

## **APPENDIX D**

# **Consistency Assessment Form of the New York City Waterfront Revitalization Program**

For Internal Use Only:

WRP no. \_\_\_\_\_

Date Received: \_\_\_\_\_

DOS no. \_\_\_\_\_

## NEW YORK CITY WATERFRONT REVITALIZATION PROGRAM Consistency Assessment Form

Proposed action subject to CEQR, ULURP, or other Local, State or Federal Agency Discretionary Actions that are situated within New York City's designated Coastal Zone Boundary must be reviewed and assessed for their consistency with the *New York City Waterfront Revitalization Program (WRP)*. The WRP was adopted as a 197-a Plan by the Council of the City of New York on October 13, 1999, and approved in coordination with local, state and Federal laws and regulations, including the State's Coastal Management Program (Executive Law, Article 42) and the Federal Coastal Zone Management Act of 1972 (P.L. 92-583). As a result of these approvals, state and federal discretionary actions within the city's coastal zone must be consistent to the maximum extent practicable with the WRP policies and the city must be given the opportunity to comment on all state and federal projects within its coastal zone.

This form is intended to assist an applicant in certifying that the proposed activity is consistent with the WRP. It should be completed when the local, state, or federal application is prepared. The completed form and accompanying information will be used by the New York State Department of State, other State Agency or the New York City Department of City Planning in its review of the applicant's certification of consistency.

### A. APPLICANT

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City of New York (Department of Small Business Services)

### B. PROPOSED ACTIVITY

1. Brief description of activity:

The proposed project is a comprehensive program for waterfront access and revitalization along the East River waterfront between the Battery Maritime Building at the south and Pier 42 at the north. LMDC is the lead agency for the environmental review of the East River Waterfront Esplanade and Piers Project and, if approved, would provide some funding. The City of New York will carry out the proposed activity and will provide or seek additional funding. Under the proposed project, two waterfront zones are proposed: a Program Zone and a Recreation Zone. The proposed Program Zone is under the FDR Drive and would provide pavilions and temporary outdoor activities; a Recreation Zone along the edge of the water with seating, play spaces, and plantings; and a uniform bikeway/walkway along South Street. In addition, the proposed project would include improvements to Piers 15, 35, 36, and 42 as well as the New Market Building pier adjacent to the South Street Seaport.

Approximately 14 pavilions totaling up to 150,000 square feet would be built in the Program Zone under the FDR Drive. The pavilions would provide community, cultural, and commercial space. Each pavilion program would correspond to the unique local needs of its location and surrounding community. In addition to the pavilions, the open space under the FDR Drive could be used for temporary activities, such as farmer's markets, performances, exhibitions, active and passive recreation, and community events.

Plantings and seating would be provided to enhance passive recreation opportunities in the Recreation Zone. Components would include benches, railings, planters, and arbors. Between the Battery Maritime Building and Old Slip, the existing narrow esplanade would be widened to approximately 35 feet with a new, approximately 15- to 25-foot-wide structure built out over the water. Pier 15, demolished in 2002-2003, would be rebuilt within its original footprint (approximately 559 feet long and 80-82 feet wide) now outlined by four remaining piles. Open space would be created on Pier 35 and at the north end of Pier 36. At the south end of Pier 42, a cove would be created for public enjoyment and temporary mooring of small boats. The City would remove the Pier 42 pier shed and reinforce the existing pier. The shed would be replaced by a new "urban beach" above the East River, with berms separating the continuing esplanade and the beach. A protected open water area with a small craft launch area would be created at the northern end of Pier 42. A Final Environmental Impact Statement (FEIS) has been prepared for the project.

2. Purpose of activity:  
 The proposed actions would aesthetically and functionally enhance the existing esplanade that runs along the project site and create new public open space in areas not currently accessible to the public. The proposed actions would improve public access to the waterfront, enhance pedestrian connectivity, and create waterfront amenities for public use and enjoyment. They would contribute to the continued revitalization of Lower Manhattan, providing open space, cultural, commercial, and recreational amenities, and waterfront access for the area's growing population.
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3. Location of activity (street address/borough or site description):  
 The project site extends along the East River waterfront from the Battery Maritime Building at its southern end to the northeastern edge of Pier 42 to the north.
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4. If a federal or state permit or license was issued or is required for the proposed activity, identify the permit type(s), the authorizing agency and provide the application or permit number(s), if known:  
 The City already possesses permits from the New York State Department of Environmental Conservation (DEC) and the US Army Corps of Engineers (ACOE) to rebuild Pier 15 for community open space and maritime uses. Additional permits from DEC and ACOE would be required for other elements of the proposed project that would occur in and over the water.
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5. Is federal or state funding being used to finance the project? If so, please identify the funding source(s).  
 Funding for the project would be provided by the US Department of Housing and Urban Development (HUD).
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6. Will the proposed project result in any large physical change to a site within the coastal area that will require the preparation of an environmental impact statement? Yes          No           
 If yes, identify Lead Agency: ✓                    
 Lower Manhattan Development Corporation
- 
7. Identify City discretionary actions, such as zoning amendment or adoption of an urban renewal plan, required for the proposed project.
- Site selection for capital improvements
  - Disposition of City-owned property
  - Changes to the City Map related to creation of the BMB Plaza
  - Special Permit for bulk and use changes on New Market Building pier and Pier 15.
  - Waterfront Zoning certification pursuant to ZR 62-711
  - Determination of consistency with Waterfront Revitalization Program
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### C. COASTAL ASSESSMENT

The following questions represent, in a broad sense, the policy of the WRP. The number in the parentheses after each question indicated the policy or policies that are the focus of the question. A detailed explanation of the Waterfront Revitalization Program and its policies are contained in the publication the *New York City Waterfront Revitalization Program*.

Check either "Yes" or "No" for each of the following questions. Once the checklist is completed, assess how the proposed project affects the policy or standards indicated in "( )" after each question with a Yes response. Explain how the action is consistent with the goals of the policy or standard.

Location Questions:	Yes	No
1. Is the project site on the waterfront or at the water's edge?	✓	_____
2. Does the proposed project require a waterfront site?	✓	_____

3. Would the action result in a physical alteration to a waterfront site, including land along the shoreline, land underwater, or coastal waters? ✓
- The proposed project would enhance the existing waterfront esplanade. Under the proposed project, the existing esplanade would be expanded between the Battery Maritime Building and Old Slip. Pier 15 would be reconstructed for recreational and other uses and a marina would be constructed at the New Market Building pier; Pier 35 would be reinforced and developed for public use; public open space would be created at the north end of Pier 26l a cove would be created by removing the southern portion of Pier 42; open space in the form of an "urban beach" would be created on Pier 42; and a protected open water area with a small craft launch area would be created at the northern end of Pier 42. In addition, approximately 14 pavilions totaling up to 150,000 square feet would be built under the FDR Drive, providing space for cultural, recreational, and commercial amenities.

**Policy Questions:**

Yes      No

The following questions represent, in a broad sense, the policies of the WRP. Numbers in parentheses after each questions indicate the policy or policies addressed by the question. The new Waterfront Revitalization Program offers detailed explanations of the policies, including criteria for consistency determinations.

Check either "Yes" or "No" for each of the following questions. For all "yes" responses, provide an attachment assessing the effects of the proposed activity on the relevant policies or standards. Explain how the action would be consistent with the goals of those policies and standards.

4. Will the proposed project result in revitalization or redevelopment of a deteriorated or under- used waterfront site? (1)  
 The proposed project would revitalize an underutilized portion of the East River waterfront and provide for increased public access and recreational opportunities. ✓
5. Is the project site appropriate for residential or commercial redevelopment? (1.1)  
 No residential development is proposed. The site is appropriate for the proposed commercial and community facility development, which could include up to 150,000 square feet of retail and community facility space in pavilions under the FDR Drive. The programming mix of retail and community facility is yet to be determined. However, both types of use would enliven the waterfront by attracting visitors and would provide amenities for residents and workers in the adjacent neighborhoods. ✓
6. Will the action result in a change in scale or character of a neighborhood? (1.2)  
 The proposed project would not change the scale of the neighborhoods surrounding the site but would improve the character of the waterfront. The proposed project would improve the design and function of the existing waterfront esplanade and would create new open spaces in areas that have long been inaccessible to the public. These open spaces would serve as recreational amenities for the residential and worker populations of Lower Manhattan. By removing vehicle parking below the FDR Drive, the Proposed Action would also improve connectivity and access between the surrounding neighborhoods and the East River waterfront. New retail and community space would be created in pavilions below the FDR Drive. These new land uses would attract visitors from the adjacent neighborhoods to the waterfront area, thus enlivening the waterfront and helping to connect it with the surrounding communities. The proposed project would not significantly adversely affect the combined elements contributing to the neighborhood character of the area. ✓
7. Will the proposed activity require provision of new public services or infrastructure in undeveloped or sparsely populated sections of the coastal area? (1.3)  
 Community facilities and services in and around the project site are sufficient to meet any increased demand that would result from the Proposed Project. The New York City Police Department and New York City Fire Department will continue to evaluate the need for personnel and equipment and make any necessary adjustments to adequately serve the area. The proposed project would not introduce new residents that would increase demands on local services. The incremental increase in energy demand caused by the proposed project would be met by the electricity, natural gas, and/or steam supply systems already in place. ✓

Policy Questions cont'd:		Yes	No
8.	Is the action located in one of the designated Significant Maritime and Industrial Areas (SMIA): South Bronx, Newtown Creek, Brooklyn Navy Yard, Red Hook, Sunset Park, or Staten Island? (2)	_____	_____✓
9.	Are there any waterfront structures, such as piers, docks, bulkheads or wharves, located on the project sites? (2) <b>The East River bulkhead runs the length of the project site. The project site also includes Pier 15 (which currently consists only of four piles), Pier 35, and a portion of Pier 36.</b>	_____✓	_____
10.	Would the action involve the siting or construction of a facility essential to the generation or transmission of energy, or a natural gas facility, or would it develop new energy resources? (2.1)	_____	_____✓
11.	Does the action involve the siting of a working waterfront use outside of a SMIA? (2.2)	_____	_____✓
12.	Does the proposed project involve infrastructure improvement, such as construction or repair of piers, docks, or bulkheads? (2.3, 3.2) <b>The proposed project would involve the reconstruction of Pier 15 within the footprint currently outlined by four piles. A marina would be constructed at the New Market Building pier. Piers 35 and 42 would be reinforced and the New Market Building pier would be reconstructed. Between the Battery Maritime Building and Old Slip, the existing narrow esplanade would be widened to approximately 35 feet with a new, approximately 15- to 25-foot-wide structure built out over the water. The expansion area is expected to be an independent structure on pilings.</b>	_____✓	_____
13.	Would the action involve mining, dredging, or dredge disposal, or placement of dredged or fill materials in coastal waters? (2.3, 3.1, 4, 5.3, 6.3) <b>Dredging would be required at Pier 15 in order to facilitate the relocation of the <i>Wavertree</i>, a historic vessel currently docked at Pier 16, to this location and to allow temporary mooring of other boats.</b>	_____✓	_____
14.	Would the action be located in a commercial or recreational boating center, such as City Island, Sheepshead Bay or Great Kills or an area devoted to water-dependent transportation? (3)	_____	_____✓
15.	Would the proposed project have an adverse effect upon the land or water uses within a commercial or recreation boating center or water-dependent transportation center? (3.1)	_____	_____✓
16.	Would the proposed project create any conflicts between commercial and recreational boating? (3.2)	_____	_____✓
17.	Does the proposed project involve any boating activity that would have an impact on the aquatic environment or surrounding land and water uses? (3.3) <b>While the proposed project includes a transient marina for small- to mid-sized vessels, operation of the marina would not be expected to result in significant adverse impacts to water quality.</b>	_____	_____✓
18.	Is the action located in one of the designated Special Natural Waterfront Areas (SNWA): Long Island Sound-East River, Jamaica Bay, or Northwest Staten Island? (4 and 9.2)	_____	_____✓
19.	Is the project site in or adjacent to a Significant Coastal Fish and Wildlife Habitats? (4.1) <b>The project site is adjacent to a Significant Coastal Fish and Wildlife Habitat in the Hudson River.</b>	_____✓	_____
20.	Is the site located within or adjacent to a Recognized Ecological Complex: South Shore of Staten Island or Riverdale Natural Area District? (4.1 and 9.2)	_____	_____✓

Policy Questions cont'd:	Yes	No
<p>21. Would the action involve any activity in or near a tidal or freshwater wetland? (4.2)  Areas with water depths at or shallower than 6 feet at MLW, classified as littoral wetland by the NYSDEC regulations, occur near the shoreline immediately north of the BMB, in isolated areas between Piers 6 and 11, and along the shoreline from the New Market Building north to approximately Catherine Street. Construction of the new esplanade expansion and archipelago between the BMB and Old Slip, construction of the marina at the New Market Building pier, the reconstruction of Piers 15 and the New Market pier, creation of a small craft launch area with a breakwater at the north end of Pier 42, and dredging to allow the mooring of ships at Pier 15 is proposed in this area. The driving of new piles and pile repair would result in very limited impacts on NYSDEC littoral zone tidal wetlands within the footprint of the piles. This limited impact would not result in significant adverse impacts to tidal wetlands resources within the project area or the East River.</p>	✓	
<p>22. Does the project site contain a rare ecological community or would the proposed project affect a vulnerable plant, fish, or wildlife species? (4.3)  The National Marine Fisheries Service indicated that the federally listed and state-listed endangered shortnose sturgeon (<i>Acipenser brevirostrum</i>) and four species of marine turtle (loggerhead, green, Kemp's ridley, and leatherback) may be present in the project area as seasonal transients. However, the shortnose sturgeon would not be expected to migrate from the Harbor Estuary through the East River to Long Island Sound because this species generally only uses marine waters associated with the estuary of the river in which it spawns, which is the Hudson River. Fish that may pass through the lower East River would be expected to use the deeper channel areas as opposed to the near-shore areas in the project area.</p> <p>Four species of marine turtles, all state and federally listed, can occur in New York Harbor. Juvenile Kemps ridley (<i>Lepidochelys kempii</i>) and large loggerhead (<i>Caretta caretta</i>) turtles regularly enter the New York Harbor and bays in the summer and fall. The green sea turtle (<i>Chelonia mydas</i>) and leatherback sea turtle (<i>Dermochelys coriacea</i>) are usually restricted to the higher salinity areas of the Harbor. All four turtle species generally inhabit Long Island Sound and Peconic and Southern Bays. They neither nest in the New York Harbor Estuary, nor reside there year-round; therefore it is unlikely that these turtle species would occur in the project area in the lower East River except as occasional transients. Consequently, the Proposed Action would not result in adverse impacts to vulnerable plant, fish, and wildlife species. A complete analysis of any potential impacts on these species is presented in Chapter 9, "Natural Resources and Water Quality," of the FEIS.</p>		✓
<p>23. Would the action have any effects on commercial or recreational use of fish resources? (4.4)</p>		✓
<p>24. Would the proposed project in any way affect the water quality classification of nearby waters or be unable to be consistent with that classification? (5)</p>		✓
<p>25. Would the action result in any direct or indirect discharges, including toxins, hazardous substances, or other pollutants, effluent, or waste, into any waterbody? (5.1)  The operation of the proposed esplanade, pavilions, and reconstructed and repaired piers would not be expected to result in an increase in stormwater runoff. Discharges from the pavilions would result in minimal increase to the municipal combined sewer system and would not result in an adverse impact to water quality from increased combined sewer overflows or discharges from the water pollution control plant that exceed the effluent quality limits. In fact, the Proposed Action would reduce stormwater flow to the river with the introduction of pervious surfaces on Piers 35 and 42.</p>		✓
<p>26. Would the action result in the draining of stormwater runoff or sewer overflows into coastal waters? (5.1)  See response to Question 25, above.</p>		✓
<p>27. Will any activity associated with the project generate nonpoint source pollution? (5.2)</p>		✓
<p>28. Would the action cause violations of the National or State air quality standards? (5.2)</p>		✓
<p>29. Would the action result in significant amounts of acid rain precursors (nitrates and sulfates)? (5.2C)</p>		✓

Policy Questions cont'd:		Yes	No
30.	Will the project involve the excavation or placing of fill in or near navigable waters, marshes, estuaries, tidal marshes or other wetlands? (5.3)		✓
31.	Would the proposed action have any effects on surface or ground water supplies? (5.4) There are no surface or groundwater supplies in the vicinity of the proposed project.		✓
32.	Would the action result in any activities within a Federally designated flood hazard area or State designated erosion hazards area? (6) The project area is within the 100-year floodplain (area with a 1 percent chance of flooding each year). The 100-year flood elevation is 10 feet above National Geodetic Vertical Datum (NGVD), which approximates mean sea level. The proposed project would not alter the natural features of the shoreline or any structural or non-structural flood or erosion control measures. Proposed habitable structures, such as the pavilions, would be designed to comply with city and federal regulations for development in flood hazard areas. Additionally, because the project would not increase the amount of impervious surface on the site, it would not result in an increased storm flooding in or near the project area. Therefore, the Proposed Project is consistent with New York City Waterfront Revitalization Program policies regarding flooding.	✓	
33.	Would the action result in any construction activities that would lead to erosion? (6)		✓
34.	Would the action involve construction or reconstruction of flood or erosion control structure? (6.1)		✓
35.	Would the action involve any new or increased activity on or near any beach, dune, barrier island, or bluff? (6.1)		✓
36.	Does the proposed project involve use of public funds for flood prevention or erosion control? (6.2)		✓
37.	Would the proposed project affect a non-renewable source of sand? (6.3)		✓
38.	Would the action result in shipping, handling, or storing of solid wastes; hazardous materials, or other pollutants? (7) The solid waste generated by the proposed project would be collected by New York City Department of Sanitation's (DSNY) collection trucks and disposed at out-of-city locations, as is currently occurring with solid waste generated in the project area. DSNY would be responsible for the handling and disposal of solid waste in a manner that would protect the public and coastal areas. Any toxic or hazardous waste encountered during construction activities associated with the project would be handled in accordance with New York City Department of Environmental Protection (NYCDEP), NYSDEC, Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA) requirements. Therefore, the Proposed Action would be consistent with this policy.	✓	
39.	Would the action affect any sites that have been used as landfills? (7.1)		✓
40.	Would the action result in development of a site that may contain contamination or has a history of underground fuel tanks, oil spills, or other form or petroleum product use or storage? (7.2) As described in the FEIS, any petroleum products encountered during construction activities associated with the Proposed Action would be managed and mitigated according to pertinent NYCDEP, NYSDEC, OSHA, and EPA requirements. Storage and handling of petroleum products would follow applicable regulations.	✓	
41.	Will the proposed activity result in any transport, storage, treatment, or disposal of solid wastes or hazardous materials, or the siting of a solid or hazardous waste facility? (7.3) See response to Question 38, above. The proposed project would not result in the siting of a solid or hazardous waste facility.		✓

Policy Questions cont'd:		Yes	No
42.	<p>Would the action result in a reduction of existing or required access to or along coastal waters, public access areas, or public parks or open spaces? (8)</p> <p><b>The proposed project would increase public access to the waterfront and create new public open space.</b></p>	_____	_____✓
43.	<p>Will the proposed project affect or be located in, on, or adjacent to any federal, state, or city park or other land in public ownership protected for open space preservation? (8)</p> <p><b>There are no city, state or federal park lands on the project site. The proposed project involves the improvement of the existing city-owned esplanade in addition to the creation of new public open space.</b></p>	_____✓	_____
44.	<p>Would the action result in the provision of open space without the provision for its maintenance? (8.1)</p> <p><b>The City of New York plans to develop an entity that would be responsible for the maintenance of the open spaces and pavilions that would be constructed under the proposed actions or to work through an existing City agency or not-for-profit entity to maintain the open spaces and pavilions.</b></p>	_____	_____✓
45.	<p>Would the action result in any development along the shoreline but NOT include new water enhanced or water dependent recreational space? (8.2)</p>	_____	_____✓
46.	<p>Will the proposed project impede visual access to coastal lands, waters and open space? (8.3)</p>	_____	_____✓
47.	<p>Does the proposed project involve publicly owned or acquired land that could accommodate waterfront open space or recreation? (8.4)</p> <p><b>The proposed project would be located on City-owned land and would enhance and facilitate public use of the East River waterfront by creating public open space.</b></p>	_____✓	_____
48.	<p>Does the project site involve lands or waters held in public trust by the state or city? (8.5)</p> <p><b>The proposed project includes lands held in public trust and would use them to provide and enhance public access to the waterfront. The proposed project would not hinder current accessibility to the waterfront nor interfere with the continued use or ownership of land and waters held in the public trust. The project would increase public access to the waterfront and create new opportunities for recreational use of the waterfront. Thus, the public interest in the use of lands and water held in public trust would be encouraged and preserved.</b></p>	_____✓	_____
49.	<p>Would the action affect natural or built resources that contribute to the scenic quality of a coastal area? (9)</p> <p><b>The proposed project would not directly affect natural or built resources that contribute to the scenic quality of the area but would enhance views of the New York Harbor and of built scenic resources such as the Brooklyn and Manhattan Bridges.</b></p>	_____	_____✓
50.	<p>Does the site currently include elements that degrade the area's scenic quality or block views to the water? (9.1)</p> <p><b>The project site currently includes several elements that degrade the visual quality of the area and block views to the water. These include automobile parking beneath the elevated FDR Drive and a vacant storage shed on Pier 42. As described above under Question 49, the proposed project would improve views to the water and enhance the overall scenic quality of the waterfront.</b></p>	_____✓	_____



51. Would the proposed action have a significant adverse impact on historic, archeological, or cultural resources? (10)

As described in the FEIS, the proposed project would enhance the waterfront of the South Street Seaport Historic District and the setting of other historic resources in the area of potential effect. New structures in the historic district would be designed to be in keeping with the character of the historic district and the review of any design elements that would affect the East River bulkhead would be included in a Programmatic Agreement(PA) between the Lower Manhattan Development Corporation (LMDC) and the State Historic Preservation Officer (SHPO).

To avoid the potential for adverse effects on an archaeological resources, a suitable treatment plan would be devised for any areas of potential sensitivity based on the conclusions of Phase 1A(s) that will be prepared for the area of potential effect and in consultation with SHPO and LPC. The treatment plan could include monitoring or field testing, depending on the nature of the potential resources identified and the extent of construction that would take place in specific locations. The preparation of any research not completed as part of the project's Environmental Impact Statement, as well as the preparation of the treatment plan, would be part of the PA that was developed between LMDC and SHPO.

\_\_\_\_\_ ✓ \_\_\_\_\_

52. Will the proposed activity affect or be located in, on, or adjacent to an historic resource listed on the National or State Register of Historic Places, or designated as a landmark by the City of New York? (10)

See response to Question 51, above.

✓ \_\_\_\_\_

**D. CERTIFICATION**

The applicant must certify that the proposed activity is consistent with New York City's Waterfront Revitalization Program, pursuant to the New York State Coastal Management Program. If this certification cannot be made, the proposed activity shall not be undertaken. If the certification can be made, complete this section.

"The proposed activity complies with New York State's Coastal Management Program as expressed in New York City's approved Local Waterfront Revitalization Program, pursuant to New York State's Coastal Management Program, and will be conducted in a manner consistent with such program."

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Date: 11/08/07