construction. On the other hand, they have had very little comment on numerous items that have already been integrated, such as the areas of the underground concourse that have been integrated with the current Path Train. Personal statements of importance cannot be used to evaluate historic significance.

Finally, we have heard that items should be preserved because parties at the hearing have requested their preservation in the past. We have heard detailed analysis of what has been demanded for and when. While we have not participated in formal discussions with the LMDC on these topics, we have for the same period of time argued that these items were not worthy of preservation when considered against the bigger picture of the importance of the site to the community, the city and the country. With the footprints specifically, community groups have consistently stated that preservation, memorialization, and rebuilding should not be based on rigorous specifications of footprints at bedrock, concrete, or ground level. We are disturbed by discussions of percent preservation off footprint columns as if a dictate of preservation had already been declared. The need to rebuild the infrastructure of the bathtub will necessitate that additional beams will be covered.

3) On the notion of public participation and democracy in decisions relating to the WTC site

Decisions relating to the future of the WTC can take public input as a guide, but cannot be subject to the wishes of interested parties. Frequent and emotional demands for a specific course of action are not justify that course. The LMDC has heard these opinions and made compromises reflected in the current site plan. The call to stop development of the site has been a coordinated, well funded, and broadly publicized campaign, but it is not reflect the wishes of the country.

It was argued in our meetings that open processes have resulted in a general call for preservation of the footprints and bathtub wall. Our participation in these events has left us dazed by the wide range of special interest demands introduced in relation to the WTC site. The opinions have ranged from rebuilding everything exactly as it was pre-9/11 to leaving the all 16 acres of the site exactly as it was immediately after 9/11. Out of the wide range of options emotionally demanded, it was impossible to develop a

consensus opinion on anything. There has been no attempt to determine, in a democratic fashion, how best to proceed with the site. I would argue that even if such a process were possible, it would be useless. The views are diverse and often directly apposed. The LMDC efforts to hear interested parties and to develop compromise have resulted in a vast memorial area and museum space. Many residents and business people in the area believe this to be an excessive level of preservation already, bordering on perpetuation of the very attack that killed nearly 3,000 people.

The calls for preservation of the site as an empty pit have been the result of a intense lobbying campaign by a small segment of the population, and of the 9/11 families. The vast majority of the population, I believe, supports a more moderate definition. These voices have not been fully heard because people are unwilling to stand against the "9/11 families" in public forums.

4) On the urgency for finalization of plans and the beginning of construction

We believe that it is important to finalize the specification of the memorial and museum area quickly so that broader site plans can be finalized and the recovery of the WTC can continue. The facilities and function of the WTC were critical to downtown New York and this part of the city will be on life support until they are restored. Delays to rethink historic significance based on spurious arguments could be dragged on indefinitely, perpetuating the intent of the terrorist attacks and endangering the long term recovery of the financial district and all of downtown. Every change in designation of historical significance could set planning efforts back significantly.

We found comments in the hearings that downtown should delay redevelopment to further consider the historic nature of spurious artifacts insulting. They are evidence of a lack of understanding and empathy. I suspect that none of the families or preservationists active in the hearings has lives or businesses that depend on revitalization of the area. In fact, they are all better served by further delays in anticipation of broader definitions of historic significance. For many of these parties, their stated goal is to stop construction and redevelopment of the site. Strict preservationists win when more is preserved. It is disingenuous to say that all of the requested items can be deemed to be historically important without further delaying redevelopment.

The parties arguing for further delays fail to understand that the terrorist attacks destroyed vast quantities of human capital. To argue that replacement of this capital can wait is to stare at the WTC towers and state that they had no significance. To deny that this loss continues to weigh heavily on local individuals and businesses is indication of a blindly self-interested position. In short, these statements are an insult to the intelligence and to human nature.

Reconstruction of downtown is an urgent need. The reconstruction itself will provide a degree of support to the area until longer-term recovery is completed.

5) On the specification that preservation serves the interest of future generations

We believe that the memorial and museum space dedicated to preservation sufficiently fills the need of future generations to remember the feeling and learn the history of the attacks. All of the additional items considered for historic designation are known only by a select and very small and active group of people. They do not interest the broader population today, much less future generations. Anything that bears a plack stating a relation to 9/11 will get passing curiosity. The designation of historic significance must exceed this standard.

People come to the site today to see the expanse of the destruction, the open 16 acres. They do that, I believe, knowing that this state is temporary, and that it is appropriate to rebuild. They do not come to see specific details of remaining structures, and are often misled as to the significance and history of these items. People walk by original components of WTC concourse without even noticing its presence. They do not walk over to the North Side to get a closer view of the elevator structure.

No one can speak for future generations. To argue in the name of future generations is simple because there is no one available to disagree. In 1942, it could have been argued that all of the destruction of Pearl Harbor should have been preserved. In the long run, it was quite sufficient to preserve the one boat that could not be moved anyway. The historic importance of an event does not justify or necessitate the preservation of every item related to that event.

6) Historic significance of identified artifacts

The 106 hearings have centered on discussion of the historic value of specific elements on the WTC site. Following is a discussion of the integrity of the property based on discussions.

Location:

Identification of the footprints at ground level is sufficient to preserve the integrity of location. The WTC memorial is specifically designed to do this. The issue is whether location extends further out and down from the memorial site. We believe that extension of the historic area is important only as a means of adding a sense of historic authenticity. This requires inclusion of some components, but not all components.

No one in the hearings, to my recollection, has argued that other buildings on the site or buildings surrounding the site critical to the integrity of the site. Only the two towers on the WTC site were attacked. Only the towers were identifiable to the broader population. We therefore believe that the area of significance is limited specifically to the outline of the two towers.

It has been argued that the bathtub has historic significance. The bathtub held largely nondescript infrastructure, such as parking lots and ventilation equipment. It was a large example of a very common method of building. The bathtub was not exposed by the destruction, even though it was damaged. We therefore feel that bathtub and retainer wall do not have integrity of location and do not qualify for preservation on this basis.

The area below the twin towers has been discussed as historic primarily based the presence of the severed box beam columns. The area was not exposed until months after the recovery effort was underway. None of the material in this area was considered worthy of preservation on site during the recovery. Beams were cut down and removed without question during the recovery. The only issue concerning material from this area was possibility of remains being found. All identifiable remains have been removed. This area has significance primarily to the recovery and does not justify historic treatment on the same level as the symbolic WTC footprints.

Setting:

On the integrity of the setting, one could argue that the importance of the site is based its setting immediately prior to 9/11. It is this setting that drew the attacks. Restoration of the site to that condition (i.e. rebuild the towers) would be the appropriate way of preserving integrity of setting. Returning the original function of the site in a new, improved design is another way to preserve the integrity of the setting. We believe that the site has integrity of setting as an extraordinary commercial district, a vital transportation hub, a distinct public space, and a central retail district. We believe that the site has integrity based on this definition and that redevelopment of these components should move forward as quickly as possible.

One could consider the integrity of setting on the site based on its condition on 9/12/01. Aside from the moral and symbolic problem with that approach discussed below, preservation of setting has never been a consideration. The 9 month recovery period established the principle that recovery held priority over preservation of setting. No one, during that time frame, argued that the setting was important to preserve. The post 9/11 setting has been replaced with a post recovery setting. This setting does not carry historical significance. For parties in the process to reverse direction now and say that post 9/11 setting or post recovery setting should be preserved, seems particularly self serving.

In conclusion, preservation of the footprints as defined by Mr. Arad's memorial preserves the setting sufficiently to recall the 9/11 attacks. Beyond that, restoring the pre-9/11 setting is more in line with the historic nature of the site. To use the 106 process to stop restoration of setting is a particularly misguided approach, hence we agree with the LMDC finding of no adverse affect.

Design

The design of the WTC was significant. It was architecturally distinct and an important American Symbol. There were important engineering feats accomplished in the building of the towers. The symbolism of the towers was enhanced by the presence of the Konig sculpture, now displayed in Battery Park.

Unfortunately, the attacks on the WTC were very successful, and by all definitions, nearly complete. Only some façade elements of 10 to 20 stories high and the Konig sculpture were recoverable. The box beams in concrete are simple iron beams and their importance as a design element is limited. They were never visible prior to 9/11/01. Development of the memorial should consider using remaining pieces of the façade and the Konig sculpture. There is plenty of room to do this and the memorial area is the proper setting. Access to box beam footprints and slurry wall can contribute to the design of the memorial, but it is not critical to preserve them in their entirety. As long as some access is provided, the design meets the requirement.

Again, if the design of the WTC were truly significant, the appropriate response would be to rebuild and restore the WTC towers. No one in the meetings argued for this. The few pieces of WTC left on the site are more related to a random path of destruction taken by the falling towers. It would not be appropriate to preserve these materials in their entirety.

One family member mentioned that the two items generally considered important by family members are the façade and the sculpture. We agree with this and believe they should be integrated into the memorial design. The memorial area has plenty of space to do this. The LMDC finding of no adverse affect is appropriate, since it leaves room to restore the important design elements of the WTC.

Materials and Workmanship

The materials and workmanship remaining at the site are not worthy of historic preservation. There are huge quantities of these materials and beams can easily be recovered from Fresh Kills and JFK Airport as needed for museum. The only remaining materials from the WTC at the site are the box beams in concrete. But off site, there are many other sections of beams that can be used as needed. None of the material on site justifies 100% preservation. The workmanship in creating the box beams and placing them in bedrock is also general in nature and not justification for preservation. The current plans leave a sufficient measure of these materials in place.

Feeling and Association

It is important to preserve the feeling and association of the site, both in its pre 9/11 form and its 9/12/01 form. That is the reason that restoration and memorialization need to be balanced. You can't understand the destruction without understanding the life that it destroyed. And you can't live or work on the site in the future without understanding that it was at one time the center of incredible pain and suffering. The two are linked at every level, and hence need to be balanced. The memorial clearly preserves the feeling and association of the site with the tragedy. It important to begin work on the memorial and also to finalize the design of the site to restore the feeling and association of the vital WTC prior to 9/11.

7) On the appropriate response to an attack on our nation

As everyone has agreed, the 106 process is not equipped to deal with all of the particulars of a tragedy on the level of 9/11. As such, I believe that detailed focus on historic preservation bypasses more important moral and symbolic issues that must be answered so that specific details and artifacts can be treated within

a larger context. If we march through preservation by labeling the trees, we will have failed to understand the forest.

On 9/11, a foreign entity bent on destruction of the United States launched a coordinated attack on the symbolic cornerstones of our American society. The WTC was the component that symbolized our economic success. The destruction of the WTC was 100% successful, as indicated by the meager remains we are considering for preservation. In addition to the lives lost, an incredible amount of economic damage was inflicted focused most intensely on people and businesses closest to the site. Restoration of the WTC in conjunction with Downtown New York and the Financial District is an important symbolic statement. While we cannot restore the lives lost, we can work toward an economic and community restoration. By rebuilding we make the statement that we lost a battle, but continue to fight the war. We honor those who lost by declaring that we will continue to live as they lived. We make the statement that we will not bend to terrorism. This statement is as important as the statement our military makes in attacking the sources of terrorism.

Our neighbors in Israel have much greater experience with the results of terrorism and have developed a cultural response to terrorist attacks. They mourn the dead, care for the survivors, and restore the site of the damage quickly to its pre-attack condition. This is not interpreted as an insult to the murdered, but as the appropriate response to a hateful act of violence.

Consider the other memorials that have been used to support the notion of an extensive WTC memorial. Civil War battlefields were often left deserted. The property was not destroyed by a specific attack of a foreign power. The battles took place in farmland at a time and place where land was not as precious as it is in Manhattan. The battlefields were easily preserved because there wasn't an urgent need to use the property for its previous purpose: farming. The Pearl Harbor memorial did not force a relocation of the Naval Base. The sunken ship was immovable at the time, and indeed, it was too expensive even to recover the bodies. It was left there as the Navy and the nation turned its focus to other priorities: World War II. The memorial installed over the ship was a minimalist means of supporting visitors to the site.

The rush to create a huge memorial to unnecessarily displace everything that was destroyed at the WTC is a step forward in a memorial fervor that grows with each US tragedy. It reflects the elevation of respect for the dead over the lives of the living. Preservationists who make a living of resisting development to preserve buildings of another era might be tempted to take an expansive WTC memorial under their wings. Artists may enjoy the idea of a grand, artistic memorial statement taking precedence over unsophisticated developers. Both of these groups would be wise to consider the source of their funding and the role business takes in supporting the arts and creating new architectural landmarks. They would also do well to consider how they would feel if their homes or their town was destroyed.

A number of experts with preservation backgrounds spoke very eloquently about the need to keep memorials symbolic and clearly understood the bigger picture of the WTC attacks. It is my hope that these voices and our voices will be heard and that the LMDC will move forward with detailed planning of both the site and the memorial, within its defined boundaries.

Thank you for the opportunity to participate in this process.

Sincerely,

David E. Stanke
President, BPCUnited

COMMENTARY

Our 9/11

By DEBRA BURLINGAME

In the immediate aftermath of the Sept. 11 terrorist attacks on our country, the families of those who perished on that day became forever linked through our shared anguish and grief. But "the 9/11 families" are not a monolithic group that speaks in one voice, and nothing has made that more clear than the controversy over the Bush campaign ads.

It is one thing for individual family members to invoke the memory of all 3,000 victims as they take to the microphone or podium to show respect for our collective loss. It is another for them to attempt to stifle the debate over the future direction of our country by declaring that the images of 9/11 should be off-limits in the presidential race, and to do so under the rubric of "The Families of Sept. 11." They do not represent me. Nor do they represent those Americans who feel that Sept. 11 was a defining moment in the history of our country and who want to know how the current or future occupant of the Oval Office views the lessons of that day.

The images of Ground Zero, the Pentagon and Shanksville have been plastered over coffee mugs, T-shirts, placemats, book covers and postage stamps, all without a peep from many of these family members. I suspect that the real outrage over the ads has more to do with context than content. It's not the pictures that disturb them so much as the person who is using them. This is demonstrated in their affiliation with Moveon.org, a rabidly anti-Bush group that sponsored a rally they held last Friday calling for the president to pull his ads off the air. But by disingenuously declaring themselves "non-partisan" and insisting that it is a matter of "taste," they retain a powerful weapon that they have learned to exploit to their advantage. They are "9/11 family members" and therefore enjoy the cloak of deference that has been graciously conferred upon them by the public, politicians and, most significantly, the media.

The leader of a lobbying group advised individuals at a 9/11 family meeting shortly after the attacks: "Make no mistake, you have a lot of power. Politicians are more afraid of you than you know." They know. As "relatives of 9/11

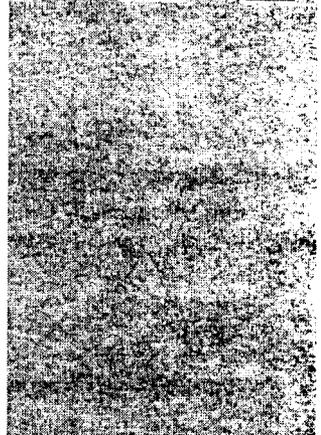
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victims," they are virtually immune to challenge on the issue of who should have the loudest voice regarding the legacy of this national tragedy.

But this was a tragedy that was experienced and felt not just by us, but by all Americans. The American people responded to the horrors of that day with unflinching courage and an outpouring of love, support and empathy, the memory of which fills me with a gratitude that I can never repay. We families received cards, letters, homemade quilts bearing the names and likenesses of our lost loved ones, hand-lettered drawings from whole classrooms of children, and an unprecedented amount of charitable funds that sustained and continue to sustain those in need more than two years later.

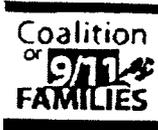
These Americans, most of whom I will never have the privilege of meeting, also gave us something even more precious. When the planes hit the buildings and the towers fell, some of their sons and daughters balled up their fists and determined then and there that they wanted to "do something" about it. Those who donned the uniforms of our Armed Forces in order to fight the war on terrorism are not offended by the images of Ground Zero. On the contrary, they are moved and inspired by them.

Whatever these 9/11 families may think of the president's foreign policy or the war in Iraq, I ask them to reconsider the language and tone of their statements. We should not tolerate or condone remarks such as those of the 9/11 relative who, so offended by the campaign ads, said that he "would vote for Saddam Hussein before I would vote for Bush." The insult was picked up and posted on Al-Jazeera's Web site. In view of the sacrifice our troops have made on our behalf, this insensitivity to them and their families suggests a level of self-indulgence and ingratitude that shocks the conscience.

George W. Bush says that his presidency is inspired by an enduring obligation to those who lost their lives on that brutal September morning. The images of that day stand as an everlasting example of our country's darkest day and finest hour. They are a vivid reminder of the strength and resilience of our great country. They belong to us all -- including this president. Let the candidates make their own choices. I trust the American people.

Ms. Burlingame, a life-long Democrat, is the sister of Charles F. "Chic" Burlingame, III, captain of American Airlines flight 77, which was crashed at the Pentagon on Sept. 11, 2001.

Updated March 8, 2004



FAX COVER SHEET

Pages: 12 , Includes Cover

March 15, 2004

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**FROM: Anthony Gardner
Coalition of 9/11 Families
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Please see attached comments on LMDC's proposed finding of "no adverse effect"



VIA FACSIMILE AND SURFACE MAIL

March 12, 2004

Mr. Kevin Rampe, President
Lower Manhattan Development Corporation
One Liberty Plaza, 20th Floor
New York, NY 10006

**RE: WORLD TRADE CENTER MEMORIAL AND REDEVELOPMENT PLAN
NATIONAL HISTORIC PRESERVATION ACT SECTION 106 COMPLIANCE
COMMENTS ON PROPOSED FINDING OF NO ADVERSE EFFECT**

Dear Mr. Rampe:

Attached please find the preliminary comments of the Coalition of 9/11 Families on the *World Trade Center Memorial and Redevelopment Plan Proposed Finding of No Adverse Effect Under Section 106 of the National Historic Preservation Act*. Although dated February 9, 2004, that document was transmitted to us via electronic mail at approximately 4:00 PM on February 11, 2004.

The Coalition does not believe it is our responsibility or obligation to carry out the research and analyses necessary to assess the effects of construction and operation of the World Trade Center Memorial and Development Plan (the Project) on historic properties within the Project's Area of Potential Effect. The burden of doing so rests with LMDC. Unfortunately, in the opinion of the Coalition, LMDC has not applied a technically vigorous approach to the effects analysis. Instead, LMDC has taken an "If we don't look, it doesn't exist" approach to the issue of how the Project will affect historic properties. That approach is inconsistent with both the requirements and intent of Section 106 of the National Historic Preservation Act.

Not only has LMDC hindered and denied the Consulting Parties access to information essential to preparing fully informed comments on LMDC's analysis of the effects of the Project, LMDC has also apparently ignored much of the information it does have. The proposed finding of no adverse effect is totally devoid of substantive detail, and assumes that the determination of eligibility for the World Trade Center site will not be revised to more accurately reflect what components of the site contribute to its significance, and how they do so. Additionally, the determination is based upon an Area of Potential Effect that was defined without any input from the Consulting Parties or any documented input from the State Historic Preservation Officer.

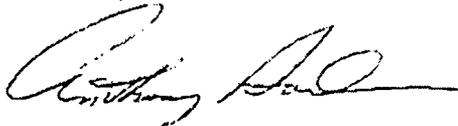
Once again LMDC has placed an arbitrary limit on the amount of time made available to the Consulting Parties for the submittal of comments on a key document. While 30 days may seem a reasonable time, we remind you that during those same 30 days the Consulting Parties were asked

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by LMDC to also prepare comments on the coordinated determination of National Register eligibility for the World Trade Center Site, and comments on LMDC's 2,000-plus page Generic Environmental Impact Statement for the Project. Once again we would point out that the Section 106 regulations do not provide for any limits on the time allotted to Consulting Parties for the provision of comments. Most of the Consulting Parties are unfamiliar with the requirements of Section 106 of the National Historic Preservation Act. LMDC has chosen not to provide the Consulting Parties with information about what constitutes an adverse effect, and under what circumstances a finding of no adverse effect is or is not appropriate. Even worse, the one paragraph in the Proposed Finding that discusses the Criteria of Adverse Effect misquotes the Criteria. It would have been helpful if LMDC had provided the Consulting Parties with copies of the relevant regulations. LMDC should extend the comment period until the Consulting Parties have had time to familiarize themselves with those regulations and all the information in them pertaining to the application of the Criteria of Effect. The need for an extension has become even more paramount since LMDC's announcement yesterday that it is once again revising the determination of eligibility, and that document will not be available for one or two more weeks.

We are saddened that LMDC apparently views the Consulting Parties as adversaries, rather than as stakeholders. We are fearful that this will result in a delay in reaching what we hope can be a successful resolution of historic preservation compliance issues. We are hopeful that legal challenges of LMDC's actions to date can be avoided.

Sincerely,



Anthony Gardner, Executive Board Member, Coalition of 9/11 Families

cc: B. Cohen, FTA
R. Arnold, FHWA
J. Fowler, Advisory Council on Historic Preservation
J. Nau, Advisory Council on Historic Preservation
D. Klima, Advisory Council on Historic Preservation
C. Vaughn, Advisory Council on Historic Preservation
Alphonso Jackson, Acting Secretary-HUD
Christopher Lord, Acting Deputy Assistant Secretary, HUD
Richard A. Hauser, General Counsel, HUD
R. Brown, HUD Preservation Officer
B. Castro, New York State Historic Preservation Officer
C. Shull, Keeper of the National Register

attachment

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World Trade Center Memorial and Redevelopment Plan, Proposed Finding of No Adverse Effect Under Section 106 of the National Historic Preservation Act (Dated February 9, 2004)

GENERAL COMMENTS:

- The proposed finding is premature since both substantive and procedural issues concerning the determination of National Register eligibility for the World Trade Center Site are still unresolved. Until those issues have been addressed, including the receipt of either the comments from the Keeper of the Register or an indication that the Keeper will not review the determination, any evaluation of the effects of the project on historic properties is premature. The Coalition continues to maintain that the final determination of eligibility is both flawed and incomplete.
- Based on information made available to the Consulting Parties, which to date includes only the Draft DGEIS and two limited verbal briefings at the last two meetings of the Consulting Parties, it is impossible to make any informed comment on it and or how the project will effect historic properties.
- Information in LMDC's DGEIS suggests that a finding of no adverse effect is inappropriate and cannot be supported.
- LMDC has presumably made a determination that there *are* historic properties in the project's Area of Potential Effect that may be affected. Such a determination is a prerequisite under the Section 106 regulations to the application of the Criteria of Adverse Effect and a finding of either Adverse Effect or No Adverse Effect. LMDC has failed to adequately involve the Consulting Parties in the application of the Criteria as required by the Section 106 regulations.
- Most of the Consulting Parties are unfamiliar with the requirements of Section 106 of the National Historic Preservation Act. LMDC did not provide the Consulting Parties with information about what constitutes an adverse effect and under what circumstances a finding of no adverse effect is appropriate. Even worse, the one paragraph in the Proposed Finding that discusses the Criteria of Adverse Effect misquotes the Criteria. As we note in our letter transmitting these comments, LMDC should provide the Consulting Parties with copies of the relevant regulations and extend the comment period until the Consulting Parties have had time to familiarize themselves with those regulations and all the information in them pertaining to the application of the Criteria of Effect.
- The Proposed Finding does not contain a single technical reference to support any of the conclusions presented. Other than referring back to the DGEIS, there is no discussion of sources or resources consulted.
- The February 9, 2004 letter transmitting the Proposed Finding, signed by Irene Change (LMDC Vice President for Legal Affairs and Counsel) states that the Proposed Finding "is conditioned on certain commitments by LMDC, namely, that the Proposed Action will be carried out consistent with the description contained in the enclosed document." The Proposed Finding does not describe any commitments by LMDC, nor does it contain anything that could be interpreted as a "description" of the Proposed Action.

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- The Section 106 regulations do not provide for a "conditional" No Adverse Effect Determination. Any "conditions" that LMDC believes are necessary to avoid or minimize adverse effects should be spelled out in either a Programmatic Agreement or a Memorandum of Agreement following an Adverse Effect Determination, as provided for in the regulations.
- Although the Proposed Finding is for the entire Proposed Action, it focuses almost exclusively on the World Trade Center Site. There is virtually no discussion of other historic properties within the Area of Potential Effect (see other comments below).

INTRODUCTION:

- The Area of Potential Effect (APE) is not defined in the Proposed Finding. One must cross-reference the DGEIS in order to identify the geographic limits of the APE.
- No explanation or basis for the APE as presently defined is provided in either the Proposed Finding or the DGEIS. LMDC has not provided the Consulting Parties with any documentation indicating that the APE was defined in consultation with the State Historic Preservation Officer.
- The Consulting Parties were not consulted regarding the definition of the APE. In fact, it is apparent that the APE was defined before Consulting Parties were even identified.
- It is noted that LMDC provided the Consulting Parties with hard copies of Chapter 5 of the DGEIS and a CD form of the entire document on February 4. However, although requested to do so at the last meeting of Consulting Parties, LMDC refused to identify where within the DGEIS other than Chapter 5, information on historic properties is discussed. As a result, the Consulting Parties are being forced to conduct a line-by-line review of a 2000-plus-page document to assemble the information needed to participate in the Section 106 process in a meaningful manner.
- The Proposed Finding contains no description of the Proposed Action. It refers indirectly to the DGEIS. However, even that document contains only a sketchy outline of what the Proposed Action will look like on the ground. The Project Description contained in Chapter 1 of the DGEIS contains only general "principals for rebuilding," "preliminary design concepts," "design guidelines," and a "mission statement." This level of detail may be appropriate for a generic analysis and may satisfy the requirements for a generic environmental impact statement under NEPA, but it is totally inadequate for purposes of National Historic Preservation Act compliance.
- The third paragraph states that the Proposed Action was developed with due consideration to four factors: pre September 11 uses of the WTC site, the events of September 11, the need to remember those who were lost, and the urgent need to rebuild. There is no mention of the need to consider the significance of the physical remains of the September 11 attacks. Those remains constitute the principal tangible evidence of the attacks, and have been identified by

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the families "of those who were lost." The treatment of those remains deserves full consideration during the redevelopment process.

- The fourth paragraph states that "Chapter 5 sets forth the reasons why LMDC believes that the Proposed Action will not adversely affect those historic resources in the APE that are not on the WTC Site." However, in Chapter 5 discussion of impacts to historic properties in the APE beyond the WTC Site (for the Proposed Action 2009-Current Conditions Scenario) is limited to less than two pages. Even that limited discussion notes that "Construction of the Proposed Project has the potential to cause damage to these buildings [known and potential historic resources within 90 feet of the Project Site] from ground-borne vibrations and dewatering" (page 5-42). The basis for the no adverse effect conclusion in the DGEIS is that Construction Protection Plans will be developed. Without knowing the content of these presently non-existent plans it is impossible to determine how effective they will be in eliminating adverse effects. In fact, on page 4-43, LMDC appears to acknowledge that these plans may not eliminate adverse effects when it states "Implementation of these plans would avoid *or minimize* (emphasis added) the potential for adverse effects to historic resources during construction." If adverse effects may only be minimized, then a finding a no adverse effect is inappropriate. Likewise, if adverse effects will be avoided only because of special conditions being imposed, a finding of adverse effect would be appropriate with the conditions necessary to avoid them spelled out in either a Programmatic Agreement or a Memorandum of Agreement as provided for in the Section 106 regulations.
- The Proposed Finding states that written comments must be received by March 15, 2004. Once again the Coalition reminds LMDC that the Section 106 implementing regulations do not provide for arbitrary limits on comment periods. Any such limit should be a topic for discussion and agreement among all the Consulting Parties.

CRITERIA OF ADVERSE EFFECT

- LMDC has misquoted and misrepresented the Criteria of Adverse Effect. The Proposed Finding states that "Under Section 106, an adverse effect is found if an undertaking *will* (emphasis added) alter directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the property's location, design, setting, materials, workmanship, feeling, or association." This is identical to Section 800.5(a)(1) of the Section 106 regulations except that LMDC has replaced the word "may" with the word "will." Under LMDC's incorrect citation of the Criteria of Adverse Effect the threshold for a finding of Adverse Effect is much higher than if the correct standard is applied. LMDC's DGEIS notes that there is a potential for the presence of significant archeological remains within the limits of the World Trade Center Site, and that these remains could be affected.
- It is stated that "Some physical remains on the WTC Site possess integrity of materials." However, what physical remains are being referred to is unclear. Which physical remains LMDC believes do and do not retain integrity of materials needs to be specified (see additional comment in following section).

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- LMDC has omitted all discussion of the examples of adverse effects contained in Section 800.5(a)(2) of the Section 106 regulations. For example, LMDC has omitted mention of the fact that "physical destruction of or damage to all or part of the property" is an adverse effect. LMDC has not discussed if or how the unidentified "physical remains" that it acknowledges "possess integrity" will be destroyed or damaged by the undertaking.

CONSIDERATION OF POTENTIAL ADVERSE EFFECTS

- The introductory paragraph says "The significance of the transcending events of September 11 and the aftermath clearly does not depend on the presence of the original, or even the damaged building, buildings and structures that portrayed the horror of that day." It goes on to say that "The WTC Site . . . does not require the presence of physical elements to be considered eligible for listing on the National Register." There is an unstated implication in these statements that even if tangible physical remains associated with the events of September 11 are destroyed, removed or altered by the LMDC, that this would not be an adverse effect, since the WTC Site would still be National Register-eligible. Anything that diminishes the qualities from which a site derives its significance is an adverse effect, even if the site continues to be National Register-eligible.
- In reference to the section headed "Location," the Coalition agrees with LMDC that not moving the World Trade Center Site would not be an adverse effect.
- In the Section headed "Setting" LMDC states "The Proposed Action would not adversely affect the historic resources that are the setting for the WTC Site" and "Overall the Proposed Action would not adversely affect the setting of the WTC Site." Nowhere in the Proposed Finding or in LMDC's determination of eligibility for the WTC Site is the setting defined or geographically bounded.
- A careful reading of the DGEIS indicates that some historic properties in the APE *may* be adversely affected, although this is not stated in Chapter 5 of that document (where the Proposed Finding "sets forth the reasons why LMDC believes that the Proposed Action will not adversely affect those historic resources in the APE that are not on the WTC Site.") Chapter 7 of the DGEIS describes how several historic properties will be affected by incremental shadows. However, even that analysis is limited to open spaces and ignores visual impacts on buildings and structures, including numerous National Historic Landmarks. The DGEIS uses New York City's CEQR Technical Manual's standard for defining an adverse effect. That standard states "An adverse shadow impact is considered to occur when the shadow from a proposed project falls on publicly accessible open space, historic landscape, or other historic resources if the features that make the resource significant depend on sunlight." The DGEIS calls out St. Paul's Chapel and Graveyard (a National Historic Landmark) as one of the properties that will be affected by incremental shadows. The DGEIS also says that City Hall Park will be affected. City Hall Park is part of the African Burial Ground and the Commons Historic District

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- The Proposed Finding reiterates LMDC's proposal to "leave open the space at grade level [street level] where the Twin Towers once stood." It states "The appropriateness of recognizing the footprints in this manner was ... supported by the consulting parties ...". This statement is simply untrue. A review of the transcript of the February 2, 2004 meeting of the Consulting Parties demonstrates exactly the opposite view is held by a majority of the consulting parties who spoke on this matter. Only one individual out of the scores of consulting parties present supported LMDC's view. The transcript is replete with references to the importance of recognizing the significance of the actual physical footprints outlined by the box beam columns at the lowest level of the WTC Site.
- The Proposed Finding also quotes, without attribution, a comment made by Ms. Winonah Warren of the Shinnecock Indian Nation that "a footprint can be something that is written on the psyche or in the soul and on the heart and not necessarily always in steel and cement and concrete." Ms. Warren has subsequently made it clear that her statement has been taken out of context and that she did not mean to lessen the significance and importance to the victims' families of the actual footprints delineated by the box beam columns.
- The section headed "Materials" notes "Some physical remains on the WTC Site possess integrity of materials." The "truncated box beams outlining portions of the footprints of the Twin Towers" and the slurry wall are discussed in the context of physical remains "frequently identified by the consulting parties and others." It is unclear if LMDC agrees that these are the physical remains that possess integrity of materials. If they are, the Proposed Finding should clearly say so. If they are not, the Proposed Finding should explain why they do not, and identify what remains LMDC does consider to have integrity of materials.
- LMDC's statement that "The original, now truncated, box beams outlining portions of the footprints of the Twin Towers are among the elements most frequently identified by the consulting parties and many others" would seem to be an acknowledgement that the remains of the box beam columns at the lowest exposed level of the site are the "footprints." Yet LMDC continues to obfuscate on this by referring to the outlines of the Twin Towers at varying heights above the box beam column remnants as the footprints.
- The Proposed Finding states in both the Materials and Feelings sections that "The Proposed Action would allow access to bedrock and truncated box beam columns." It does not explain how this to be accomplished or what the quality of access will be. Will all of the extant box beam columns be accessible? Will they be accessible to the public? Will they be incorporated into the Memorial experience? Will access be restricted in any way? Will they be accessible in a way that allows their full extent to be appreciated and which allows their emotional impact to be conveyed to visitors? LMDC does not attempt to address these questions because in the absence of more detailed design data it is impossible to do so.
- In the section headed "Setting" LMDC describes the "symbolic space" "at-grade and to at least 30-feet below grade" as the footprints. This directly contradicts the definition in another section of the Proposed Finding (see previous comment).

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- The "Materials" section devotes a paragraph to the slurry wall. It states "Exposing a portion of the slurry wall and making it accessible to the families and the public would avoid an adverse effect." LMDC seems to be acknowledging here something that they did not do in their determination of National Register eligibility for the WTC Site—that the slurry wall contributes to the site's significance. The Proposed Finding contains statements that attempt to support LMDC's contention that the slurry wall lacks integrity of materials. They refer to it as "extensively altered" yet never mention that it retains its functional integrity and is now the dominant visual feature at the site—the reason it has been incorporated into the Memorial design. Interestingly, LMDC notes that the slurry wall was never intended to be exposed to the elements, yet LMDC's determination of National Register eligibility starts the period of the site's significance on September 11, 2001, just before the slurry wall was exposed for the first time by recovery efforts. It is the *exposed* slurry wall that contributes to the significance of the site. The Proposed Finding contains no description of how the slurry wall be affected by LMDC's undertaking, making it impossible to render either a finding of adverse effect or no adverse effect.
- The "Materials" section devotes a paragraph to the "remnants of the parking and service levels under 6 WTC at the north end of the bathtub, the heavily damaged stair and escalator platform on Vesey Street, and a specific elevator pit at the base of each tower" that the Consulting Parties identified as being of concern. The Proposed Finding states that "none of these remnants are considered defining in relationship to the WTC as a symbol of American commerce or to the attacks or to the rescue and recovery efforts." The LMDC has excluded the significance of the pre-attack World Trade Center from its National Register eligibility determination, and gone on record as saying that the Pre-attack World Trade Center was not National Register-eligible. In that context it is puzzling to see a reference to the WTC as a "symbol of American commerce." The exposed remnants of the formerly subterranean parking and service levels at 6 WTC are, after the slurry wall, the most visually dominant component of the site as it exists today. They convey, perhaps even better than the slurry wall, the magnitude of the destruction that occurred on 9/11.
- The elevator pits were identified by the Consulting Parties as significant because they are sole remnants of one of the three unique engineering aspects of the Twin Towers that made their construction possible (the others two being the exterior box beam support columns and the slurry wall). However, LMDC by failing to acknowledge the significance of the construction of the Twin Towers, avoids having to address the fact that affecting the physical remains of these features, which document the unique engineering aspects of the Twin Towers, is adverse.
- The Proposed Finding states that the remnants of the parking and service levels under 6 WTC, the stair and escalator platform on Vesey Street, and the elevator pits at the base of each tower lack functional and structural integrity. This is circular reasoning. LMDC seems to be saying that the World Trade Center Site is significant because the World Trade Center was destroyed on September 11—but the remains of the World Trade Center are *not* significant *because* they were destroyed on September 11. This problem is directly related to LMDC's faulty eligibility determination, which fails to consider that the World Trade Center

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Site is more closely akin to an archeological site than a building, and LMDC's failure to apply the National Register criteria with that fact in mind.

- The Proposed Finding states that the remnants of the parking and service levels under 6 WTC, the stair and escalator platform on Vesey Street, and the elevator pits at the base of each tower "were not intended to be returned to use or functional condition." The relevance of this sentence is unclear. The fact that these features will not be returned to their original function is not at issue. The Coalition continues to maintain that they contribute to the significance of the World Trade Center Site and that if they will be altered or destroyed as part of LMDC's undertaking that that is an adverse effect and ways to avoid or mitigate that adverse effect should be a topic for discussion among the agencies and the Consulting Parties. Photographic recording of these features, as proposed by LMDC in the Proposed Finding, may be an appropriate mitigation measure, but does not justify a no adverse effect determination.
- Both the Proposed Finding in the section on "Feeling" and the revised determination of National Register eligibility acknowledge that "the surviving physical features of the site—including the bathtub area, slurry wall, and bases of steel columns—convey the tragedy and destruction that took place on September 11 . . ." Yet LMDC fails to acknowledge that these features possess integrity of materials or that they contribute to the significance of the World Trade Center Site. Rather than addressing how the "feeling" of the site may be affected by unspecified and undescribed aspects of their undertaking—a necessary component of a determination of either adverse or no adverse effect—LMDC simply ignores the issue by concluding that the importance of the events of September 11 "do not depend on the presence of actual structures in and around which they took place." That conclusion is certainly true, but it does not justify a failure to acknowledge that those structures contribute to the site's significance and may be adversely affected by LMDC.
- The "feeling" section states the Proposed Action "would allow access to bedrock, the truncated box beam columns, and a portion of the slurry wall, thus avoiding an adverse effect on those elements that are considered to contribute to feeling." Once again LMDC has failed to describe the nature or quality of the "access" being proposed (see earlier comment). The provision of access as proposed is essentially mitigation of an adverse effect.
- LMDC's position that providing "access" "avoids an adverse effect on those elements that are considered to contribute to feeling" is unsupportable. The family members represented by the Coalition are in a much better position than LMDC to speak to how the integrity of "feeling" at the World Trade Center Site will be affected. It is the Coalition's position that anything less than providing for full public access to all of the extant box beam columns (the Twin Tower's "footprints") in a manner that allows for their significance and emotional impact to be fully appreciated and interpreted would constitute an adverse effect.

LMDC'S MEMORIAL AND PLANNING EFFORTS

- The Proposed Finding states that "LMDC has engaged in an unprecedented level of public involvement. The Coalition takes issue with this. Our own experience has been one of being

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"talked at" rather than "talked with." LMDC continues to treat the Coalition (and other Consulting Parties) as members of a broader public rather than as stakeholders in the Section 106 process.

- The Proposed Finding states that "Public involvement has helped to ensure that the WTC Site's integrity of feeling and association is not diminished." As noted above the Coalition believes that the Proposed Action may well diminish the integrity of feeling of the site. One wonders why other aspects of integrity, including design, setting, workmanship, and materials are not included in this statement."
- The Proposed Finding states that the Proposed Action would create a Memorial Center to "commemorate the WTC and portray the pre-WTC history of the site, the circumstances that led to the creation of the WTC, [and] the engineering and design features that were part of the WTC construction . . ." Yet LMDC fails to acknowledge in its determination of National Register eligibility that any of these aspects of the site's history contribute to its significance. Special note should be made of the fact that LMDC continues to reject the importance of the physical remains of the engineering and design features that were unique to the World Trade Center and made its construction possible.

PROPOSED FINDING

- LMDC's two-sentence conclusion claims that their finding of no adverse effect is based on "the reasons set forth in Chapter 5 of the DGEIS . . ." However, information in both Chapter 5 and in other chapters of the DGEIS (see for example, the comment above relating to Chapter 7) is at odds with this conclusion.

The DGEIS has already also been publicly criticized on a number of grounds unrelated to historic resource issues. It is highly likely that significant changes in even the bare-bones description of the Proposed Action will be necessary to address these criticisms. Any such changes could significantly alter the nature and extent of effects to historic properties both on and off the WTC Site. For example, on February 12, 2004, after the issuance of the DGEIS the *New York Times* reported "the ganglia of underground infrastructure may make it impossible to construct voids whose boundaries correspond exactly to the tower perimeters. Getting in the way are visitors' ramps, underground circulation spaces, service roads, [and] the PATH electrical substation . . ." On February 27, 2004, LMDC issued a press release about the acquisition of the Deutsche Bank Building property adjacent to the WTC Site. This will have a significant effect on the development of below-grade areas on the WTC Site. On March 2, 2004, the New York City Planning Commission called for the extending of streets through the WTC Site. This would also have a significant effect on the Project. On March 5, 2004, the *New York Times* reported that revised draft design guidelines for the redevelopment of the WTC Site were being circulated among planners, architects, and officials. As recently as yesterday, newspapers reported that some of the below-grade infrastructure planned for the WTC Site might be moved to "temporary" or so-called "taxpayer" structures to be erected along Church Street.

COMMENTS OF THE COALITION OF 9/11 FAMILIES

World Trade Center Memorial and Redevelopment Plan, Proposed Finding of No Adverse Effect Under Section 106 of the National Historic Preservation Act (Dated February 9, 2004)

In the absence of much more detailed engineering and design information it is presently impossible to evaluate if or how the historic properties in the Proposed Undertaking's Area of Potential Effect will be affected.

333 Rector Place, Apt. 11-B
New York, NY 10280
March 12, 2004

Lower Manhattan Development Corporation
Attention: Comments - WTC Memorial and Redevelopment
Plan/Section 106 Review
One Liberty Plaza, 20th Floor
New York, NY 10006

Re: Comments of Consulting Party in WTC Section 106 Review

Ladies and Gentlemen:

On behalf of the Coalition to Save West Street (the "Coalition"), a Consulting Party in the Section 106 review relating to the World Trade Center site (the "Site"), I offer the following comments regarding the LMDC's proposed finding that the World Trade Center Memorial and Redevelopment Plan (the "Proposed Action") will have no adverse effect under Section 106 of the National Historic Preservation Act.

The Coalition, a group of approximately 400 residents of Lower Manhattan formed in 2002 in order to oppose plans to tunnel a portion of West Street, believes that its views on the redevelopment of the Site are broadly representative of a strong majority of Lower Manhattan residents.

The Coalition endorses the finding of the LMDC that the Proposed Action will have no adverse effect on the Site. While we have serious environmental concerns about portions of the Proposed Action that we will address in separate comments, we believe that the arguments for preserving portions of the Site beyond what is contemplated by the Proposed Action are specious. While comments from preservationist groups should be welcomed in the same manner as all other public input, we would oppose giving preservationist groups any kind of veto power over the process. Denials to the contrary, the potential for serious delays would be enormous and could threaten the viability of the revitalization of Lower Manhattan. This cannot be allowed to happen.

In Section IV of the Proposed Finding of No Adverse Effect, the LMDC notes that redevelopment of the Site under the Proposed Action would ensure "that Lower Manhattan retains its role as the financial capital of the world, an endeavor for which the WTC was originally created and the status of which was contributed to by many if not all of the victims." This phrase accurately captures the perspective of most local residents, particularly those of us who were living here prior to 9/11 (in my case, more than 10 years as a resident of Battery Park City), in the following ways:

- First, it reflects the fact that most residents want to see the Site once again become a center of commercial and retail activity on a scale similar to that which previously existed. This is the environment that most of us chose to live in or near and would like to see restored. Although our group is not among those who call for the restoration of the “twin towers” or buildings on the Site at least as tall or taller, I have been amazed throughout this entire public process at the persistence of those groups and the passion with which they advocate their views in the face of the odds against them. They represent the desire for revitalization in its purest form and, although many local residents would not endorse their exact views, there is a great deal of understanding of the desire to rebuild that is behind their advocacy.
- Second, it is nowhere written in stone that Lower Manhattan must continue to be the financial capital of the world. That crown can easily fall from our head as a result of a misguided emphasis on preservation rather than rebuilding. As the language of your document points out, economic activity on a large scale was the purpose for which the World Trade Center (“WTC”) was originally created and is what represents its real historic significance (one of the reasons that it was a key terrorist target!) -- a fact that could never be adequately captured by the retention of a few undistinguished physical remnants at the Site.
- Finally, your choice of phrasing captures very well the fact that an emphasis on redevelopment and moving forward is not incompatible with deep sympathy for the persons who perished on the Site and the anguish of their families. From the perspective of a resident like myself who traversed the WTC concourse almost every day for eight years prior to 9/11, the people who died in those towers were the people that I rubbed shoulders with (literally in some cases) during each weekday morning rush hour, and many of them were the people most deeply engaged in making us the financial capital of the world.

The LMDC’s analysis under *Materials* in Section III of the Proposed Finding of No Adverse Effect is particularly sound and noteworthy. Sadly, the nearly total destruction at the Site as a result of the attack and the ensuing cleanup means that there are very few structural remnants worthy of preservation. The urge to preserve at least *something* physical is understandable but misguided. For example, most local residents had never heard of, much less seen, the slurry wall prior to 9/11, so surely the suggestion that it be kept visible as a symbol of the WTC cannot be the right answer. We were very lucky on 9/11 that the slurry wall did hold back the waters of the Hudson River, but your analysis correctly points out the inability of that fragile structure to continue to stand on its own. Rather than serve as a tourist attraction for people to gawk at, most if not all of it should be reburied so that it can continue to perform its essential function of protecting the Site and the surrounding areas from the waters of the Hudson.

Certainly the mighty WTC cannot be adequately represented to history by a few parking garage remnants, a couple of elevator pits and/or a heavily damaged stair and

escalator platform. Something of a case might be made for the latter platform simply because of its prior visibility at the Site (which could evoke memories of the Site prior to 9/11 for some), but I recently took a close look at that structure and it is just too heavily damaged to be worthy of preservation. It would be an eyesore and would force local residents, who desire to get on with their lives, to relive the traumatic experience of 9/11 every day as they cross the Site.

With respect to the footprints, the urge to preserve them is also understandable, but most local residents feel that the *Reflecting Absence* memorial does this adequately without the need to preserve all of the box beam columns that outline the footprints at bedrock level. The displacement of a proposed tourist bus garage from the Site, possibly to a location in a nearby residential neighborhood, as a result of the emphasis on access to bedrock has already caused hard feelings between residents and some of the family members. If it is desired to preserve any more of the box beam columns that outline the footprints at bedrock level, those beams should be removed and relocated if they are an additional obstacle to redevelopment. It is not worth holding up the rebuilding of the Site for even one day for the purpose of preserving additional box beam columns at their current location.

In addition to the foregoing, I now understand that there is advocacy in some preservationist circles for preserving the smoke scars in the remains of the parking garage on the Site. This view, in my opinion, borders on the bizarre. Rather than emphasizing preservation of the historic legacy of the Site through rebuilding and revitalization, it would focus on preserving the handiwork of the terrorists whose objective was to destroy that legacy. If such smoke scars must be preserved (as repugnant as that concept is), then let them be removed from their existing location in the parking garage and placed in a museum underground at the Site where only those who want to see them (future terrorists in training, perhaps?) will be forced to do so.

Finally, I would like to comment briefly on the possible return of artifacts to the Site, which was the topic of much discussion at the two meetings of the Consulting Parties that I personally attended. Simply put, I believe that most local residents would not object to this as long as the volume is not too great, that good taste and dignity are brought to bear in the selection of the artifacts, and that they are not located on the Site in such a way that local residents will be forced to confront traumatic memories of 9/11 each time they cross the Site. (An extreme example of this, which I assume no one is advocating, would be the return of a destroyed fire truck to the Site.)

I would like to close this comment letter by emphasizing that I and most other local residents are not insensitive to preservationist concerns. In my case, I lived in New Orleans for over 20 years and am very aware of the work done in that city by the Vieux Carre Commission in preserving the history and architecture of the French Quarter. In fact, I served in New Orleans city government for four years and have personally known past Directors of that Commission. As a resident of Virginia and later as a law student at the University of Virginia in Charlottesville, I came to love and appreciate Jefferson's Monticello, which I revisit at every opportunity. And in my third year of law school

preparing to be a corporate attorney, I chose to take a seminar on historic preservation. However, I believe that what we are witnessing now is an emerging inappropriate emphasis on preservation at the Site at the expense of the other vital needs of Lower Manhattan. The Coalition chooses to resist that trend by supporting the LMDC's determination that the Proposed Action will have no adverse effect on the Site.

Thank you for the opportunity that I and other members of the Coalition have been afforded to participate in the Section 106 review process.

Yours truly,



Bill Love

Vice Chair

Coalition to Save West Street

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**COMMENTS BY ROBERT KORNFELD, JR. R.A. ON BEHALF OF THE
HISTORIC DISTRICTS COUNCIL, MARCH 15, 2004**

**Proposed Finding of No Adverse Effect Under Section 106 of the National Historic
Preservation Act – World Trade Center Memorial and Redevelopment Plan, dated
February 9, 2004**

The Proposed Finding of No Adverse Effect should be withdrawn for the following reasons:

1. The Proposed Finding is not based on an acceptable Determination of Eligibility. The Determination is deeply flawed, as reflected by our comments as well as those of many other consulting parties. The Determination lacks a factual and conceptual understanding of the site's historic features, the basis of their significance, the aspects of integrity that they possess, and their contribution to the significance of the site as a whole. A significant risk is that if portions of the current proposed action are revised or cancelled, this document would be presumably remain standing, offering the historic resources on-site almost no consideration or protection.
2. There clearly are adverse effects, even under the flawed Determination. For example, in terms of setting, the disaster created a 16-acre open space comprised of the ruins of the World Trade Center complex. Surrounding it on all sides were street walls of buildings damaged as a result of the disaster. Securing and stabilizing these buildings was one of the three basic components of the disaster response (above grade, below grade and surrounding structures). These buildings are intimately connected both the disaster and recovery. The proposed action would reduce the open space from 16 to about 4-1/2 acres, surrounded on three sides by interposed new buildings and on the fourth by a new highway. The ways that the proposed action mitigates these adverse effects should be stated and justified.

Another adverse effect is the preservation and access to the B-6 bedrock level footprints. Based on the vague, inconsistent information available it is not clear that full access to the footprints of 1 WTC and 2 WTC is assured. If not, this must be addressed as an adverse effect. Also, covering the footprints must be addressed as an adverse effect because the emergency operation left them open as the visual focus of the site. While none of the consulting parties has expressed a desire to see them remain exposed permanently, the character of the cover and the space that it creates is a primary consideration for evaluating mitigation.

The voids in the grade level memorial, known as "Reflecting Absence," are intended to define the volume once occupied by the towers. It would be an adverse effect if this volume is reduced and incorrectly defines the location and scale of the towers as LMDC has indicated that it will in press interviews.

3. The Proposed Finding appears self-contradictory because it makes reference to several proposed mitigation measures.

4. If the Proposed Finding stands it would draw the Section 106 process to an abrupt end without a successful resolution of outstanding issues. In fact there is a great deal of acrimony concerning process as well as substance.
5. There are no specific plans of the proposed action. The adverse effects of the proposed action cannot be determined without additional information. For example, does LMDC plan to span the 1 WTC and 2 WTC footprints with long-span structures and create a large, dignified, ceremonial space, or will there be a grid of columns and numerous partitions, with part occupied by a PATH station and access to the footprints limited to portions?
6. The Proposed Finding and the vague plans that it is based on would allow wide latitude to modify or revise the plans without accountability for the consequences to historic resources on the site. Given the historical significance of the site to our nation's heritage it is not sufficient to accept vague assurances that could be withdrawn if new constraints are announced. There should be a Memorandum of Agreement that references specific features and dimensions.
7. The Proposed Finding reaches several unfounded conclusions based on syllogistic or invalid reasoning:
 - A. The text states that, "The importance of the transcending events of September 11 and in its aftermath the heroic rescue and unprecedented recovery efforts do not depend on the presence of the actual structures in and around which they took place."

This is comparable to saying that the historical significance of the holocaust does not depend on the presence of the structures at Auschwitz, so it would not be an adverse effect to demolish them. In fact, such historical features, intact or ruined, have an unmatched power to convey the significance of the events with which they are associated. This is particularly true of events such as the World Trade Center disaster, which is so closely associated with a particular site, yet had such wide-reaching influence. The presence of authentic historical features on the World Trade Center site is highly significant and their indiscriminate loss would be tragic and shameful.

The redevelopment planners should treat the historic features of the site with reverence and a sense of stewardship, not with glib dismissals, grudging acceptance, or arbitrary decisions of what is significant by individuals unqualified to make the determination.

- B. The text refers to leaving, "open the space at grade level where the Twin Towers stood..." and refers to the, "...appropriateness of recognizing the footprints in this manner..." This concept is supported with a quote from one of the consulting parties: "a footprint can be something that is written on the psyche or in the soul and on the heart and not necessarily always in steel and cement and concrete." This line of reasoning is clearly intended

to put a warm, fuzzy face on the desecration of the physical footprints at the B-6 bedrock level, a place once referred to as “hallowed ground” by New York Governor George Pataki. The consulting party quoted, a representative of the Shinnecock Nation, clarified that her quote was taken out of context and was not intended to take away from the significance of physical features, but to emphasize the transcending spirituality of the site.

At the March 12, 2004 meeting LMDC officials maintained that they have recognized that the physical footprints at bedrock level are distinctive features and that the creation of openings at ground level and thirty feet below are not a substitute for their preservation. If that is the case, the text should be completely revised to reflect that distinction. The text should indicate any adverse effects to either the physical footprints at B-6 bedrock level or to the grade level voids that define the volume that the towers once occupied.

- C. Several major historic features, including the ruins of the garage beneath 6 WTC, which are slated to be demolished, are dismissed as lacking “functional integrity.” This is absurd when their significance does not stem from their original function, and their viability as historic features does not rely on their performing their original function if preserved. In fact, they would not be permitted to perform their original function if preserved because they would be treated as historic ruins. Because of this arbitrary and irrelevant consideration these features are not evaluated for the several aspects of integrity that they do possess, and their demolition is not counted as an adverse effect, which it clearly would be.
- D. Several major historic features, including the ruins of the garage beneath 6 WTC, which are slated to be demolished, are dismissed as lacking “structural integrity.” Based on all information made available it appears that they are viable with stabilization and that this is not a valid consideration. These garage ruins have stood for 2-1/2 years since the disaster and they continue to be relied on to partially stabilize the north slurry wall, so they clearly retain a substantial degree of integrity. Some shoring and stabilization have already been performed on the garage ruins, and it was asserted that they could not weather indefinitely outdoors. No study or report has been cited to support a position that they would not be viable as ruins if protected and stabilized. It appears that the evaluation originates with unnamed parties who consider the removal of these features desirable and who have made an arbitrary judgement that they are not worth preserving. This is not a valid means of determining if they are significant or contributing, or if their demolition would be an adverse effect, which it clearly would be.

- 8. Much of the Proposed Finding is devoted to discussion of ways in which features are not contributing rather than issues of effect. This is material that procedurally

belongs in the Determination because it should already be established prior to assessing adverse effects. Much of this consists of tortured arguments that struggle to disqualify nearly every feature from consideration. An example of this is that, "none of these remnants are considered character-defining in relationship to the WTC as a symbol of American commerce," a statement that does not reflect the essence of what the Determination found historic about the site. It also states that most of the ruins on-site are not character-defining in relationship "to the attacks or to the rescue and recovery efforts." This is entirely absurd since the disaster and subsequent recovery efforts gave shape to what remains. What could be more character-defining than concrete with scratches and gouges from the steel of the collapsing towers, smoke stains from fires, and the serrated edges of steel members cut by the acetylene torches of iron workers from the emergency operation?



March 12, 2004

Kevin Rampe, President
Lower Manhattan Development Corporation
One Liberty Plaza, 20th Floor
New York, NY 10006

Dear Mr. Rampe,

I am writing on behalf of the Municipal Art Society to comment upon the Proposed Finding of No Adverse Effect released by the Lower Manhattan Development Corporation for the World Trade Center Memorial and Redevelopment Plan as part of the Section 106 Review for the project.

As we have expressed at the Consulting Party meetings held in recent weeks, the Society does not agree with the Finding of No Adverse Effect. First, we are concerned that the Memorial and Redevelopment Plan is still far too vague for its potential affects to be adequately assessed. But even in vague form, it is hard to imagine that the future implementation of a Memorial and Redevelopment Plan will not compromise, remove, or cover some of the "remains" of the World Trade Center that can still be seen on the site. However, because the Determination of Eligibility for the State & National Registers fails to specifically identify the "significant" and/or "contributing" features on the WTC site, it appears that LMDC has drawn the conclusion that nothing of value can be adversely affected by future plans (on the premise that nothing of value is present). We disagree with the decision to not identify the remains as significant; the extant features are the last remaining evidence that the World Trade Center once stood on the site, and as such they are of great importance. Once their significance is formally acknowledged, we believe it is inescapable that the redevelopment of the site will constitute an adverse effect to those features. Clearly, flaws in the Determination of Eligibility have led to a flawed Finding of Affect.

We believe the Determination's flaws stem from a misinterpretation of the guidelines being followed for State & National Register Eligibility review. The issue of "integrity" -- which comes up frequently in the Finding document -- has been misconstrued. The event of import in this situation is one of massive destruction. What took place on September 11th resulted in the World Trade Center site looking the way it does today, and

it has been declared that those same events are the reason the site is eligible for the Registers in the first place. That being the case, whether the buildings and features that stood on the site *before* September 11th can still be said to maintain their "functional integrity" is not at all relevant to the Determination of Eligibility. In this very special situation, the word "integrity" should be interpreted to mean "providing evidence of the events of September 11th." If the agencies involved cannot interpret "integrity" in this manner, the issue of "integrity" should be taken out of this review, as it cannot possibly apply to a site where the meaningful event, by its very definition, robbed all of the built features of their "functional integrity." A new interpretation of "integrity" – or its removal from the discussion – would allow a more accurate assessment of important features of the site as it stands today, and would lead to a very different Determination of Eligibility and Finding of Affect.

We understand that the job of LMDC is to move redevelopment forward in an expeditious manner, and we support this very important goal. However, we are also mindful that many of the interested parties participating in the Section 106 Review process now underway are deeply dissatisfied with the Determination of Eligibility and Finding of No Adverse Effect. We strongly urge you to rethink and modify both documents. A Finding of Adverse Effect need not impede the process of redeveloping the World Trade Center site, but it would allow for reasoned discussion of how best to mitigate the effects Redevelopment is bound to have on the extant remains of the World Trade Center complex.

Thank you for this opportunity to express the Society's views.

Sincerely,



Frank Sanchis
Senior Vice President

CC: Bernard Cohen, Federal Transportation Authority
Robert Arnold, Federal Highway Administration
Don Klima, Advisory Council on Historic Preservation
Charlene Dwin Vaughn, Advisory Council on Historic Preservation
Robert Kuhn, NY State Historic Preservation Office
Bernadette Castro, NY State Historic Preservation Office

LAW DEPARTMENT



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DATE: March 15, 2004

PAGES: Cover plus 15

RE: World Trade Center Site
No Adverse Effect Finding

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March 15, 2004

Mr. Kevin Rampe
Lower Manhattan Development Corp.
One Liberty Plaza, 20th Floor
New York, NY 10006

Re: World Trade Center Memorial and Redevelopment Plan
Comments on Proposed Finding of No Adverse Effect

Dear Mr. Rampe:

On behalf of the National Trust for Historic Preservation, we submit the following comments on the Proposed Finding of No Adverse Effect drafted by the Lower Manhattan Development Corp. (LMDC) for the World Trade Center Memorial and Redevelopment Plan, pursuant to Section 106 of the National Historic Preservation Act. As you know, we attended the consultation meetings in New York on February 24 and March 11, 2004, at which this proposed finding was discussed in detail.

General Comments.

The National Trust strongly disagrees with the proposed finding of No Adverse Effect, as do our local preservation partners in New York who have joined with us in the Lower Manhattan Emergency Preservation Fund. The proposed finding cannot be substantiated under the criteria in the Section 106 regulations, 36 C.F.R. § 800.5. We urge the LMDC to revise in a fundamental way its approach for assessing the effects of this undertaking.

First of all, a finding of No Adverse Effect is premature. Avoiding and minimizing adverse effects is certainly a laudable goal, which we commend the LMDC for embracing. But the plans for the memorial and the redevelopment are simply not detailed enough yet to enable the LMDC to conclude with assurance that all adverse effects will be completely and utterly avoided. Indeed, it defies credibility to assert that not a single element of the World Trade Center site will be adversely affected in any way.

The LMDC's adamant insistence that no adverse effects of any kind will occur appears driven in part by the unfortunate misperception that the mere suggestion that effects might be "adverse" would represent some kind of black mark or demerit. We strongly disagree with this interpretation. The proposed finding, however, appears contrived and result-oriented, which further undermines the LMDC's credibility.



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The LMDC's insistence that no adverse effects will occur also appears to be driven in part by an assumption that the Section 106 review (and thus the redevelopment process as a whole) will move more swiftly with such a finding. In our view, nothing could be further from the truth. We believe this misguided finding of No Adverse Effect will have precisely the opposite effect of delaying the redevelopment by serving as bait for litigation, (with a likelihood of success on the merits).

Although the proposed finding is conceived as a "conditional" no adverse effect determination, i.e., predicated on conditions to ensure that adverse effects will be avoided, 36 C.F.R. § 800.5(b), the conditions are so vaguely defined that it would be impossible to provide any such assurance. For example, the proposed finding states in several places that allowing public access to bedrock, and to the truncated box beam columns and a portion of the slurry wall, would "avoid" an adverse effect. We disagree. First, the finding is not conditioned on any specific degree or quantity or quality of "access." Will the public have access to one or two of the box beam column remnants, or all of them? Will the accessible "portion" of the slurry wall be one foot wide, or the entire wall? The answers necessarily lie somewhere in the middle of these two extremes, but the point is that the specifics have not been decided yet, and those specifics will make all the difference in the world.

Comments on Specific Elements of the Finding.

In general, the assessment of effects is compartmentalized and legalistic in its approach. The differences between the analysis of the setting, feeling, and association, for example, seem arbitrary and artificial. Nonetheless, we will attempt to provide comments on individual sections, in addition to the general comments above.

Location. The location of the WTC Site as a whole would certainly not be changed, as recognized in the proposed finding. However, a number of significant elements within the site may well be relocated as decisions are made during the planning process. The effects of these potential choices have not been analyzed. For example, the Vesey Street stair and escalator platform, and building remnants with smoke scars, are significant, contributing elements that should be relocated in order to integrate them into the memorial and ensure public access to these important features.

Setting. As discussed at the February 24 meeting, we strongly encourage you to delete the quote at the end of this section. This quote is taken out of context, and has caused objections by a number of consulting parties, because it creates the appearance of a contrived attempt to diminish the significance of the physical remains of the World Trade Center.

Materials. This is the most controversial section of the proposed finding. The National Register eligibility determination failed to resolve the issues of which physical remnants on the site retain integrity of materials – and which remnants are contributing elements or character-

defining features of the site. Yet the effect finding proceeds to assume away their significance, based on rationales never offered or considered in the eligibility determination, and leaps to conclusions that none of them will be adversely affected, even though the specific plans for the memorial have yet to be finalized.

The proposed finding of no adverse effect also offers several rationales in this section that are completely irrelevant and inappropriate as standards for evaluating effects in this case. For example, the finding states that the Hudson Tube, the parking garage and service levels at the north end (which include smoke scars), and the Vesey Street stair and escalator platform all lack "functional integrity," and that the parking and service levels also lack structural integrity. Apparently, the suggestion is that, *because* they no longer function as originally constructed, removing them would not adversely affect them. On the contrary, the significance of these remnants is not based on whether they still function in the way they did before September 11, but rather, on the fact that these physical remains survived at all, after an attack that destroyed everything else around them. Drawing again on the Trust's prior analogy to Pearl Harbor may be useful in assessing this issue. The significance of the *USS Arizona* is not negated by the battleship's lack of "functional integrity." For similar reasons, the significance and potential for adversely affecting the physical remains of the World Trade Center Site should not depend on whether those physical elements can function in the way they did prior to September 11.

The proposed finding also states that these physical remains were not "intended" to be used in the future, i.e., that the "intent" was to remove them, and thus, by implication, that carrying out the prior intent should not be considered an adverse effect. This rationale puts the cart before the horse, and suggests that a decision made prior to compliance with Section 106 should trump any meaningful analysis of effects, regardless of what information may later become available to make a decision that takes into account historic properties.

Feeling. The proposed finding states that "the importance of the transcending events of September 11 . . . do[es] not depend on the presence of the actual structures in and around which they took place." This may be true as a general principle; in other words, the significance of the site is not undermined by the loss of the structures that were destroyed. However, this general principle does not resolve the question of whether surviving structures or physical remains would be adversely affected if they were removed or made permanently inaccessible. In our view, the integrity of feeling at the site *would* be adversely affected by the destruction or loss of the physical remains that survive.

Programmatic Agreement as the Preferred Approach.

We have repeatedly advised the LMDC that we believe the appropriate mechanism for compliance with Section 106 in this case would be to develop a Programmatic Agreement (PA) to govern the process for taking into account the effects of the LMDC's proposed actions as the

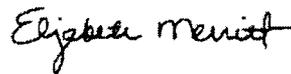
Mr. Kevin Rampe
Proposed Finding of No Adverse Effect
March 15, 2004
Page 4

planning goes forward for the memorial and redevelopment. Indeed, three of the five criteria for using a PA are present in this case:

- The effects on historic properties cannot be fully determined prior to approval of an undertaking;
- A nonfederal party (LMDC) is delegated major decisionmaking responsibilities as the project goes forward; and
- "other circumstances [i.e., the unique issues presented by the World Trade Center site] warrant a departure from the normal Section 106 process."

36 C.F.R. § 800.14(b)(ii), (iii), (v). A Programmatic Agreement would not avoid the need to resolve the disputed issues in the eligibility determination, but would provide a mechanism for evaluating and addressing effect issues that may arise as the planning process goes forward. We strongly reiterate our call for such an approach, in consultation with all parties to the Section 106 process.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel



Marilyn Fenollosa
Senior Program Officer & Regional Attorney

Cc: Don L. Klima, Advisory Council on Historic Preservation
Charlene Dwin Vaughn, Advisory Council on Historic Preservation
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Mr. Kevin Rampe
Proposed Finding of No Adverse Effect
March 15, 2004
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Frank E. Sanchis III, Municipal Art Society
Peg Breen, New York Landmarks Conservancy
Alex Herrera, New York Landmarks Conservancy
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Andrea Ferster, Esq.
Joel Klein, Coalition of 9/11 Families
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New
York
Landmarks
Conservancy

*preserving &
protecting
New York*

March 15, 2004

Kevin M. Rampe
President
Lower Manhattan Development Corporation
One Liberty Plaza, 20th Floor
New York, NY 10006

Re: WTC Memorial and Redevelopment Plan/Section 106 Review/Determination of Effect

Dear Mr. Rampe:

The Landmarks Conservancy wishes to reiterate its position, which we have voiced at several public meetings, that we are in disagreement with your proposed finding of no adverse effect pursuant to Section 106 of the National Historic Preservation Act. We also wish to reaffirm the comments made in our prior letter dated March 3, 2003 (from the LMEPF), that we disagree with your conclusions that there are no physical features on the site that are contributing to the determination of National Register Eligibility and that the artifacts removed from the site cannot be considered for inclusion on the National Register Nomination.

The features that survived the attack of the World Trade Center and were left in place after the recovery and clean up operations are physical links to the site's period of significance and convey the devastation of the attacks. They therefore should be recognized and described as contributing features in the National Register Nomination. Additionally, we have stated that the salvaged artifacts from the site currently stored in Hangar 17 at JFK Airport, as well as in various other locations, should be inventoried and included in the Determination of Eligibility. The artifacts are connected to the site by strong historic and emotional bonds. They are in every respect a part of the history of the site. After a tour of Hangar 17 conducted by the Port Authority on March 12, 2004, the Conservancy is more convinced than ever that these artifacts deserve proper recognition and protection as historic artifacts. Since an inclusive inventory would take considerable time to produce, we suggest a thematic designation of the artifacts. In a way it defies logic to state that the extant features and the salvaged artifacts are not significant.

In terms of the in-situ elements, the Conservancy finds that certain surviving features contribute to the special historic character of the site. They include: The slurry wall, the box column stubs that outline the perimeter of the two towers, the Vesey Street stair and

entrance, portions of the garage with evidence of smoke and fire damage, and the column and beam construction in the form of a cross. In our opinion, these are among the most important features that serve to anchor the site to its past. They offer a physical link to the period of significance. They should be deemed contributing.

There seemed to be some apprehension among certain attendees at the public hearings that a finding of significance means that the elements may not be altered. As we trust the LMDC knows, there are many ways to mitigate proposed impacts on a significant feature.

In terms of the finding of no adverse effect, we find that it is in error because: 1) it is based on the faulty premise that there are no contributing features on the site; 2) it is premature since we do not yet know the memorial and redevelopment plans in sufficient detail to understand how they will effect the features; 3) the finding that these features have lost their original functional integrity is an inappropriate standard given the nature of the attack and the fact that the functionality of these elements is not the basis for their significance. Therefore, we cannot accept this finding nor the circular logic that assumes that features that were not intended to be used in the master plan are somehow therefore not to be considered as significant features.

The Conservancy agrees with our colleagues at the National Trust for Historic Preservation that the appropriate mechanism for compliance with Section 106 in this case would be through the development of a Programmatic Agreement, which would govern the effect and disposition of these features and artifacts as the planning goes forward and the design process unfolds. We have no desire to slow the redevelopment schedule and believe that a Programmatic Agreement would contribute to a smoother redevelopment process.

We were encouraged to hear from the LMDC attorney at last Thursday's hearing that the LMDC would be establishing a committee to study the artifacts and to determine which, and in what form, they will be returned to the WTC site. Such a committee could work within the parameters established in a Programmatic Agreement.

Lastly, with regard to the DGEIS, the Conservancy finds that the environmental safeguards planned for the historic resources within the APE, are very deficient. We recommend that the physical condition of the historic buildings in the vicinity be better safeguarded during the proposed redevelopment of the site. The physical condition of these historic assets should be documented prior to the commencement of construction and then carefully monitored for any changes. Monitoring traditionally include devices that measure movement of settlement cracks and other pre-existing flaws as well as separate devices placed in strategic locations that measure vibrations and which set a

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certain limit to the amount of movement, or particle acceleration, that can be safely tolerated by these buildings. If that limit is exceeded an alarm is sounded and efforts need to be taken to prevent that limit from being exceeded again. These monitoring protocols are standard in large construction projects in the crowded neighborhood of Manhattan and it is surprising that they are lacking in this plan. Given the scope of this project, additional safeguards may be warranted.

We appreciate this opportunity to comment on these issues and hope to continue working with the LMDC and the Port Authority on the protection of historic resources on the WTC site and in the surrounding area.

Sincerely,



Peg Green
President

cc: Governor George E. Pataki,
Doug Blais, Office of the Governor
Don L. Klima, Advisory Council
Charlene Dwin Vaughn, Advisory Council
David G. Blick, HUD
Elizabeth Merritt, National Trust for Historic Preservation
Hon. Bernadette Castro, NYS Parks, Recreation and Historic Preservation
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March 15, 2004

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**RE: World Trade Center Memorial and Redevelopment Plan
Comments on Revised Draft National Register Eligibility
Determination and Comments on Proposed Finding of No
Adverse Effect**

Dear Mssrs. Rampe, Cohen and Arnold:

The Preservation League of New York State strongly disagrees with the proposed finding of No Adverse Effect drafted by the Lower Manhattan Development Corporation (LMDC) for the World Trade Center Memorial and Redevelopment Plan.

Following our participation in the consultation meetings in New York on February 24 and March 11, at which this proposed finding was discussed, the League offers that this finding is premature.

Fundamental issues regarding the National Register eligibility of the World Trade Center site remain unresolved. In particular, the eligibility determination fails to address which of the physical remnants on the site possess integrity of materials and which remnants are contributing or character-defining features of the site.

Until the dialogue is closed on what constitutes a significant resource at the World Trade Center site, the Preservation League feels that any determination of No Adverse Effect would be vulnerable to challenges.

