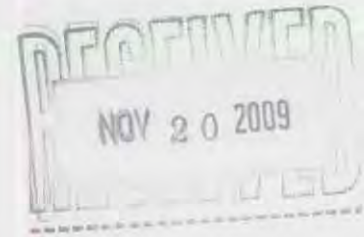


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William Berger
(1906-1965)

Richard G. Berger

Sheila H. Gandolfi - Paralegal

M-43

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November 17, 2009

Paul Tronolone
Empire State Development Corporation
95 Perry Street
Buffalo, NY 14203

RE: Comments on Draft Generic Environmental Impact Statement – Canal Side Project

Dear Mr. Tronolone and Mr. Davison:

Please accept my comments on the Draft Generic Environmental Impact Statement for the Canal Side Project. I submit these comments on behalf of myself and the Campaign for Greater Buffalo - History, Architecture and Culture, a not-for-profit public interest corporation of which I am a Board Member and past President. I apologize in advance for the relative brevity of these comments. However, the crush of my personal business and my law practice have made it difficult for me to comment more fully upon this important project for the future of Buffalo. Because of the importance of this project, I will continue to submit comments as I am able, understanding that you may not be able to respond to them formally, because of the deadline of November 17, 2009. However, I feel an obligation to contribute in any way I can. I would urge you to consider extending further the deadline for comments if your completion schedule would permit you to do so.

I. **INTRODUCTORY REMARKS**

M-43.1

Since the 1901 Pan-American Expedition, the Canal Side Project is likely the most significant urban renewal project in Buffalo's history. Compared to the construction of the Kensington Expressway or of the Light Rail Rapid Transit, the redevelopment of lower Main Street and the Erie Canal Harbor will have a far more significant effect upon the future development of Buffalo. The only other project in Buffalo's history which compares in importance would be the development of Buffalo's park system and parkways under the brilliant direction of Frederick Law Olmsted.

The core of the Canal Side Project, its *raison d'etre*, is to honor and appreciate the historic role that Buffalo played in the development of the United States during the Nineteenth

M-43.3

M-43.2

Century. Specifically, Buffalo's Erie Canal Harbor, including the Commercial Slip as the terminus of the Erie Canal, and the Central Wharf, is a national treasure of elite distinction. The New York State Office of Historic Preservation at the Federal Court hearing in 2000 opined that the Erie Canal Harbor was one of the ten most important historical sites in the United States. For the economic future of Buffalo, New York, expressing the history of its harbor in an authentic and attractive manner is crucial. A vibrant historic district, constructed according to the guidelines of the Secretary of Interior for Historic Landscapes, would attract international attention and tourism. Such a site would also qualify for a National Park Service center and would be a springboard for further development of the surrounding area.

It must be remembered that this entire project was conceived during the time in 1999 to 2000 when ESDC proposed to build a waterfront park and boating area on the Buffalo River. Community opposition prompted a federal lawsuit that was ultimately successful in compelling the lead agencies to reconsider the historic importance of the terminus of the Erie Canal. In June, 2000, Governor Pataki announced that the original project plan was being scrapped in favor of a new, historically faithful design that would express the rich heritage of Buffalo, the Erie Canal and the waterfront. The possibility of constructing a commercial district outside the historic district did not occur until 2006. It is a wonderful opportunity to revitalize the cornerstone of Buffalo, but it must be recognized that commercial development is only made possible by the development of the Historic District.

II. M-43.4 COMMENTS M-43.5

A. General Comments

The Canal Side Project, as expressed in the GEIS, is respectful of the historic importance of the Erie Canal Harbor, but it places that importance in a secondary role to commercial development. Following the final scoping report, the GEIS focuses on development of a commercial district and revitalization of downtown Buffalo as a first priority, while leaving the creation of a historic district as a distinct second priority. Indeed, any development in the historic waterfront district, except for a proposed waterfront hotel, is left for future consideration. The construction of a Bass Pro store, directly outside the historic district, is seen as the anchor to the entire project. Bass Pro may be the anchor store needed to attract other national chain stores, but it is not the key to redevelopment of lower Main Street. The Historic Erie Canal District is the key to attracting tourism and it is the key to giving a coherent context to the entire development project. In order to accommodate Bass Pro and other national commercial outlets, the GEIS proposed to add automobile traffic, even two-way traffic, on streets within the historic district, as well as on-street parking and off-street parking. Obviously, the single most striking feature of a 19th century American landscape on Buffalo's Harbor is the absence of motor vehicles, which did not exist during this period. The narrow, cobblestone streetscapes, narrow sidewalks and buildings built to within a few feet of the street, as called for by the historic guidelines, exclude the possibility of all but limited vehicular traffic, at least for the historic district.

M-43.6

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M-43.8

Secondly, while the Cultural Resources Report, Appendix D, is a good beginning for understanding the historic significance of the Erie Canal Harbor, the Report needs considerable strengthening. In 2004, the U.S. Department of Transportation together with ESDC, the New York State Thruway Authority, the County of Erie and the City of Buffalo, issued a final supplemental EIS for the Erie Canal Harbor Project covering only the historic district. The FSEIS was accompanied by a final historic Master Plan for the district and an amended Urban Renewal Plan. These documents are controlling and binding documents for the development of the historic district. Over \$45 million dollars of Federal Transit aid was contributed toward the preparation of the historic district, including the relocation of the Naval Park, rewatering of the Commercial Slip, and the truncation of the Hamburg drain.

Unfortunately, the essential importance of the Erie Canal Harbor to the transportation history of the United States has been essentially ignored in the DGEIS, in favor of creating a non-descript pleasure environment. In the 2005 Master Plan, Prime Street was to include a single railroad track and railroad cars, to express the intersection of waterborne transportation with the railroad era of the later 19th century. No mention is made in the DGEIS of this feature. The historic street pattern of the Canal District would be lost, contrary to guidelines of the Federal Department of the Interior, by the relocation of Lloyd Street, the widening of streets and the rounding of street corners to accommodate modern vehicular and truck traffic. These modifications, proposed in the DGEIS, will essentially destroy any semblance of historic authenticity for the district, and would turn it into a fantasy theme park.

The final Erie Canal Harbor Master Plan was devoted to ways to express the 19th century character of Waterfront Buffalo in a modern setting containing necessary health and public amenities. Of course, handicap access to the district is essential as well as modern plumbing and sewage facilities, and electric utilities. While these amenities were not available in the 19th century, they can be accommodated while still preserving the historic landscape, if the effort and sensitivity is present. The DGEIS, however, seems to focus primarily on the possibility for large-scale commercial development outside the historic district and calls for several development projects within the historic district which are incompatible with any 19th Century landscape. For instance, a glass-covered marketplace cannot be included in a plan for a historic district. A waterside hotel that aggrandizes and replaces approximately 40% of the Central Wharf is completely excluded by the 2005 Master Plan and by the Urban Renewal Plan. To be sure, there are ways that a market and small hotel facilities can be accommodated in the Historic District. The Urban Renewal Plan permits small hotels in the Mixed Use District to have a small lobby on the first floor and rooms above. (See, Waterfront Redevelopment Project Urban Renewal Plan – No. N.Y. R-35, Erie Canal Harbor Amendment, Draft - Revision 3, November 2004, §3.2.3.2[4]) Single use hotels are prohibited. (id., §3.2.3.4[1]) The present proposals are, therefore, unacceptable.

M-43.9

B. FINANCES

The DGEIS makes no mention of the project budget, the sources of funding and the itemized costs of the various alternatives. The only mention of project costs appears in section

M-43.10

3.5.

“In general, the Preferred Alternative would comprise \$300 million in public/private investment consisting of 1,075,000 square feet of commercial (retail, lodging, office), cultural, and residential space in the Project Area ...”

The public deserves to know the source of fund being used for the project, the projected costs of the various elements of the project, and the difference in cost between the various alternatives. This is the minimum that must be included in the DGEIS. Note that the Master Plan gave fairly detailed costs for the various alternatives to development of the Historic District. (page 41) These will be useful starting figures that will have to be updated. Similarly, if one looks at the EIS prepared for Southtowns Connector/Buffalo Outer Harbor Project, detailed cost estimates are put forth for each of the design alternatives. There is no reason why full disclosure of project funding and costs should not be made here.

C. CULTURAL RESOURCES REPORT

The Cultural Resources Report misunderstands and virtually ignores the enormous importance of Buffalo’s African American Community in the 19th century Erie Canal Harbor and in the development of the City of Buffalo. A major effort will have to be devoted to rewriting the Cultural Resources Report in order to include the important contribution of black Americans. The most significant event in all of Nineteenth Century American history was the Civil War, and Buffalo played a crucial role in the events of that time, before, during and after the Civil War. Buffalo was the terminus of the Underground Railroad. Our own Michigan Street Baptist Church was a haven for runaway slaves who escaped to Canada and freedom via the Erie Canal Harbor. Buffalo was an abolitionist center in the United States, and its courts repudiated the Fugitive Slave Act, freeing slaves from the grasp of bounty hunters.

There is only a brief mention of the “possibility” of a black presence at the Erie Canal Harbor in the DGEIS. To the contrary, there is firm historical proof that there was an African American rooming house, restaurant and meeting place, Dug’s Dive, situated in the heart of Buffalo’s harbor, right on the Commercial Slip. Following the Civil War, the first national African American civil rights organization was spawned in Buffalo, the Niagara Movement, which became the precursor to the NAACP. All of this and much more must be thoroughly discussed in the Cultural Resources Report and expressed in a vital, tangible and living way within the historic district. Our country has finally come to a point in its development where black Americans are assured equal protection before the law, where the mayor of Buffalo, the governor of New York State and the President of the United States all have an African American heritage. It is simply unacceptable to exclude the African American contribution to 19th century Buffalo from this project. There are many resources in Buffalo which can assist the sponsors in rewriting the Cultural Resources Report. The University of Buffalo African American Studies Department, the Monroe Fordham Regional History Center at Buffalo State College, and the Langston Hughes Center on Main Street, are but some of the many resources available locally for the proper explanation of African American history.

M-43.11

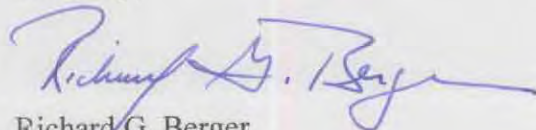
D. DISTINGUISH THE HISTORIC DISTRICT FROM THE COMMERCIAL DISTRICT

I was personally assured by your office that in the Historic Erie Canal District, (those areas covered by the 2004 Master Plan, exclusive of the Naval Museum) that the Master Plan would be followed faithfully. One change was to eliminate the large boat basin, which we wholly support. But otherwise, the 2004 Master Plan was a formidable document that expressed a vision of a historic district which would make Buffalo an international tourist destination, and a living history museum. It should be the controlling document for the district. It is legally supported by the Supplemental Final Environmental Impact Statement. The process now being undertaken, that is the subject of the DGEIS, is necessary only to the extent that it explores the environmental and human impact of the development project outside the Historic District, and the extent to which such development will impact the Historic District. We urge the project sponsors to adopt and adhere to the SFEIS, the 2004 Master Plan, and the Amended Urban Renewal Plan.

I hope these comments will be of some assistance to ESDC and ECHDC in preparing for this exciting project.

M-43.12

Sincerely,



Richard G. Berger



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

November 25, 2009

Paul Tronolone
Empire State Development Corporation
95 Perry Street
Suite 500
Buffalo, New York 14203-3030

Dear Mr. Tronolone:

M-44.1

In response to a letter received from Thomas Dee, I'm taking this opportunity to thank you for sending the Canal Side Project Draft Generic Environmental Impact Statement (DGEIS) to the Department of State, Division of Coastal Resources. The proposed project holds real promise for revitalizing Buffalo's Lake Erie waterfront by providing new vitality in the reuse of the urban infrastructure. In particular, the proposed project is attentive to providing public access to the waterfront and appears to be mindful of appropriate locations for water-dependent uses.

M-44.2

The DGEIS document presents information that requires clarification. Additional specificity of the information would improve the clarity of intent while describing the Proposed Action. Along these lines, it would better demonstrate the positive impacts of the proposed project if the existing conditions are described in greater detail up-front, perhaps incorporating the photographs from section 6.2 of the DGEIS. All of the existing and proposed land uses should be clearly differentiated.

M-44.3

Further to aiding the project purposes, a better analysis of the State Coastal Policies should be provided to address pre- and post-development issues of stormwater management, flood hazards, visual character, water-dependent uses, water quality, noise conditions, public transit, and wildlife, i.e., migratory bird and fish species. This more detailed policy analysis should also take into account the fact that the Aud and Donovan site locations immediately adjacent to, and their direct impacts upon, the State Coastal Management Zone (CMZ) make them integral to our jurisdictional mandate for regulatory review of the Proposed Action within the CMZ.

Additionally, as the project progresses, it would be beneficial to document the public input and informational meetings, such as the October 20, 2009 Public Hearing, posting appropriate documents on a website, and any other outreach efforts undertaken on behalf of the Canal Side Project.

As currently proposed, the Canal Side Project will eventually be reviewed by the Division's Consistency Review Staff, pursuant to the provisions of the federal Coastal Zone Management Act (CZMA) and implementing Part 15 Chapter IX of the Code of Federal Regulations (15 CFR) Subpart 930.

Please contact me with any questions. I can be reached at (518)473-2461.

M-44.6

M-44.5

M-44.4

Sincerely,

Renee Parsons
Coastal Resources Specialist
Division of Coastal Resources

Cc: Matthew N. Davison



MARIA R. WHYTE
LEGISLATOR - 6th DISTRICT
MAJORITY LEADER

DEC - 9 2009

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December 7, 2009

Paul Tronolone
Empire State Development Corporation
95 Perry Street
Buffalo, NY 14203

WNY Workers' Rights Board – DGEIS Comments

Dear Mr. Tronolone, members of ESDC and ECHDC:

I am writing on behalf of the WNY Workers' Rights Board. The WNY Workers' Rights Board was established in 1995, and is comprised of more than forty prominent community leaders from throughout Western New York. The diverse Board consists of religious leaders, politicians from all levels of government, representatives of community organizations, attorneys, physicians, educators, and others. The board members bring expertise in their fields to provide support for workers' rights.

We appreciate this opportunity to comment on the Canal Side Draft Environmental Impact Statement (DGEIS). We are generally supportive of your goals and objectives for the Canal Side project; however, we believe that the return on the public's investment will not be realized to its fullest potential unless the project meets clear, legally binding requirements regarding job quality and access, sustainable design and green infrastructure, set aside space for local, independent businesses, and mixed income housing.

Through research on experiences and best practices in cities very similar to Buffalo, it is clear that large-scale economic development projects are only worth the often hefty taxpayer price tag if it is ensured through a legally binding agreement that the project will produce authentic public goods.

We therefore support the call of others in the community for a Canal Side *Community Benefits Agreement*. Due to the large scale nature of this project and the subsidies that tax payers will provide, and have already provided, the Empire State Development Corporation, through its subsidiary, the Erie Canal Harbor Development Corporation should NOT award or approve any contracts, sub-contracts, leases or the like until ESDC, ECHDC, Benderson, and Bass Pro work with community interests and to reach a Community Benefits Agreement that:

M-45.1

- Ensures the creation of quality permanent jobs that pay a Living Wage;
- Prioritizes and sets legally binding goals for local and minority hiring;
- Requires prevailing rate be paid on all construction jobs, with minority, local hiring, and apprenticeship goals;
- Includes a green building and green infrastructure requirement so that all buildings meet the equivalent of LEED-Silver and include effective storm water management and water conservation plans;
- Accommodates and nurtures small and local businesses, as opposed to big box retailers, so that more money re-circulates in our immediate community by setting aside appropriately sized commercial spaces for local, independent businesses;
- Focuses on mixed use development; and
- Maintains existing moderate income housing while making new residential units affordable and available to low and moderate income residents.

These are key pillars to high road development, development that embraces the needs of our community. Executing high road development strategies becomes even more critical when you consider that Buffalo has consistently ranked within the top ten of poor US cities and that we continue to face staggering employment and population losses.

The WNY Workers' Rights Board is by no means against development; however, we firmly believe that the city of Buffalo cannot afford to pursue another silver bullet solution to our urban poverty, job loss, declining quality of life and failed economic development. The Bass Pro-Benderson plan, as it exists currently, represents such a shortsighted strategy and mechanisms must be implemented to ensure long-term economic growth and community benefit if the project is to proceed and be successful.

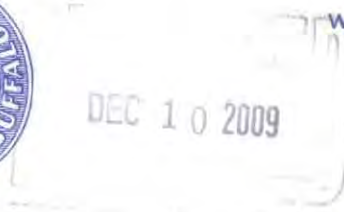
Sincerely,

Maria Whyte
 Maria Whyte
 6th District Erie County Legislator
 Democratic Majority Leader

The Buffalo Common Council

M-46

MICHAEL P. KEARNS
PRESIDENT PRO TEMPORE
SOUTH DISTRICT COUNCIL MEMBER
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CHAIRMAN

FINANCE

WATERFRONT DEVELOPMENT

COMMITTEES

BUDGET

BURA

CIVIL SERVICE

CLAIMS

RULES

LEGISLATIVE ASSISTANTS

MARTHA-ANN MURPHY

KELLY M. KRUG

RUSSELL C. WEAVER

December 8, 2009

Paul Tronolone
Empire State Development Corporation
95 Perry Street
Buffalo, NY 14203

Dear Mr. Tronolone, members of ESDC and ECHDC:

M-46.1

M-46.2

M-46.3

I appreciate this opportunity to comment on the Canal Side Draft Environmental Impact Statement (DGEIS). Though research on experiences and best practices in the cities very similar to Buffalo, it is clear that large scale economic development projects are only worth the often hefty taxpayer price tag if it is ensured through a legally binding agreement that the project will produce authentic public goods.

I therefore support the call of others in the community for a Canal Side *Community Benefits Agreement*. Due to the large scale nature of this project and the subsidies that tax payers will provide, and have already provided, the Empire State Development Corporation, through its subsidiary, the Erie Canal Harbor Development Corporation should NOT award or approve any contracts, sub-contracts, leases or the like until ESDC, ECHDC, Benderson and Bass Pro work with community interests and to reach a Community Benefits Agreement that:

M-46.4

- Includes a green building and green infrastructure requirement;
- Accommodates and nurtures small and local businesses, so that more money re-circulates in our immediate community by setting aside appropriately sized commercial spaces for local, independent businesses;
- Ensures the creation of quality permanent jobs that pay a Living Wage;
- Prioritizes and sets legally binding goals for local and minority;
- Requires prevailing rate be paid on all construction jobs, with minority, local hiring and apprenticeship goals;
- Focuses on mixed use development; and
- Maintains existing moderate income housing while making new residential units affordable and available to low and moderate income residents.

M-46.8

M-46.7

M-46.6

M-46.5

"For the People"

These are key pillars to high road development, development that embraces the needs of our community.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Kearns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael P. Kearns
Councilmember

