



# Buffalo Niagara Medical Campus

Knowledge works.

November 17, 2009

Paul Tronolone  
Empire State Development Corp.  
95 Perry Street  
Buffalo, New York 14203

M-18.1

Dear Mr. Tronolone:

Please accept this letter of support for the Erie Canal Harbor Development Corp. and the Buffalo Canal Side project.

We seek to attract world-class researchers, physicians, and companies to be a part of the growing Buffalo Niagara Medical Campus, making significant projects like Canal Side critical to helping ensure this a community that people want to relocate to.

As BNMC institutions face an increasingly competitive process to recruit the level of talent needed to sustain the work being done at these renowned facilities, it is vital that Western New York as a whole be a place where people want to live, work, and play. Seeing the success of a project on the Scale of Canal Side would certainly go a long way toward raising the profile of Buffalo and aiding our recruitment and retention efforts.

Please do not hesitate to contact me if you need more information.

Sincerely,

M-18.2

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Executive Director

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November 17, 2009

Mr. Paul Tronolone  
 Empire State Development Corporation  
 95 Perry Street, Suite 500  
 Buffalo, New York, 14203  
[ptronolone@empire.state.ny.us](mailto:ptronolone@empire.state.ny.us)

**RE: Comments to the Canal Side Project DGEIS**

Dear Mr. Tronolone:

Enclosed you will find written comments prepared by Buffalo Niagara RIVERKEEPER regarding the Erie Canal Harbor Development Corporation (ECHDC) and Empire State Development (ESD) Canal Side Project Draft Generic Environmental Impact Statement (DGEIS).

M-19.1

RIVERKEEPER would like to commend the ECHDC for its exploration of sustainable development opportunities and requests a firm commitment to the stormwater management practices recommended in that Appendix.

M-19.2

Consistent with our commitment since 2001, RIVERKEEPER remains strongly committed to the preservation of the water's edge as public open space and oppose the development of private facilities on the water's edge.

We hope to collaborate with the ECHDC to:

- 1) improve public waterfront access through the extension of the Central Wharf and lawn space along the Buffalo River to the DLW Terminal and the Buffalo River Greenway Trail head at the Valley's Riverfest Park;
- 2) improve physical access to the River for water dependent uses such as fishing and paddling;
- 3) improve the habitat value of the site in conjunction with Buffalo River Legacy Act and Great Lakes Regional Initiative efforts; and
- 4) address stormwater management and sewer overflows in the project area.

If there are any questions, please contact me directly at (716) 852-7483, or email [jboneill@bnriverkeeper.org](mailto:jboneill@bnriverkeeper.org).

M-19.3

Sincerely,

Julie Barrett O'Neill, Esq.  
 Executive Director and Riverkeeper  
 Buffalo Niagara RIVERKEEPER

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Buffalo Niagara RIVERKEEPER shares the Erie Canal Harbor Development Corporation (ECHDC) vision to revitalize Western New York's waterfront and restore economic growth to Buffalo based on the region's legacy of pride, urban significance and natural beauty. However we continue to have some core concerns regarding specifics of the project as described in the DGEIS. RIVERKEEPER comments and recommendations as related to our core concerns are detailed below.

1) **EQUITABLE PUBLIC ACCESS AND SPACE PROGRAMMING ON THE BUFFALO RIVER**

M-19.4

None of the discussed alternatives allow for public boat or fishing access (canoe, kayak, jon boats, etc.) to and from the Buffalo River beyond a few paid docking opportunities for powerboats. It appears that all alternatives recommend floating docks to be given to Bass Pro for their commercial use, a functional privatization of the public's waterfront. Suggested strategies for access and connectivity were included in Appendix F (Sustainable Development at Canal Side) but did not include access to the River.

M-19.5

The 2005 Draft City of Buffalo Waterfront Revitalization Plan (LWRP) Policy 9 as well as the Niagara River Greenway Plan and New York's Public Trust Doctrine regarding publicly owned waterfront property law emphasizes the need to protect and expand the public's access to local waterways. The LWRP Policy 9.1.B in particular discusses the need to "Provide convenient, well-defined physical public access to and along the Buffalo waterfront for water-related recreation". Policy 9.1.I also establishes a policy to "provide improved access to the waterfront area from the waterside, including improved docking facilities and an increase in the amount of transient dockage, particularly at the Small Boat Harbor, Erie Basin Marina and at new facilities provided as part of the redevelopment efforts for the Erie Canal Harbor and Outer Harbor."

M-19.6

***Recommendation:*** Add fishing access, diverse docking heights/opportunities for canoes, kayaks, etc. and passive access to the preferred project plan or as a mitigation measure at a nearby accessible site. An assessment of public water access should be included as a sustainable development strategy.

2) **PRESERVATION OF WATER'S EDGE AS OPEN SPACE**

As mentioned in our first comment, New York's Public Trust Law articulated in *General City Law § 20* (2) divests the city of the power to convey publicly owned waterfront property except by special act of the Legislature. Although the statute grants municipalities broad rights to acquire and sell real property, the Legislature, cognizant of the well-settled common-law rule that a "public trust" is impressed upon certain forms of publicly owned property (*see, Brooklyn Park Commrs. v Armstrong, 45 NY 234; Village Green Realty Corp. v Glen Cove Community Dev. Agency, 95 AD2d 259; Aldrich v City of New York, 208 Misc 930, affd 2 AD2d 760*), statutorily restricted a city's ability to convey such property by further providing that: "the rights of a city in and to its waterfront, ferries, bridges, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all other public places, are hereby declared to be inalienable" (*General City Law § 20 [2]*).

M-19.7

Since the opening of the Central Wharf in 2008, local residents have actively utilized the space for numerous water appreciation, entertainment and recreational activities. Consistent with RIVERKEEPER's involvement in the Erie Canal Redevelopment effort since 2001, we oppose the siting of the proposed "Boutique" hotel or any other permanent commercial facilities along the water's edge. There has been no approval by the State Legislature for the alienation of the public's waterfront lands for private uses.

Such facilities, even if maintained in public ownership, result in a functional privatization of the community's public water access. Our City's experience with developments at Shanghai Red's and Iron Mountain Paper Company demonstrate that such uses often close off or consume large portions of the water's edge due to security, patron accommodation and even fire lane requirements.

The close proximity and ample land available for potential development within the 2004 Erie Canal Harbor Redevelopment Area, Webster and Donovan Blocks ensure that any hotel demand can be accommodated without infringing upon the public's waterfront space.

**Recommendation**

M-19.8

***Do not sell the public's waterfront access lands to private interests. Implement the low density alternative plan for site E-1, extending the Central Wharf along the Buffalo River with combined wharf and lawn space at least 125 feet deep from the water's edge<sup>1</sup> and preserving the site as public waterfront access. The Canal Corporation should work to link these spaces via the DLW site to the Buffalo River Greenway including the Valley Community's Riverfest Park, Ohio Street DEC Launch Site and New York Power Authority Ice Boom Park site.***

**3) ADHERENCE FEDERAL, STATE AND LOCAL LAND USE REGULATIONS AND PLANS**

M-19.9

We are deeply disappointed to have read section E.S.7.3 and E.S.7.7 of the DGEIS and their rejection of compliance with specified, in particular local, land use regulations.

In 2005, the City of Buffalo published a draft Local Waterfront Revitalization Plan consistent with the federal Coastal Zone Management Act. That plan, approved by the City of Buffalo Common Council, was submitted to the State of New York for final acceptance as a statement of the local community's vision for its waterfront revitalization. The 2004 proposal for the Erie Canal Harbor Redevelopment Area were captured in the plan in section IV regarding proposed land uses and projects.

The legal impact of finalizing the City's Local Waterfront Revitalization Plan would have been that all State and Federal agencies working within the City's Coastal Zone would have had to comply with the provisions of the plan in accordance with the federal Coastal Zone Management Act. This legal framework seeks to level the playing field between local governments and state and federal agencies so that local governments can more directly shape the future of their communities.

Instead, upon the creation of the Erie Canal Harbor Redevelopment Corporation, the Corporation requested that the plan's finalization be delayed. For nearly four years, the Erie Canal Harbor Corporation has prevented the finalization of the City's plan, and hence the legal impact of an approved LWRP.

M-19.10

<sup>1</sup> The current site appears to allow for over 150' of combined wharf and lawn space as a continuous zone along the water's edge.

M-19.11

All of the members of the Erie Canal Harbor Corporation are appointed by the New York State Governor. Neither Erie County nor the City of Buffalo is represented on the Canal Corporation Board of Directors despite the inclusion of City and County resources in the project. None of the members of the Canal Corporation have been elected to their post by the local community thus providing some mechanism for public accountability.

M-19.12

The Corporation's rejection of local land use planning laws, particularly on the eve of the City's efforts to update its local land use code, is untenable particularly in light of project activities and impacts on City land holdings, public services and tax structure.

M-19.13

***Recommendations:*** ~~The ECHDC~~ ***should follow all pertinent Federal, State and Local land use regulations, plans and requirements. These regulations and plans include, but are not exclusive to the following:***

- **Niagara River Greenway Plan**
- **The City of Buffalo Draft 2005 Local Waterfront Revitalization Plan and New York State Coastal Zone Management Program**
- **Buffalo Sewer Authority (BSA) Wet Weather Management Plan**
- **Buffalo River Remedial Action Plan**
- **Various Brownfield Opportunity Area Plans (South Buffalo, Buffalo River, Outer Harbor)**

M-19.14

**In addition, the Governor should appoint representatives from both the City of Buffalo and Erie County to represent local constituents in the redevelopment of the Canal Harbor area.**

#### 4) COMBINED SEWER OVERFLOWS (CSO)

The Hamburg Drain, a combined sewer overflow (CSO) (the third most active in the BSA system), flows into the commercial slip. The DGEIS states that ECHDC will work in conjunction with any BSA plans to mitigate overflow ~~inputs~~ **inputs** from the Drain.

M-19.15

***Recommendations:*** ***The Erie Canal Harbor Corporation should work with the Buffalo Sewer Authority to determine if current efforts to mitigate Hamburg Drain CSO pollution can extend beyond aeration and screening to actual water quality improvements. In particular, the agencies should immediately investigate New York State Thruway inputs to the Hamburg Drain system and opportunities to divert Thruway stormwater to retention and infiltration areas.***

M-19.16

***As per the Buffalo Sewer Authority Wet Weather Plan and Draft Long Term Control Plan, EPA CSO Control Policy all new sewer connections will be connected into the separated sanitary sewer system. All existing sewer infrastructure within the project impact area should be separate – provided that stormwater management strategies are employed to prevent the introduction of nonpoint source pollution. All stormwater should be treated onsite using sustainable development and green infrastructure as described in the next comment.***

#### 5) SITE IMPACTS ON WATER QUALITY (GREEN INFRASTRUCTURE)

The revised sections 7.6 Water Resources (specifically Section 7.6.3. Stormwater Management) as well as Appendix F (Sustainable Development at Canal Side) of the DGEIS were reviewed and the plan for the project to comply with LEED Silver certification was noted at the Public Hearing. Suggested strategies in Appendix F for the general sustainability categories were reviewed with particular focus on water

M-19.17

management. Page 7-31 of the DGEIS states that all stormwater mitigation measures will be examined in the FGEIS for feasibility in design, construction and operation. Stormwater management as part of the project design and operation is of utmost importance as the project area is within one of the largest CSOs in the City and any additional runoff adds to the contamination of the River within this newly formed public access and development project.

M-19.18

***Recommendations:*** **RIVERKEEPER** commends ECHDC for including a thorough review of general sustainable development strategies (Appendix F) and recommends that a robust sustainability plan with clear requirements and specific project plans for green infrastructure and sustainable development be developed for public review, comment and approval before or as part of the FGEIS. Specific strategies, beyond those recommended in Appendix F, are rain gardens, the use of native plants in landscaping and grey water reuse in the proposed canal systems.

**6) WATER CONSERVATION**

Best management practices for water conservation and reuse onsite are conceptually described in Appendix F (Sustainable Development at Canal Side).

M-19.19

***Recommendation:*** Again, **RIVERKEEPER** commends ECHDC for including a thorough review of general sustainable development strategies (App. F) including water conservation and recommends that a robust sustainability plan with clear requirements and specific project plans for water conservation be developed for public review, comment and approval before or as part of the FGEIS. Water conservation is of particular importance on Lake Erie in accordance with the Great Lakes Compact.

**7) AQUATIC HABITAT FEATURES**

Section 7.6.3.1 Mitigation states that ECHDC will consult with NYSDEC to identify possible aquatic habitat enhancements that could be included as part of the design for the floating dock system.

M-19.20

***Recommendation:*** Extensive habitat restoration studies have been conducted as part of the Buffalo River Remedial Action planning process. ECHDC should participate in the Buffalo River Great Lakes Legacy Act Project Coordination Team on possible sediment remediation and habitat restoration efforts to ensure that coordination and maximization of the public's investment in River revitalization. Aquatic habitat features should be incorporated in any shoreline stabilization, revetment or docking designs. Examples include sunken artificial reefs, lunger structures, submerged woody debris and aquatic plants. Specific aquatic habitat mitigation should be included in the FGEIS.

11/17/09

NOTE:  
This correspondence (indexed as M-20) is an advance faxed copy of comments on the DGEIS. See the corresponding letter format (indexed as M-39) for response to comments.

M-20

To: Mr Paul Tronolone  
ECHDC

846-8262

From: Sam Williams  
WFP - WNY Chapter

Hard copy to follow via mail

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November 17, 2009

Mr. Paul Tronolone  
Empire State Development Corporation  
95 Perry Street  
Buffalo, New York 14203

Working Families Party - DGEIS Comments

Dear Mr. Tronolone, members of the Empire State Development Corporation (ESDC) and Erie Canal Harbor Development Corporation (ECHDC):

I am writing on behalf of the Working Families Party - Western New York Chapter.

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 sustainable design and green infrastructure, set aside space for local independent businesses, job quality and access, 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 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 taxpayers 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 the ESDC, ECHDC, Benderson, and Bass Pro work with community interests and to reach a Community Benefits Agreement that:

- 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;

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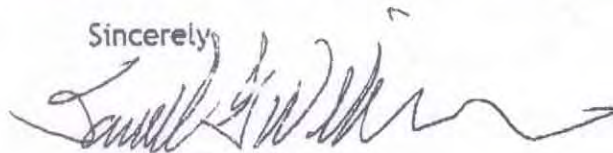
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- Ensures the creation of quality permanent jobs that pay a Living Wage;
- Prioritizes and sets legally binding goals for local and minority hiring;
- Requires prevailing rate be paid on all construction jobs, with minority, local hiring, and apprenticeship goals;
- 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 U.S. cities and that we continue to face staggering employment and population losses.

The Western New York Chapter of the Working Families Party 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. Mechanisms must be implemented to ensure long-term economic growth and community benefit if the project is to proceed and be successful.

Sincerely,



Samuel G. Williams  
Chairperson, Western New York Chapter  
Working Families Party

SGW:je/opei494aficio

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