

RECORD OF DECISION
for
THE ERIE CANAL HARBOR PROJECT
(FORMERLY THE BUFFALO INNER HARBOR DEVELOPMENT PROJECT)
BUFFALO, NEW YORK

1. Decision

The Federal Transit Administration (FTA) has decided that the requirements of the National Environmental Policy Act of 1969 (NEPA) have been satisfied for the Erie Canal Harbor Project (hereinafter referred to as the "Project"), formerly called the Buffalo Inner Harbor Development Project (hereinafter referred to as the "Original Project"). The Project is being administered by the New York State Urban Development Corporation doing business as Empire State Development Corporation (ESDC) for the Niagara Frontier Transportation Authority (NFTA). Through the NEPA process, the Project, which involves specific changes to the Original Project that aim to better interpret the site's location at the historic western terminus of the Erie Canal, has been selected as the environmentally preferred alternative. This Record of Decision (ROD) sets forth a concise basis for FTA's decision in compliance with relevant legal requirements. Further details supporting this ROD can be found in the Supplemental Final Environmental Impact Statement (SFEIS) for the Erie Canal Harbor Project, published by FTA in December 2004, the Final Environmental Impact Statement (FEIS) for the Buffalo Inner Harbor Project, published by FTA in February 1999, and the Record of Decision for the Buffalo Inner Harbor Project, issued by FTA in June 1999. This February 2005 ROD for the Project supersedes the June 1999 ROD for the Original Project.

The Project site encompasses approximately 12.5 acres of land owned by the City of Buffalo, and is bounded by Main Street, Hanover Street, Marine Drive, and the Buffalo River in downtown Buffalo near the southern terminus of the NFTA's Metro Rail transit system.

2. Background

A. Description of the Original Project

In 1997, ESDC initiated planning and design for the Original Project, which involved the reconfiguration of a portion of the Buffalo River bulkhead and redevelopment of a site within the City's Waterfront Development Project Urban Renewal Area into a new harbor with intermodal transportation components at the foot of Main Street. Additional components included a series of landside improvements to facilitate and enhance public access to the waterfront, connect pedestrian and bicycle paths, and provide opportunities for private development.

The following components of the Original Project have been completed:

- Construction of a new naval basin on the Buffalo River in Veteran's Memorial Park to accommodate the relocation of three naval vessels: the USS Little Rock, USS the

Sullivans, and USS Croaker and related site/landscape improvements in Veteran's Memorial Park;

- Relocation of several war memorials within Veteran's Memorial Park along a newly created "Heroes Walk" within the park;
- Re-routing of the sanitary force main (the Kelly Island main) traversing the Project site; and
- Construction of off-site improvements, including reconstruction of a portion of Scott Street and Marine Drive to add new bicycle lanes, bus cut-outs, sidewalks/lighting, and conversion from a one-way to a two-way traffic pattern.

The following components of the Original Project have remained part of the Proposed Project:

- Demolition and relocation of the existing Naval and Military Park and outdoor exhibit area and construction of a new museum building/exhibit yard and associated site/landscape improvements in Veteran's Memorial Park;
- Creation of a Transit Plaza along Scott Street, the northern edge of the Project site, which will include a continuous pedestrian path on the south side of the plaza, vehicular drop-off facilities, bus stop shelters, information kiosks, and new bicycle lanes and storage facilities;
- Continuation of the waterfront esplanade along the river, and pedestrian connections from the esplanade to Main and Scott Streets; and
- Establishment of future development parcels.

A combination of FTA, New York State Thruway Authority (NYSTA), Erie County, and City of Buffalo sources were secured to fund the Original Project. The Notice of Intent to prepare a draft environmental impact statement (DEIS) for the Original Project was issued by FTA on November 14, 1997, and its final environmental impact statement (FEIS), entitled "Buffalo Inner Harbor Project" was published in February 1999. The FEIS contained FTA's findings in accordance with Section 4(f) of the Department of Transportation Act related to the "use" of dedicated parkland and cultural resources for transportation improvements. On June 22, 1999, the FTA issued a Record of Decision (ROD), which documented its decision and findings on the landside and marine improvements of the Original Project.

B. Section 106 Process for the Original Project

At the same time as undertaking the NEPA process, FTA, with ESDC's assistance, also engaged in a Section 106 consultation process with the New York State Historic Preservation Officer (SHPO) of the New York Office of Parks, Recreation and Historic Preservation (OPRHP). The cultural resources on the Project site were particular archaeological resources associated with the site's location at the former western terminus of the Erie Canal. The history of this process is described in the SFEIS.

C. Federal Lawsuit Against the Original Project

The Preservation Coalition of Erie County (PCEC) filed a lawsuit on October 6, 1999 in the U.S. District Court for the Western District of New York against FTA, NFTA, the New York State Thruway Authority, ESDC, and the SHPO (*Preservation Coalition of Erie County v. FTA et al*). This lawsuit sought a preliminary injunction to stop the construction of the Original Project from proceeding, pending the completion of a

supplemental environmental impact statement (SEIS) that considered the effects of the Original Project on all of the historic resources present at the site. The PCEC contended that the Original Project would have adversely affected the site's archaeological resources, and that the supplemental Section 106 consultation process should have been documented in an SEIS process that was subject to public comment.

On March 31, 2000, the Honorable William M. Skretny, U.S. District Court Judge, issued a decision and order in the matter. While not granting the preliminary injunction sought by the PCEC to stop progress on construction of the Original Project, he ordered that an SEIS be prepared on a fast track schedule, focusing entirely on the overall cultural resources assessment and the Section 106 process, including the subsequent SHPO consultation process associated with the 80-foot section of Commercial Slip wall encountered, conducted after the issuance of the SHPO's December 1998 Determination of No Adverse Effect and the FTA's 1999 ROD.

FTA and ESDC issued a draft SEIS in May 2000, followed by a public hearing and comment period. At the request of Erie County and the City of Buffalo during this public comment period, ESDC agreed to reconsider certain design elements of the Original Project. Accordingly, the Federal lawsuit was settled and the May 2000 SEIS was never issued as a final document. In addition, the SEIS (and thus the Section 106 review) associated with the court order was never finalized and no formal determination of National Register eligibility (either individually or collectively) was made for any cultural resources encountered on the Project site other than the Commercial Slip.

D. Reformulating of the Scope of the Original Project

In October 2000, Governor George Pataki announced that the State of New York would provide additional funds to the Buffalo Inner Harbor Development Project (renamed the "Erie Canal Harbor" Project) to address reconfiguration of the Hamburg Drain and to allow for a re-watering of the Commercial Slip along its historic right-of-way. Following discussions through June 2002, ESDC, the City of Buffalo, the Buffalo Sewer Authority (BSA), and Erie County entered into a Memorandum of Understanding (hereinafter referred to as the "ESDC MOU"), which outlined the respective responsibilities and expectations of the various parties/agencies associated with modifications to the Original Project. The ESDC MOU allowed constructing a portion of the Original Project (as designed in 1999) to continue, while the balance of the site was to be reviewed in order to better develop an appropriate heritage interpretation program that highlights the site's location at the western terminus of the Erie Canal. The MOU, which is included in the Appendix of the SDEIS, remains in effect.

3. Description of the Proposed Project and Phasing

The Original Project involved the reconfiguration and redevelopment of a new commercial harbor with intermodal transportation emphasis at the foot of Main Street, along the Buffalo River near its mouth at Lake Erie. In addition, the Original Project included the construction of a series of landside improvements to facilitate and enhance public access to the water; to connect existing pedestrian and bicycle path systems; and to provide opportunities for private development.

The Project includes the same thematic components as the Original Project as discussed above, including a new naval basin, new museum, and new canal slip, as well as components that aim to better interpret the site's location at the historic western

terminus of the Erie Canal. These changes, adapted from the Original Project, emerged from items specified in the 2002 ESDC MOU, and include:

- Construction of a new, navigable canal slip, through re-watering and excavation of the Commercial Slip along its historic right-of-way, in lieu of construction of a new canal slip paralleling the right-of-way;
- Relocating/modifying the new museum building for the Naval and Military Park to allow re-watering of the Commercial Slip;
- Redesign/reconfiguration of the waterfront plaza proposed in the Original Project to better interpret the former location/setting of Buffalo's Central Wharf;
- Construction of a new south basin to accommodate tour boats and large-scale maritime vessels, although involving a smaller facility than that proposed in the Original Project to allow for interpretation of the Central Wharf;
- Refining the design of bulkhead areas along the re-watered Commercial Slip and Central Wharf to maximize access by transient recreational vessels;
- Use of the historic street pattern (e.g., Prime, Commercial, Lloyd, Hanover, and Dayton Streets) and the former right-of-way of the Prime Slip to serve as the basis for a system of pedestrian/bicycle-only and vehicular streets through the site; and
- Truncating the Hamburg Drain, which passes through the former right-of-way of the Commercial Slip, to allow for re-watering of the Commercial Slip.

The above elements of the Project are an outgrowth of the *Erie Canal Harbor Final Master Plan* (Flynn Battaglia Associates, et. al. 2004). The components of the Project will be completed in three phases as follows:

- **Phase One**, involving components of the Project that were completed in July 2003, such as the Naval Basin, relocation of the naval vessels, and landscape improvements to Veteran's Memorial Park (completed);
- **Phase Two** (for which FTA funding is committed), involving completion of the main infrastructure elements (e.g., transit plaza, harbor elements, street systems, utilities, etc.), selected heritage interpretation elements recommended in the Master Plan, and the new museum building for the Naval and Military Park; and
- **Phase Three** (for which funding is not yet programmed), involving completion of the entire program of heritage interpretation included in the Master Plan and full build-out of all the future development parcels on the Project site.

4. Basis for Decision

FTA's decision is based on information contained in the DEIS (1998), FEIS (1999), ROD (1999), SDEIS (2004) and SFEIS (2004) for the Project, and includes review of the purpose and need for the Erie Canal Harbor Project; review of Project goals and objectives; and consideration of alternatives, environmental impacts, and measures to minimize harm.

A. Project Purpose and Need, and Goals and Objectives

The Original Project was intended to enhance and facilitate public transit access to the water's edge; to augment ridership on the NFTA's Metro Rail system; and to encourage

inter- and multimodal opportunities between waterborne, transit, pedestrian, and bicycle route systems. Additionally, the Original Project was expected to spur private investment by further capitalizing on multimodal transportation facilities in the Project area and potential connectivity among these modes that could be offered. The overall intent was to foster the creation of a hub of activity that supports increased economic development opportunities in the area as well as a livable community environment that would provide year-round entertainment and recreational activities.

The overall intent of the Project remains the same as the Original Project; however, it has been refined to identify methods that would involve a more defined program of heritage interpretation associated with the Project site's location at the historic western terminus of the Erie Canal. A series of revised goals were formulated to guide the design and implementation of the Project, as described in detail in the SFEIS. Below is a list of the main elements, which meet the Project's goals and objectives (the objectives for each goal are listed in the SFEIS):

Goal 1: Incorporate Erie Canal Harbor Heritage Interpretation in the Project

Elements:

- Implementing an interpretation program using appropriate themes, plans, and exhibits.
- Developing a re-watered, navigable Commercial Slip within the boundaries of the original, historically significant Commercial Slip.
- Incorporating archaeological features of the site's historic "urban fabric" (street remnants, building foundations, etc.) as the basis for the development plan.
- Developing a new wharf and pedestrian esplanade that evokes the historical attributes of the original Central Wharf on the Project site.
- Re-designing the proposed new Buffalo and Erie County Naval and Military Museum to be more sensitive to its context in an historic site.

Goal 2: Facilitate Balanced Erie Canal Harbor Activity/Land Use Relationships

Elements:

- Establishing public spaces for community interaction such as the Central Wharf.
- Creating facilities for a variety of maritime activities including large tourist vessels and smaller personal watercraft.
- Installing infrastructure for facilitating immediate uses (public open space, historic interpretation, and harbor) and long-term uses (future development parcels).

Goal 3: Foster Erie Canal Harbor Economic Development

Elements:

- Facilitating future development on the Project site through the establishment of parcels with appropriate infrastructure facilities and utility services (access roads, electrical, sewer, water, etc.).
- Adding value to existing uses (Marine Drive Apartments, HSBC Arena, Waterfront Village, Erie Basin, and the Cobblestone District) and vacant/underutilized parcels (Webster Block, Memorial Auditorium, Donovan site) surrounding the Project site through creation of a centralized hub of waterfront activity.

- Support regional goals of developing cultural/heritage tourism industry and regional visitor attraction by highlighting the Erie Canal in the context of the region's overall offerings (architecture, Olmsted park system, museums, Niagara Falls, etc.).
- Creation of a suitable western tourist destination for the Erie Canalway Recreation Corridor and National Heritage Corridor.

Goal 4: Coordinate Erie Canal Harbor Public Access and Transportation Relationships

Elements:

- Establishment of a Transit Plaza along Scott Street near Main Street to serve as a focal point of entry to the Project site, serving as a pedestrian feature linking existing Metro Rail stations, Metro Bus stops, and a future Buffalo Intermodal Transportation Center immediately north of the Project site.
- Re-establishing a network of historic street and canal rights-of-way that once existed on the Project site (Commercial Street, Lloyd Street, Prime Slip, Hanover Street, Dayton Street, Prime Street) to serve as either vehicular streets or pedestrian/bicycle-only streets linking the Transit Plaza to the water's edge and harbor facilities.
- Establishing a continuous waterfront esplanade linking to the region's current system of waterfront greenway trails.
- Creation of appropriate harbor space for tourist-oriented vessels, water taxis, and similar commercial maritime uses, as well as transient mooring facilities for smaller watercraft.

B. Consideration of Alternatives

As part of the Erie Canal Harbor Master Plan process, three conceptual alternatives were developed through a scoping meeting and public workshops, reflecting input from the general public and heritage-related interest groups. While having unique historic emphasis, these alternative designs for the Project site shared common components required by the Project's revised goals including the Central Wharf, re-watered Commercial Slip, and South Basin, as well as transportation components that were included under the Original Project. The section in this ROD entitled "Public Opportunity to Comment" provides more detailed information on this process.

The detailed descriptions and diagrams of each alternative are in the SFEIS, and described briefly below.

Alternative One

Alternative One included a development program interpreting the period of significance from the early 19th century canal era through the early 20th century railroad era. Given this overall concept, site surfaces would be primarily finishes in hardscape (concrete, cobbles, stabilized soil, etc.) with limited landscape elements included on the outer street edges, focusing more on the former commercial/industrial character of the area.

Alternative Two

Alternative Two also included a development program interpreting the site's history through the early 20th century railroad era. However, this alternative would create a somewhat more park-like setting – with a greater use of green space on the site's perimeter and in selected interior areas than in Alternative One.

Alternative Three

Differing from Alternative One and Two, Alternative Three represented a narrower period of significance – focusing only on the 19th century canal era with some early railroad references in Prime Street. It would also have the most park-like setting – with a softscape parkway under the Buffalo Skyway.

No-Action Alternative

The No-Action Alternative is defined as the future condition without the Project, but assumes implementation of any previously planned and committed projects in the vicinity of the Project site by the estimated time of completion (ETC) of Phase Two (2007), or by the Project design year, in this case ETC + 20 years or 2027. With the No-Action Alternative, no demolition/relocation of Naval and Military Park museum facilities would occur. Similarly, no redevelopment or changes would occur on the Project site, including re-watering of the Commercial Slip, historic interpretation elements, waterfront esplanade, new roads; and/or future development parcels. In turn, no changes would occur to the Hamburg Drain.

The No-Action Alternative would fail to meet the goals and objectives of the Project in terms of highlighting the site's location as the historic terminus of the Erie Canal; realizing improved connectivity among transit, pedestrian, bicycle and vehicular modes at the waterfront; creation of year-round public access; and establishment of improved maritime access for a variety of recreation/commercial vessels. In addition, the current mix of uses in the Project area does not offer the potential to increase the Project area's attractiveness nor encourage economic development.

C. Environmentally Preferred Alternative

The three conceptual alternatives were presented to the public for review and comment at a public workshop. Participants were asked to rank the alternatives against a series of evaluation criteria, formed from the revised goals and objectives of the Project. Key considerations included heritage elements and interpretation, economic viability, site access, and the relationship of proposed site improvements to other programmed improvements in the vicinity of the Project site. An evaluation matrix was developed to compare the performance of each of the three conceptual alternatives with regard to public comments and in relationship to fulfilling the goals and objectives of the Project.

Overall, Alternative Three best met the evaluation criteria as a whole. However, various elements/characteristics in the other two alternatives were considered to be desirable and reasonable to be included in the overall design. Therefore, based on the outcomes of the evaluation process, the proposed Project (or environmentally preferred alternative) was developed as a hybrid primarily based upon conceptual Alternative Three. This alternative was then further refined to include desired elements from each of the other two alternative plans that were favored by the public and deemed to fulfill the revised goals and objectives. It is this hybrid alternative which became the Project evaluated in the SFEIS.

D. Potential Significant Impacts of the Project

This section presents a summary of the potential environmental impacts that would occur as a result of construction and operation of the Project. More detailed information on these impacts is contained in the SFEIS. The categories included in this section in which impacts would occur are: land use, zoning, and community facilities;

archaeological resources; water resources; coastal zone management and navigable waters; site contamination; physical and ecological resources; utilities; and other construction impacts. Impacts would be significant in the areas of archaeological resources and water resources. The mitigation measures for these impacts, along with other Project commitments, are described in Appendix A.

Land Use, Zoning, and Community Facilities

- The Waterfront Urban Renewal Plan will require an additional amendment by the Buffalo Common Council beyond that adopted in 1999 as part of the Original Project (as described in Attachment A).

Archaeological Resources

- The temporary removal and re-installation of extant Commercial Slip wall stones will affect the original historic context on the Project site, but will not affect the site's National Register eligibility associated with its importance to the development of Buffalo and the nation.
- The construction associated with re-watering the Commercial Slip and the new museum building for the Naval and Military Park will affect National Register-eligible prehistoric or pre-contact archaeological resources.
- The reconstruction of the site's former street network and construction of the future development parcels will affect National Register-eligible historic period artifact deposits beneath the streets or future development parcels, if any exist. However, the funding and administration of future development parcels are not included in the Federal undertaking.

Water Resources

- The Project could result in potential water quality impacts that may result from fueling and boat maintenance activities, as well as soil erosion and sedimentation during construction. Soil erosion, sedimentation, and pollution control measures would mitigate these impacts.
- Truncating the Hamburg Drain and re-watering the Commercial Slip will require implementation of treatment measures to reduce the occurrences and presence of floatable debris and to remedy any potential odor problems that could be realized from periodic instances of stagnant water. The Hamburg Drain serves as a discharge point for combined sewer overflows into the Buffalo River. Pollutant concerns including elevated counts of fecal coliform, lower than required dissolved oxygen levels, elevated total suspended solids/turbidity, biological oxygen demand (BOD) levels, and floatable debris are typical of combined sewer overflows, and would require mitigation measures to allow for the re-watered Slip.

Coastal Zone Management and Navigable Waters

- While the Project will not result in impacts to navigation and coastal zone management, ESDC will continue to coordinate with applicable Federal, State, and local agencies during the final engineering design process to address all design, construction, and operational issues associated with the harbor facilities.

Site Contamination

- Potential impacts of the Project will be limited to the construction phase, and are associated with potential exposure of on-site workers to contaminated fill materials excavated from the Project site and the proper disposal of these fill materials.

Physical and Ecological Resources

- The Proposed Project site is located within one mile of a New York State Significant Coastal Fish and Wildlife Habitat area, the now-closed Times Beach Area (now a nature preserve located 1,500 feet to the southwest of the site) and the North Buffalo Harbor Area (within 3,500 feet of the site). The North Buffalo Harbor has the greatest potential for impact from increased sedimentation during the construction phase of the Project due to its downstream location from the site.

Utilities

- The impacts of the Project on utilities will be associated with the new underground facilities located within proximity to existing infrastructure on the Project site, particularly the pier structures supporting the Buffalo Skyway.

Other Construction Impacts

- Similar to any large-scale infrastructure project, the Project will result in unavoidable short-term impacts during construction, including dust emissions from construction activities, increased carbon monoxide emissions due to periodic traffic disruptions, and increased noise from construction activities. ESDC will coordinate construction activities with appropriate state and local agencies.

E. Measures to Minimize Harm

ESDC will design and incorporate into the Project all mitigation measures included in the SFEIS, and those measures to be identified during final design. These measures constitute all practicable mitigation measures and will address Project-related impacts to the fullest extent practicable. FTA will require ESDC to periodically submit written reports on its progress in implementing the mitigation commitments. FTA will monitor this progress through quarterly review of final engineering and design and construction of the Project. The measures to minimize harm are fully described in the SFEIS and are summarized in **Attachment A** to this ROD.

5. Public Opportunity to Comment

The NEPA process has included an extensive public outreach program, initiated during the SDEIS scoping and alternative development phases and continuing through the SFEIS phase. Public opportunity to comment has included several meetings and workshops with the public, local and regional organizations, an established Heritage Interest Group subcommittee, elected officials, and interested governmental agencies.

A. Public Scoping Process

The analysis of the Project's environmental impacts for the SDEIS commenced in 2003. On April 17, 2003, FTA published a Notice of Intent for the Project in the *Federal Register*, and a public scoping meeting was held on May 13, 2003 at the Buffalo and Erie County Historical Society. Eleven public statements were made at the scoping meeting and 15 written comment letters/forms were received.

B. Alternative Development Process

During the alternative development process, three public design workshops were conducted by ESDC, in an effort to maximize public input and subsequent consensus building for the formulation of the *Erie Canal Harbor Final Master Plan*. The workshops served as public forums to examine the opportunities and constraints of the Project site, and provided the public with opportunities to offer input and feedback on the various components of the Project. They focused on the specific design elements of each alternative and how these features would meet the established goals of the Project. Also during this period, a series of meetings were conducted with an established Heritage Interest Group subcommittee (comprised of over 30 agencies, organizations, and individuals that focus upon historic preservation, cultural tourism, and historical research in the Buffalo-Niagara region) to focus specifically on the historic interpretation objectives of the Project design. Substantive comments received at each of these meetings were documented for the public record and are addressed in the SDEIS.

C. SDEIS Public Comments

Public review of the SDEIS began with the publication of the SDEIS Notice of Availability in the *Federal Register* on July 2, 2004. The SDEIS and notice of its availability were widely distributed to involved and interested agencies and other parties. The SDEIS was posted on ESDC's website, and the public hearing on the document was advertised in community newspapers and on the ESDC website. ESDC, NFTA, and FTA held a public hearing on July 13, 2004, at the Downtown Buffalo Campus of Erie Community College. The public comment period remained open until August 9, 2004; however the SFEIS includes responses to comments received through October 4, 2004.

During the public comment period for the SDEIS, eight public statements were made at the public meeting, of which six were favorable, and 20 additional written comments were received, of which 15 were either favorable or accepting of the document. Many of the comments expressed support for the changes to the Original Project, resulting in the Project evaluated in the SFEIS. Among those submitting comments, there was general agreement in support of the Project's revised goal of increasing the level of Erie Canal interpretation, while still meeting its original public access objectives. Other comments received on the SDEIS related to the following:

- Suggested changes to site details contained in the *Erie Canal Harbor Draft Master Plan*, which were addressed by ESDC through refinements in the Final Master Plan or through consideration of such features in the final design process for the Proposed Project;
- Regulatory provisions for private development on designated development parcels, which were addressed through revisions to the requirements in the draft Waterfront Urban Renewal Plan Amendment that will be adopted by the City of Buffalo;
- A proposal for a solar-power carousel facility to be located on the Project site, which like other buildings and facilities proposed during the alternative development process for the Erie Canal Harbor Draft Master Plan, could be permitted on any one of the future development parcels provided it met design standards contained in the Waterfront Urban Renewal Plan Amendment;
- Provisions for charter bus staging and parking associated with visitation to the Erie Canal Harbor site, which are part of the Project and clarified in SFEIS; and

- The timing of the construction and the scope of components included for funding under the Phase Two program, which has been clarified in the SFEIS regarding initiatives being undertaken by ESDC for funding of the full build-out of Project.

D. SFEIS

The SFEIS includes responses to comments received on the SDEIS during the public comment period that extended from June 25, 2004 (i.e., the date of the issuance of the SDEIS Notice of Availability) through August 9, 2004, as well as additional comments received through October 4, 2004. It identifies particular project elements that will be incorporated during the final engineering process and mitigation measures that will be implemented to minimize significant impacts. It also identifies and assesses the refinements to the Project that have been made as a result of public comments on the SDEIS. ESDC, NFTA, and FTA published the SFEIS in December 2004.

Agency Coordination

Throughout the environmental review process, FTA, NFTA and ESDC coordinated with numerous federal, state, regional, and local agencies, including:

- U.S. Army Corps of Engineers (USACE)
- U.S. Department of the Interior
- National Park Service (NPS)
- U.S. Fish and Wildlife Service (USFWS)
- U.S. Navy
- U.S. Coast Guard
- U.S. Department of Housing and Urban Development (HUD)
- U.S. Environmental Protection Agency (EPA)
- Advisory Council on Historic Preservation (ACHP)
- New York State Department of Transportation (NYSDOT)
- New York Office of Parks, Recreation and Historic Preservation (OPRHP)
- New York OPRHP Historic Resources Field Bureau, in their role as the State Historic Preservation Officer (SHPO)
- New York State Department of Environmental Conservation (NYSDEC)
- New York State Department of State (NYSDOS)
- New York State Thruway Authority (NYSTA)
- Greater Buffalo-Niagara Regional Transportation Council (GBNRTC)
- Erie County Department of Planning and Environment (ECDEP)
- City of Buffalo Office Of Strategic Planning (OSP)
- City of Buffalo Planning Board
- City of Buffalo Department of Public Works, Streets, and Parks
- Buffalo Sewer Authority

All concerns and comments raised by the agencies have been addressed in the SFEIS.

6. Determinations and Findings

A. Environmental Protection

The environmental record for the Project includes the previously referenced FEIS issued for the Original Project in February 1999, the ROD issued in June 1999, the SDEIS issued in June 2004, and the SFEIS issued in December 2004. These documents

represent FTA's detailed analyses and findings required by NEPA and the Federal Transit Act, 49 U.S.C. 5324(b), regarding the following: the environmental impacts of the Project; any adverse environmental effects which cannot be avoided should the Project be implemented; alternatives to the Project; and any irreversible impacts on the environment should the Project be implemented.

On the basis of the evaluation of social, economic, and environmental impacts as presented in the SFEIS; the environmental impacts and mitigation measures described in the SFEIS; and the written and oral comments offered by the public and public agencies, the FTA has determined in accordance with 49 U.S.C. 5324(b) that:

- An adequate opportunity to present views was given to all parties with a significant economic, social, or environmental interest;
- Consideration was given to the preservation and enhancement of the environment and to the interest of the community in which the Project is located; and
- All reasonable steps have been taken to minimize adverse environmental effects of the Project, and where adverse environmental effects remain, no feasible and prudent alternatives that would mitigate such effects exist.

B. Conformity with Air Quality Plans

The Clean Air Act Amendments (CAA) of 1990, as amended, require that projects conform to the purposes of the State Implementation Plan (SIP) to receive federal financial assistance. Those purposes are to eliminate or reduce the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieve expeditious attainment of such Standards. The U.S. Environmental Protection Agency's (EPA) final transportation conformity rule, dated August 15, 1997, requires metropolitan planning organizations (MPOs), the Federal Highway Administration (FHWA), and FTA to make conformity determinations on metropolitan long-range transportation plans (LRTPs), transportation improvement programs (TIPs), and transportation projects with respect to the SIP before they are adopted or approved. The LRTP is the official intermodal metropolitan transportation plan for an area and generally has a 20-year planning horizon. The TIP is a staged, multiyear, intermodal program of transportation projects that is consistent with the LRTP.

The Original Project was included in the LRTP adopted by the region's Metropolitan Planning Organization, the Greater Buffalo-Niagara Regional Transportation Council (GBNRTC), in 1995. In addition, the Original Project is included in the 1998-2002 TIP adopted by the GBNRTC. In 1997, GBNRTC found that the regional transportation plan and TIP conform to the purposes of the SIP and the applicable guidance on the CAAA. The changes and refinements to the Original Project to increase the level of historic interpretation will result in no additional impacts to local or regional air quality. Thus, prior assessments and findings by GBNRTC in accordance with applicable guidance on the CAAA remain valid.

C. Section 4(f)

Section 4(f) of the Department of Transportation Act (49 U.S.C. 303) affords special protection to parks, recreation areas, wildlife and waterfowl refuges, and historic sites, including archaeological sites.

The Project will require the use of all of a Section 4(f) resource, specifically involving extant remnants of the Commercial Slip, which have been determined eligible for

inclusion on the National Register. Remnants of the Slip (as well as other resources) already encountered would be reused as part of a heritage interpretation program to celebrate the site's Erie Canal history. This would include re-watering of the Commercial Slip, as dictated in the ESDC MOU.

For this resource, a Section 4(f) evaluation was prepared as part of the SFEIS in accordance with the Section 4(f) regulations and USDOT guidance and is contained in the SFEIS. Based upon a number of considerations, as described in the SFEIS, FTA has concluded that a) there are no feasible and prudent alternatives to the direct and/or constructive use of land from these Section 4(f) resources, and b) the Project includes all possible planning and measures to minimize harm to the Section 4(f) resources resulting from such use. The U.S. Department of Interior, in its August 19, 2004 comment letter to FTA, concurs that there are no prudent and feasible alternatives to the alignments of the Project as presented in the Section 4(f) evaluation.

D. Section 6(f)

Under Section 6(f) of the Land and Water Conservation Fund Act (LWCFA), parkland receiving funds through this program may not be converted to non-park use without the approval of the U.S. Department of Interior, National Park Service (NPS). In 1999, an assessment was made to determine whether the provisions of Section 6(f) of the LWCFA of 1965 apply to the Original Project. The Original Project entailed the relocation of the Naval and Military Museum and the excavation along the Buffalo River front for berthing the three Naval Vessels at Veteran's Memorial Park. The NPS reviewed the Original Project in conjunction with the OPRHP. The NPS and the OPRHP provided separate determinations that the Original Project would not have constituted a 6(f) conversion.

As part of their 6(f) findings for the Original Project in 1999, NPS and OPRHP included a condition that any operation of the Naval and Military Park in its new location by a private non-profit corporation be done in accordance with all Land and Water Conservation Fund (LWCF) program regulations (e.g., the facility must be open to the general public, reasonable fees are charged, and no residency use restrictions could be imposed). In addition, the agencies stated that any lease or license agreement the City of Buffalo would enter into with the private non-profit corporation to operate the facility would need to contain specific reference to compliance with LWCF program regulations, and that no commercial development was to take place at Veteran's Memorial Park.

Changes associated with the Project will involve a slight refinement in the ultimate location of the Naval and Military Park museum complex as compared to the Original Project, to allow for a re-watering of the Commercial Slip. The NPS deferred interpretation of the implications of this change to the OPRHP. On April 20, 2004, OPRHP concluded that, like the Original Project, this change would not constitute a Section 6(f) conversion, provided that the 1999 conditions (noted above) on the operation of the Naval and Military Park in accordance with all LWCF program regulations are adhered to.

E. Section 106

The effects of the Project on historic and archaeological resources were assessed in accordance with Section 106 of the National Historic Preservation Act of 1966. A study area—known as the Area of Potential Effect (hereinafter, "APE")—was identified in consultation with the SHPO, and historic and archaeological resources were identified

through field surveys and documentary research within the APE in consultation with the SHPO.

FTA completed a Section 106 process prior to approval of the Original Project, as part of the NEPA process completed in 1999. The Section 106 process was reopened since elements of the Original Project had been revised, and because work under the Erie Canal Harbor Project involved new information on National Register-eligible archaeological resources. As described in the SFEIS, the views of the public have been considered in the Section 106 process and incorporated into the redesign of the project.

As part of the 1999 FEIS for the Original Project, ESDC and FTA, in consultation with the SHPO, identified a property in the APE (i.e., archaeological remnants of the Commercial Slip walls) that meets the criteria for listing on the National Register (hereinafter referred to as "National Register Criteria").

- As part of the formulation of changes to the Project as documented in the SFEIS, ESDC and FTA, in consultation with the SHPO, determined that resources in the APE collectively comprise an archaeological district (hereinafter referred to as the "Erie Canal Harbor Archaeological District" or the "District") that is eligible for inclusion on the National Register. This District consists of: the archaeological remains of the Commercial Slip, prehistoric/pre-contact period archaeological resources encountered in the APE, potentially archaeologically sensitive areas beneath historic street remains, and the additional historic period archaeological resources in the APE (e.g., street remnants, building foundations) that contribute but are not individually eligible for the National Register.

The Project includes a comprehensive program to interpret the site and create an appreciation and understanding of the Erie Canal's impact on the City of Buffalo and the nation. The Project allows for the preservation and interpretation of the existing cultural and historical resources instead of avoiding them entirely.

The temporary removal and re-installation of extant Commercial Slip wall stones would affect the Slip's original historic context on the Project site. However, it would not affect the site's National Register eligibility associated with its importance to the development of Buffalo and the nation. Construction associated with re-watering the Commercial Slip and the new museum building for the Naval and Military Park could also affect National Register-eligible prehistoric or pre-contact archaeological resources.

ESDC also identified the potential for encountering deposits in the APE that were not excavated in prior investigations (e.g., in certain locations within future development sites), particularly in the easternmost portions of the Project site, which may meet the National Register Criteria. FTA has no responsibility for the future development parcels.

Due to the possibility of effects on resources eligible for listing on the National Register, FTA together with NFTA, the City of Buffalo, ESDC, and the SHPO prepared a Programmatic Agreement to establish stipulations for the management of the cultural resources in the APE. The Programmatic Agreement, effective December 7, 2004, is included in the SFEIS.

FTA invited the Advisory Council on Historic Preservation (ACHP) to participate in the Section 106 process, pursuant to Section 106 and Appendix A to Part 800, Criteria for Council Involvement in Reviewing Individual Section 106 Cases. The ACHP declined to participate.

F. Environmental Justice

The Erie Canal Harbor Project was evaluated in the SFEIS with respect to its impacts on minority and low-income communities. This analysis determined that environmental effects of the Project would not be disproportionately borne by minority or low-income populations. Therefore FTA finds that the Project is in accordance with the requirements of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," and the Department of Transportation Order to Address Environmental Justice in Minority Populations and Low-Income Populations.

G. Floodplains and Wetlands

Certain harbor elements (walkways along the Commercial Slip and South Basin) would encroach on the designated 100-year floodplain. Location of harbor elements and walkway facilities are compatible uses in floodplain areas, particularly along urbanized waterfronts. These components would not increase flood risks in and around the Project site. FTA therefore finds that the Project is in accordance with the requirements of Executive Order 11988.

The Project will not result in any impact to wetlands, as the Project site is urban in character and contains no wetland areas. Thus, FTA finds that the Project is in accordance with the requirements of Executive Order 11990.

H. Permits and Approvals

ESDC will obtain all necessary permits and approvals and comply with all applicable laws and policies in implementing the Project. The list of agency permits and approvals is contained in the SFEIS.

7. Supplemental Environmental Review and Re-Evaluation

ESDC, in cooperation with FTA and NFTA, shall initiate a supplemental environmental review of the Project, as outlined in 23 CFR 771.130, whenever: (1) Substantial changes to the Project would result in significant environmental impacts that were not evaluated in the SFEIS; (2) New information or circumstances relevant to environmental concerns and bearing on the Project or its impacts would result in significant environmental impacts not evaluated in the SFEIS; or (3) where the significance of new impacts is uncertain. A supplemental environmental review will not be necessary where the changes to the Project, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the SFEIS without causing other environmental impacts that are significant and were not evaluated in the SFEIS.

Pursuant to 23 CFR Section 771.129, a written evaluation of the SFEIS for the Project will be required before further approvals may be granted if it becomes necessary to make significant changes to the scope of the Project, or if major steps to advance elements under Phase Two of the Project (for which FTA funds are being used to complete) have not been taken within three years. As noted above, before considering a grant for Phase Two construction after three years, ESDC will conduct a re-evaluation of the SFEIS so that FTA can determine whether its conclusions remain valid. Additionally, as part of any procurement contracts for the Project, ESDC must commit to carry out, or cause to be carried out, the mitigation measures described in the SFEIS and herein.



Letitia Thompson
Regional Administrator, Region II
Federal Transit Administration

09-02-05
Date

ERIE CANAL HARBOR PROJECT RECORD OF DECISION

ATTACHMENT A SUMMARY OF MITIGATION MEASURES

The following mitigation measures will be undertaken to minimize impacts that may occur as a result of the construction and operation of the Erie Canal Harbor Project. Construction will cause the majority of the impacts. All mitigation measures will be incorporated into final design of the Project. The mitigation measures, which apply to all phases of construction, are listed briefly below by subject area. All of the mitigation measures from the 1999 ROD that are still relevant for this Project are included in this Attachment. Mitigation measures pertaining to construction of built elements of the Project, such as the Naval Basin, are excluded from this Attachment. A more detailed discussion of Project impacts and mitigation is contained in the Supplemental Final Environmental Impact Statement (SFEIS).

Land Use, Zoning, and Community Facilities

- While the Project is consistent with most of the goals/objectives of plans and policies that govern development in the area, amendment of one of these plans would be necessary to allow for its implementation. ESDC will coordinate with the City of Buffalo to facilitate the adoption of an amendment to the Waterfront Urban Renewal Plan by the Buffalo Common Council. This plan amendment will include:
 - A revised Land Use Plan to specifically permit the uses and site design features included under the Project;
 - Refinements to the Architectural/Urban Design Guidelines to be consistent with the Erie Canal themes of the Project; and
 - A revised Land Disposition Plan to add planned pedestrian and road rights-of-way, as well as revised locations for proposed new boat basins, the Commercial Slip, and future development sites, all consistent with the Project.

A draft of the Waterfront Urban Renewal Plan Amendment, as revised per comments received during the SDEIS public comment period and a public hearing before the City of Buffalo Planning Board on September 28, 2004, is presented in Appendix D of the SFEIS.

Archaeological Resources

- Activities to be undertaken as part of Phase Two of the Project (i.e., FTA-funded infrastructure improvements) are set forth in the Programmatic Agreement for the Project, between FTA, NFTA, ESDC, the City of Buffalo, and the SHPO, effective December 7, 2004, which has been executed by FTA, NFTA, ESDC, the City of Buffalo, and the SHPO. The Programmatic Agreement describes the consultation to be conducted during the Project's final design and construction processes to avoid or minimize permanent adverse effects of the Project on resources within the Erie Canal Harbor Archaeological District.

Water Resources

- As stipulated for the Original Project, ESDC will develop a Soil Erosion and Sediment Control Plan during final design, consistent with the State Pollution

Discharge Elimination System requirements, in order to mitigate effects on water quality during construction. The permitting process for the Project will include the filing of a revised joint permit application with USACE and NYSDEC. As part of the overall permitting process required for implementation of the Project, NYSDEC will review the construction and operational procedures associated with the plan to ensure that it is consistent with the policies contained in the Buffalo River Remedial Action Plan.

- As stipulated for the Original Project, conventional dredging conducted as part of the Project to establish the final harbor elevations will follow USACE procedures currently approved for the maintenance program in the Buffalo River Channel.
- In order to mitigate impacts of combined sewer overflow from the truncated Hamburg Drain upon the re-watered Commercial Slip, ESDC will include a system for re-circulation of water into the Commercial Slip to increase water flow after storm events and during stagnant periods. This system would involve the installation of conveyance lines and a pump station facility to draw in Buffalo River water and displace it at the head of the re-watered Slip. In addition, this system will include an appropriate aeration mechanism(s) designed to replenish dissolved oxygen levels in the Slip.
- ESDC will coordinate with BSA and the City of Buffalo during final design and commits to have one of the following systems in place and operational at the completion of the Phase Two program to control floatable debris associated with the truncation of the Hamburg Drain:
 - Construction of a stand-alone mechanical screening facility (either at the southwest corner of the Memorial Auditorium property or at another nearby location in the vicinity of the head of the re-watered Commercial Slip);
 - Construction of the underflow baffle/bar grate system at one of the aforementioned locations in such a manner that it could be later retrofitted to accommodate mechanical bar screening equipment; or
 - Construction of a underflow baffle/bar grate system as an interim system at one of the aforementioned locations, followed by a stand-alone mechanical screening facility, in the event that the approaches described in the two scenarios above cannot be achieved because of funding requirements, timing associated with the completion of Phase Two, or physical constraints to construction.
- ESDC will prepare an Operations and Maintenance Plan in close coordination and concurrence with the City of Buffalo, BSA, USACE, U.S. Coast Guard and other affected agencies. This plan will contain drawings, procedures, and responsibilities for regular harbor operations and maintenance activities, control of harbor drift, use/maintenance of the water re-circulation system, and maintenance of the floatable debris control system.

Coastal Zone Management and Navigable Waters

- As stipulated for the Original Project, ESDC will coordinate with USACE, U.S. Coast Guard, and NYSDEC on the final engineering design of the Proposed Project to address all design, construction, and operational issues associated with the harbor facilities. These issues will also be incorporated into the Operations and Maintenance Plan for the Project.

Site Contamination

- ESDC will comply with measures to mitigate potential adverse effects through following procedures identified in the NYSDEC-approved Soils Management Plan for the Original Project. This plan identified management procedures for dealing with various fill materials on the Project site during construction in accordance with NYSDEC guidance. Additional waste streams identified as part of the Project will not require any substantial changes to the overall approach in this plan. ESDC will coordinate with NYSDEC on any necessary amendments and/or supplemental information to the approved Soils Management Plan to address specific issues arising out of the Project.
- As specified for the Original Project, the USACE confined disposal facility will be used for the placement of dredged and excavated materials, conditional upon review of the chemical constituencies of the excavated materials. Only material dredged from the Buffalo River and upland material excavated approximately eight feet below the existing ground surface may be placed within this facility.
- Soil/sediment excavated above the water line will be considered for use as daily cover or fill as part of a beneficial use determination. Anticipated locations for disposal of contaminated soil/sediment would include, but are not limited to an existing landfill in the Town of Tonawanda (if this facility is still active during the construction period); and/or a Waste Management, Inc. landfill for disposal of contaminated wastes, located in Chaffee.
- ESDC will ensure that the construction contractor provides an onsite soils manager who will be responsible for the implementation of the Soils Management Plan.

Physical and Ecological Resources

- As specified for the Original Project, ESDC will ensure adherence to conditions within new and/or revised Section 401/404 and Section 10 Permits for the Project to avoid sedimentation effects during construction activities to sensitive habitats in the vicinity of the Project site, particularly two New York State Significant Coastal Fish and Wildlife Habitat areas, the Times Beach Area (about 1500 feet to the southwest of the site) and the North Buffalo Harbor Area (within 3500 feet of the site).
- Also as part of the Original Project, the U.S. Fish and Wildlife Service recommended the use of plant species as part of the Project that will enhance wildlife habitat, particularly for coastal bird species. ESDC will incorporate these recommendations in the final landscape design plan for Project.

Utilities

- In accordance with NYSDOT requirements specified for the Original Project, placement of any underground utility lines as part of final design of the Project shall come no closer than three feet from the footers of the Buffalo Skyway piers or as required by NYSDOT. Similarly, the existing drainage system (downspout piping

into storm sewer) for the Buffalo Skyway will be incorporated into any proposed changes to the Erie Canal Harbor drainage design. ESDC will incorporate these utility and drainage elements into the final design for the Project.

Other Construction Impacts


- **Noise.** As specified for the Original Project, short-term noise impacts associated with construction-related vehicles will be mitigated through the adherence to local and Federal regulations and standards pertaining to noise during the construction phase. Construction noise is regulated by Chapter 293-4(1) of the Charter and Code of the City of Buffalo, and by EPA emission standards for construction equipment.
- **Air Quality.** As specified for the Original Project, ESDC will use best management practices during construction to minimize potential fugitive dust and other air quality impacts. In addition, in order to minimize the amount of carbon monoxide emissions generated from motor vehicles, ESDC will make every effort during the construction phase to limit disruption to traffic, especially during peak travel periods.
- **Buffalo Skyway.** As specified for the Original Project, ESDC will coordinate all construction activities for the Project with NYSDOT to ensure the continued integrity of and access to the Buffalo Skyway piers. Activities will be administered through NYSDOT Temporary Occupancy/Use and Highway Work Permit Programs. In addition, the City of Buffalo will continue to work closely with NYSDOT regarding future development on parcels under the Skyway in Phase Three of the Project to resolve maintenance and liability issues.

FEDERAL TRANSIT ADMINISTRATION
SECTION 4(F) FINDING
BUFFALO INNER HARBOR PROJECT

Based upon our review of the Section 4(f) Evaluation for the Buffalo Inner Harbor Project, and the comments received from the U.S. Department of Interior, the Federal Transit Administration finds that there is no prudent and feasible alternative to the proposed action and that the Empire State Development Corporation (ESDC), on behalf of the Niagara Frontier Transportation Authority, has considered all reasonable avoidance alternatives to minimize harm to the park and recreation, and historic and archaeological resources within the study area.

This finding is subject to ESDC adhering to the stipulations outlined in the January 8, 1999 Department of Interior letter and the December 18, 1998 New York State Office of Parks, Recreation and Historic Preservation (OPRHP) letter, as well as the mitigation measures specified in the Section 4(f) Evaluation.

By:


Letitia Thompson
Regional Administrator