

FOR CONSIDERATION

March 26, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Buffalo (Erie County) - Canal Side

REQUEST FOR: Adoption of Findings Pursuant to the State Environmental Quality Review Act; Affirmation of General Project Plan; and Authorization to Take Related Actions

Project Summary (Please see the attached General Project Plan for a more detailed description of the Project)

Project Site: The Project is located on approximately 20 acres of vacant, substandard or underutilized land in downtown Buffalo (the “Project Area”), and is generally bounded by the following streets:

- On the north by Upper Terrace and Exchange Streets and Perry Boulevard;
- On the east by Washington Street and Seymour H. Knox III Plaza;
- On the south by Perry Street and Buffalo River; and
- On the west by Erie Street, Marine Drive, and Pearl and Commercial Streets.

A Parcel Plan is attached to the General Project Plan.

Project Description: The Project will consist of over 1 million square feet of commercial (retail, lodging, and office), cultural, and residential space along the Buffalo waterfront that will be designed to emphasize downtown Buffalo’s connection to the Lake Erie waterfront through the construction of a network of interpretive water elements evoking the character and vibrancy of the historic canals that once crossed the area, including segments of the Erie Canal, the Commercial Slip, and the Prime Slip. Anchored by a Bass Pro Outdoor World Store, a destination retailer, the Project will provide various year-round offerings and experiences, including restaurants, entertainment venues, retail outlets, cultural attractions, vast public spaces, and increased access to the Buffalo River, appealing to a wide demographic of visitors and residents.

Preliminary Funding Uses

<u>Canal Side Funding Uses</u>	
Public Canals & Atrium	\$ 47,870,090
Below Grade Parking Garage	\$ 17,078,377
Commercial Slip Parking Garage	\$ 24,503,000
Streets	\$ 6,148,220
Prime Slip	\$ 3,000,000
Design Contingency	\$ 5,000,000
Soft Cost	\$ 5,950,000
Floating Docks	\$ 600,000
Bass Pro Store ¹	\$ 35,000,000
Parking at Webster & Donovan Blocks	\$ 4,800,000
Anchor Tenant Allowance ²	\$ 4,000,000
Private Development	\$ 140,880,000
Total Project Cost:	\$ 294,829,687

Preliminary Funding Sources

<u>Anticipated Funding Sources</u>	
New York Power Authority	\$ 105,000,000
Federal Transit Administration	\$ 11,800,000
Federal Highway Administration	\$ 11,300,000
New York State	\$ 21,000,000
ESDC Upstate Regional Blueprint Fund	\$ 5,000,000
Private Financing	\$ 140,880,000
Total Funding Sources:	\$ 294,980,000

¹ Include core, shell, and fixtures, but excludes all equipment and furnishings—to be funded by Bass Pro and not included in the Project Budget.

² Allowance is for an incentive to attract a second anchor tenant to the Project Site.

Background:

On December 18, 2009, the ESDC Directors made Land Use Improvement Project Findings, adopted a General Project Plan (“GPP”) and authorized the holding of a public hearing with respect to the development and construction of the Canal Side Land Use Improvement Project (the “Project”). On January 21, 2010, the ESDC Directors accepted and approved a Final Generic Environmental Impact Statement (“FGEIS”) for the Project.

The major components of the Canal Side General Project Plan development are as follows:

- (i) Open Space including the Canal Side Commons, located on top of Canal Side Hall; water features (e.g., canals) providing year-round water uses such as ice skating, paddle boating, fishing classes; an extended Central Wharf Green; the Prime Slip canal; the Skyway Plaza; sidewalks and bicycle lanes; additional seasonal floating dock space.
- (ii) Public Improvements including the Aud block parking structure; street-level canal system; and Canal Side Hall and Canal Side Commons.
- (iii) Private Improvements including a Bass Pro Store; Winter Garden; Donovan Block; Webster Block; Erie Canal Harbor Parcels; the Commercial Slip Block and under the Thruway Block.

The primary purposes of the proposed Project are to redevelop a blighted area of the City by (i) transforming an area that is blighted and underutilized into a vibrant, transit-oriented, mixed-use development with appropriate density along the City’s waterfront; (ii) providing a mixed-use setting for year-round activities and unique experiences that will attract visitors and generate economic growth in an area that has been underutilized for decades; (iii) generating additional economic activity and City and State tax revenues; (iv) supplying amenities, housing and cultural facilities for the creation of an urban neighborhood oriented to the waterfront and canal features; and (v) providing publicly accessible open space and recreational opportunities.

A more detailed description of the Project and the Project financing plan is set forth within the attached General Project Plan. (See Attachment B hereto.)

The Public Hearing

On January 26, 2010, the Corporation held a public hearing on the Project at the Albright-Knox Art Gallery in Buffalo. The public hearing commenced at 6:00 pm and continued to approximately 9:00 pm. The public hearing was extensively covered by the media and very well attended. Approximately 25 speakers made oral presentations at the hearing.

Under a separate cover, the Directors have been provided with a complete transcript of comments received at the public hearing, a complete set of written comments received during the comment period which officially closed on February 26, 2010 and a summary of the comments and staff responses. Most of the comments received about the GPP were duplicative to those that were submitted in response to the Draft Generic Environmental Impact Statement (“DGEIS”)

and which were previously provided to the Directors and fully analyzed and responded to in the FGEIS.

Project Modifications

The GPP, attached hereto, was adopted on December 18, 2009 by the ESDC Board of Directors. In response to comments received from the public and changes relative to design of the Project, several minor changes are anticipated to be made to the Project:

- (i) The number of parking spaces on Main Street is expected to be reduced from 80 to 38.
- (ii) Additional parking spaces were added east of Main Street.
- (iii) The ESDC funding source referenced in the Anticipated Funding Source's table above has been identified as the Upstate Regional Blueprint Fund. It is expected that the \$5 million item will be approved by the Upstate ESDC Board in March.

Affirmative Action

ESDC will administer and enforce an affirmative action program for the construction of the Project. ECHDC, Bass Pro and any private developer(s) will each agree to make a good faith effort to utilize minority and women business enterprises ("M/WBE's") in the construction of the Project and will ensure that minorities and women are adequately represented in the construction workforce for the Project.

A Project goal has been established of 20% M/WBE participation in the construction of the Project and a minority and women workforce participation goal of 25%.

Environmental Review and SEQRA Findings

The Corporation is the lead agency for the environmental review of the Project, pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation, and has concluded the environmental review of the proposed action. A FGEIS has been issued and duly filed by ESDC and a Findings Statement has been prepared and is attached hereto as Attachment A. ESDC has determined that the proposed action avoids or mitigates all potentially significant adverse impacts to the extent practicable. ESDC staff therefore recommends that the Directors adopt the SEQRA Findings Statement attached as Attachment A.

The Findings Statement contains the facts and conclusions in the DGEIS and FGEIS relied upon to support the Corporation's actions with respect to the Project, and indicates the social, economic and other factors and standards forming the basis of its decision.

The findings that the Corporation must adopt prior to affirming the General Project Plan or taking other actions related to the Project are that:

- The Corporation has given consideration to the DGEIS and FGEIS;

- The requirements of the SEQRA process, including the implementing regulations of the New York State Department of Environmental Conservation, have been met;
- Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the Project is one that avoids or minimizes adverse environmental effects to the maximum extent practicable, including the effects disclosed in the FGEIS;
- Consistent with social, economic and other essential considerations to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures which were identified as practicable.

The Findings Statement considers the relevant environmental impacts, facts and conclusions disclosed in the FGEIS and weighs the environmental impacts that have been disclosed against the social, economic and other considerations relevant to the Project. The Findings Statement also sets forth the rationale for ESDC's determination under SEQRA that the proposed action avoids or minimizes adverse impacts to the maximum extent practicable. ESDC staff therefore recommends that the Directors adopt the SEQRA Findings Statement attached as Attachment A.

Design and Construction:

Design & Construction (D&C) staff has been reviewing all design drawings, the construction schedule, and cost estimates related to Project and participated in the development of the Design Guidelines, a copy of which is attached to the General Project Plan. D&C will continue to review of construction related documents and in any modifications to the Design Guidelines. It is expected that minor and non-material changes to the Design Guidelines will be made as design of the Project continues.

D&C staff will review and approve schematic and construction documents, review cost estimates and monitor the bid and contract award process for a construction manager, contractors and sub-contractors. With respect to the infrastructure improvements funded by the State, it is expected that D&C will attend construction meetings, monitor construction, review and approve contractor requisitions for payment and verify that all its requirements have been satisfied prior to construction completion.

Override

ESDC will override certain local regulations pursuant to the UDC Act. These overrides will permit a development more reflective of and consistent with, land use policy envisioned for the City waterfront and will include an override of the City zoning ordinance to allow office and hotel uses in an Industrial-Institutional District and will eliminate any need to amend the land use provisions contained in the Waterfront Urban Renewal Plan. With regard to this action and undertaking the Project, the City has been consulted throughout the planning process and has provided significant input into Project design.

The City supports the Project and ESDC will exercise its statutory powers to facilitate the Project on the following terms:

1. The Bass Pro, Canal system and aquarium, Canal Side Hall, Donovan Block, Webster Block, Erie Canal Harbor Parcels, Commercial Slip Block described above will be included in the GPP as approved by the ESDC. Also the components will be developed pursuant to the Design Guidelines.
2. ECHDC included all relevant City departments, agencies and boards including the Common Council, the Control Board and the Planning Board in the review process during the SEQRA review period.
3. At the conclusion of the SEQRA process, ESDC and ECHDC will work with the City to seek necessary approvals for the initial build-out of the Canal Side Project which will include the Bass Pro store, Aud Block development, Donovan Block, Webster Block, public infrastructure within the Project's 20+/- acres and the Commercial Slip Parking Garage. Specifically, this phase will be presented to the Common Council in conjunction with the disposition of City properties to ECHDC in furtherance of the Project. In addition, this phase will be presented to the Planning Board to review consistency with the GPP and the Design Guidelines which are incorporated into the GPP.
4. Subsequent build-out of the remainder of the Canal Side Project, which generally will incorporate all or parts of the Historic District as outlined in the 2004 ECHMP, will similarly be presented to the Common Council and the Planning Board.
5. In the event that there are any proposed changes to the GPP after its initial approval, ESDC will consult and seek input from pertinent City entities.

Requested Actions

The Directors are being requested to: (i) Adopt Findings pursuant to the State Environmental Quality Review Act; (ii) Affirm the General Project Plan; (iii) Override Certain Provisions of the City of Buffalo zoning ordinance; and (iv) Authorize the Corporation to Take all Related Actions.

Attachments

Resolutions

Attachment A - SEQRA Findings Statement

Attachment B - General Project Plan (with Exhibits)

March 26, 2010

Buffalo (Erie County) – Canal Side Land Use Improvement Project - Adoption of Findings Pursuant to the State Environmental Quality Review Act; Authorization to Take Related Actions

RESOLVED, that, on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation relating to the Canal Side Land Use Improvement Project (the “Project”), the Corporation hereby makes and adopts, pursuant to the State Environmental Quality Review Act (“SEQRA”), the following findings and determinations, which findings and determinations are made after full consideration of the SEQRA Findings Statement, which Findings Statement is hereby adopted by the Corporation, and copies of which Findings Statement are hereby ordered filed with the records of the Corporation relating to the Project:

- The Corporation has given consideration to the Draft and Final Generic Environmental Impact Statements (“DGEIS” and “FGEIS”, respectively) prepared for the Project;
- The requirements of the SEQRA process, including the implementing regulations of the New York State Department of Environmental Conservation, have been met;
- Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the Project is one that will avoid or minimize significant adverse environmental effects to the maximum extent practicable, including the effects disclosed in the FGEIS and the Findings Statement;
- Consistent with social, economic and other essential considerations, significant adverse environmental effects associated with the development of the Project which were identified in the FGEIS and in the Findings Statement will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures that were identified in the FGEIS and the Findings Statement as practicable; and
- The Project is in compliance with Section 14.09 of the State Historic Preservation Act;

and be it further

RESOLVED, that the Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to comply with the requirements of SEQRA in connection with the Project; and be it further

RESOLVED, that the Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver any and all documents and to take any and all such actions as may be necessary or appropriate to effectuate the foregoing resolution; and be it further

* * *

March 26, 2010

Buffalo (Erie County) – Canal Side Land Use Improvement Project - Affirmation of General Project Plan; Override of Certain Provisions of the City of Buffalo Zoning Ordinance; Ratification of Findings; Authorization to Take Related Actions

RESOLVED, that, on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation relating to the Canal Side Land Use Improvement Project (the “Project”), and pursuant to Section 16 of the UDC Act, after due consideration of: (1) the testimony given at the public hearing on January 26, 2010 on the proposed General Project Plan; (2) all comments received by the Corporation during the comment period concluding February 26, 2010; (3) the DGEIS and FGEIS prepared in connection with the Project, including responses to comments made at the public hearing or received thereafter; and (4) the UDC Act, SEQRA statement of facts and conclusions and other determinations attached hereto, the Corporation does hereby affirm the General Project Plan, a copy of which is attached hereto and which has been presented to this meeting and is ordered filed with the records of the Corporation relating to the Project; and be it further

RESOLVED, that, on the basis of the materials presented to this meeting, pursuant to Section 16 of the UDC Act, the Directors hereby find that, in constructing, reconstructing, rehabilitating, altering or improving the Project Site (as described in the materials presented to this meeting), compliance with the requirements of certain local laws, ordinances, codes, charters or regulations applicable to such construction, reconstruction, rehabilitation, alteration or improvement, including but not limited to the City of Buffalo Zoning Ordinance is not feasible or practicable in the discretion of the Corporation; and be it further

RESOLVED, that any and all acts performed by any officers of the Corporation prior to the date of these resolutions in furtherance of these or prior resolutions with respect to the Project are hereby ratified, adopted, confirmed, and approved in all respects; and be it further

RESOLVED, that the Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver any and all documents and to take any and all such actions as may be necessary or appropriate to effectuate the foregoing resolutions; and be it further

* * *

Attachment A

SEQRA Findings Statement

Attachment B
General Project Plan