

(b) Electronically through the Web site at <http://www.BorderFenceNEPA.com>.

(c) By e-mail to: [RGVcomments@BorderFenceNEPA.com](mailto:RGVcomments@BorderFenceNEPA.com).

(d) By mail to: Rio Grande Valley Tactical Infrastructure EIS, c/o e<sup>2</sup>M, 2751 Prosperity Avenue, Suite 200, Fairfax, Virginia 22031.

(e) By fax to: (757) 282-7697.

Comments on the Draft EIS should be submitted by December 31, 2007.

Dated: December 5, 2007.

**Eugene H. Schied,**

*Assistant Commissioner, Office of Finance, Customs and Border Protection.*

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BILLING CODE 9111-14-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5162-N-02]

### Conformity Determination for the East River Waterfront Esplanade and Piers Project City of New York, New York County, NY

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** In accordance with the federal Clean Air Act General Conformity rule, the Lower Manhattan Development Corporation (LMDC) has prepared a general conformity determination (Conformity Determination) for the East River Waterfront Esplanade and Piers Project (the Selected Project) pursuant to the October 2007 National Environmental Policy Act Record of Decision and Lead Agency Findings Statement (ROD). LMDC is a subsidiary of the Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York) and is responsible, pursuant to federal statute 42 U.S.C. 5304(g) as the recipient of U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant program funds, for conducting reviews of projects receiving HUD funds in accordance with 24 CFR part 58, as well as other laws and regulations. These responsibilities include compliance with the National Environmental Policy Act and the Clean Air Act, 42 U.S.C. 7401 *et seq.* (particularly sections 7506(c) and (d)), in accordance with 24 CFR 58.4 and 58.5.

The Selected Project will improve a two mile portion of the East River waterfront in Manhattan and create a City-owned public open space. The area

of the Selected Project will generally encompass the waterfront, the upland area adjacent to and under the elevated FDR Drive and South Street extending from the Whitehall Ferry Terminal and Peter Minuit Plaza on the South to East River Park on the North, as well as Pier 15, the New Market Building pier, Pier 35, Pier 36, and Pier 42. The Selected Project is fully described in the Final Environmental Impact Statement for the East River Waterfront Esplanade and Piers Project.

The Selected Project is located in Manhattan, New York County, which has been designated by the United States Environmental Protection Agency (EPA) as a moderate non-attainment area for particulate matter less than 10 micrometers in aerodynamic diameter (PM<sub>10</sub>), a non-attainment area for particulate matter less than 2.5 micrometers in aerodynamic diameter (PM<sub>2.5</sub>), and a moderate non-attainment area for the 8-hour ozone standard. New York County was previously designated by the EPA as a severe non-attainment area for the 1-hour ozone standard. The area is in attainment for all other criteria pollutants: Nitrogen dioxide (NO<sub>2</sub>), lead, sulfur dioxide (SO<sub>2</sub>), and carbon monoxide (CO). MDC's review has been conducted consistent with the requirements of 40 CFR Part 93, Subpart B: "Determining Conformity of Federal Actions to State or Federal Implementation Plans" issued on November 30, 1993 (as amended on July 17, 2006, to address PM<sub>2.5</sub> emissions). LMDC has determined that, during the peak construction year of 2008, potential emissions for all the criteria pollutants would be below the *de minimis* thresholds established under federal regulations at 40 CFR 93.153(b) which are currently applicable in New York County. Nonetheless, the construction emissions could exceed the 25 tons per year (tpy) annual nitrogen oxides (NO<sub>x</sub>) threshold for severe ozone non-attainment areas, which was applicable to New York County under the previous 1-hour ozone standard designation. Accordingly, LMDC has prepared its Conformity Determination to demonstrate that the federally-funded portion of the Selected Project will conform with the 1-hour ozone State Implementation Plan (SIP). Pursuant to the requirements of 40 CFR 93.153(h)(4), this notice lists the activities that are presumed to conform to the New York ozone SIP.

The Draft Conformity Determination for the Proposed East River Waterfront Esplanade and Piers Project was made available for public review beginning May 18, 2007. Notices of its availability were published in the New York State

Department of Environmental Conservation *Environmental Notice Bulletin* and newspapers of general circulation on May 30, 2007. The Draft Conformity Determination was also published in the **Federal Register** on July 27, 2007. No comments on the Draft Conformity Determination were received.

**ADDRESSES:** The Conformity Determination is available at the following location: Lower Manhattan Development Corporation, One Liberty Plaza, 20th Floor, New York, NY 10006. The Conformity Determination is also available on the LMDC Web site at <http://www.renewnyc.com> in the "Planning, Design & Development" section and is an exhibit to LMDC's ROD.

#### FOR FURTHER INFORMATION CONTACT:

Christina Hynes, Lower Manhattan Development Corporation, One Liberty Plaza, 20th Floor, New York, NY 10006; Telephone: (212) 962-2300; Fax: (212) 962-2431.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Clean Air Act (CAA), as amended in 1990, defines a non-attainment area (NAA) as a geographic region that has been designated as not meeting one or more of the National Ambient Air Quality Standards (NAAQS). The Selected Project is located in New York County, which has been designated by the EPA as a moderate NAAQS NAA for PM<sub>10</sub>, a NAA for PM<sub>2.5</sub>, and a moderate NAA for ozone. The area is in attainment for all other criteria pollutants: Nitrogen dioxide (NO<sub>2</sub>), lead, sulfur dioxide (SO<sub>2</sub>), and carbon monoxide (CO). EPA had re-designated New York City as in attainment for CO on April 19, 2002 (67 FR 19337); the CAA requires that a maintenance plan ensure continued compliance with the CO NAAQS for former NAAs.

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

The general conformity requirements in 40 CFR part 93, subpart B, apply to those federal actions that are located in a non-attainment or maintenance area, and that are not subject to transportation conformity requirements at 40 CFR part 51, subpart T, or part 93, subpart A,

where the action's direct and indirect emissions have the potential to emit one or more of the criteria pollutants or precursors, in the case of ozone and PM<sub>2.5</sub>, at emission rates equal to or exceeding the prescribed rates at 40 CFR 93.153(b), or where the action encompasses 10 percent or more of a NAA or maintenance area's total emissions inventory for that pollutant. In the case of New York County, the prescribed annual rates are 50 tons of VOCs and 100 tons of NO<sub>x</sub> (ozone precursors in moderate 8-hour ozone NAA and PM<sub>2.5</sub> precursors in PM<sub>2.5</sub> NAA), 100 tons of CO (CO maintenance area), 100 tons of PM<sub>10</sub> (moderate PM<sub>10</sub> NAA), 100 tons of PM<sub>2.5</sub> (PM<sub>2.5</sub> NAA), and 100 tons of SO<sub>2</sub> (PM<sub>2.5</sub> precursor in PM<sub>2.5</sub> NAA).

LMDC has determined that the total annual direct and indirect emissions of all such criteria pollutants from the Selected Project are less than the *de minimis* rates prescribed in 40 CFR 93.153(b), as currently in effect, that would trigger the requirement to conduct a general conformity determination. Therefore, a general conformity determination is not necessarily required by current federal regulations. Nonetheless, temporarily, during construction, annual NO<sub>x</sub> emissions are predicted to exceed the threshold of 25 tons per year that would apply to a severe ozone non-attainment area under the former 1-hour ozone NAAQS. Accordingly, LMDC prepared a Conformity Determination to demonstrate the Selected Project's conformity with the ozone SIP.

## B. Requirements of the Conformity Determination

The purpose of the conformity analysis is to establish that the Selected Project will conform to the New York ozone SIP, thereby demonstrating that total direct and indirect emissions of the ozone precursors, in this case NO<sub>x</sub>, from the Selected Project, will not:

- Cause or contribute to any new violation of any standard in the area,
- Interfere with provisions in the applicable SIP for maintenance of any standard,
- Increase the frequency or severity of any existing violation of any standard in any area, or
- Delay timely attainment of any standard or any required interim emission reductions or other milestones in the SIP for purposes of—
  1. A demonstration of reasonably further progress (RFP),
  2. A demonstration of attainment, or
  3. A maintenance plan.

For the purposes of a general conformity determination, direct and

indirect emissions are defined as follows (40 CFR 93.152):

- **Direct Emissions:** Those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action;

- **Indirect Emissions:** Those emissions of a criteria pollutant or its precursors that—

1. Are caused by the federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; and

2. The federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency.

LMDC has determined that the predicted emissions due to the Selected Project during construction that should be subject to its general conformity review include direct emissions from (1) non-road engines operating on-site during construction, (2) marine vessels carrying materials to and from the site and conducting other work along the waterfront, and (3) emissions from construction-related vehicles traveling to and from the site.

## C. Presumption of Conformity

The Selected Project will be located in an area previously designated as a severe ozone non-attainment area under the 1-hour ozone NAAQS. The NO<sub>x</sub> emissions during two years of construction were predicted to potentially exceed the prescribed level for severe ozone non-attainment areas (25 tons per year). Therefore, LMDC has determined the following:

- The methods for estimating direct and indirect emissions from the Selected Project meet the requirements of 40 CFR 93.159.

- The Selected Project was predicted to result in the emission of up to 70.5 tons and 31.2 tons of NO<sub>x</sub> per year in 2008 and 2009, respectively.

- All construction-related NO<sub>x</sub> emissions, including those from the Selected Project, are included in the emissions budget specified in the New York State Implementation Plan for Ozone—Phase II Alternative Attainment Demonstration.

- The Selected Project does not cause or contribute to any new violation, or increase the frequency or severity of any existing violation, of the standards for the pollutants addressed in 40 CFR 93.158.

- The Selected Project does not violate any requirements or milestones in the ozone SIP.

Based on these determinations, the Selected Project is presumed to conform

to the ozone SIP for the project area. The activities that are presumed to conform include all construction-related activities that will receive federal funding for the East River Waterfront Esplanade and Piers Project.

Dated: November 30, 2007.

**Nelson R. Bregón,**

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. E7-23832 Filed 12-7-07; 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5130-N-17]

### Privacy Act of 1974; Notice of a Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the United States Department of Agriculture (USDA)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of a computer matching program between the HUD and the USDA.

**SUMMARY:** In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (June 19, 1989, 54 FR 25818), and OMB Bulletin 89-22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," HUD is issuing a public notice of its intent to conduct a recurring computer matching program with the USDA to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with the USDA's debtor files. Additionally, the record to be matched section was updated to reflect HUD's new Privacy Act Systems of Records involved in the CAIVRS matching program. This update does not change the authority and the objectives of the existing HUD and USDA computer matching program.

**DATES:** *Effective Date:* The effective date of the matching program shall begin *January 9, 2008* or 40 days from the date copies of the signed (by both HUD and USDA's Data Integrity Boards (DIBs)) computer matching agreement is sent to both Housing of Congress and the Office of Management and Budget (OMB), whichever is later, providing no