



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

FILED JUL 09 10 59 AM '19

July 5, 2019

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Transfer of Shoreline Trail Property at the former Bethlehem Steel Site from the Buffalo and Erie County Industrial Land Development Corporation to Erie County

Dear Honorable Members:

Enclosed please find a memorandum and proposed resolution from the Department of Environment and Planning authorizing Erie County to become a party to the New York State Brownfield Cleanup Program Brownfield Site Cleanup Agreement affecting the bike path right-of-way as identified above, as so related to Erie County's acquisition of the bike path right-of-way that was approved by this Honorable body on October 5, 2017.

Should your Honorable Body require further information, I encourage you to contact Director, Industrial Assistance Program Christopher S. Pawenski. Thank you for your consideration on this matter.

Sincerely yours,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/mw
Enclosure

cc: Thomas R. Hersey, Jr., Commissioner

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Department of Environment and Planning
Re: Transfer of Shoreline Trail Property at Bethlehem Steel Site from the Buffalo and Erie County Industrial Land Development Corporation to Erie County
Date: July 5, 2019

SUMMARY

The Erie County Legislature previously approved the purchase of a certain fifty-foot wide right-of-way (Property) from the Buffalo and Erie County Industrial Land Development Corporation (ILDC) for the purpose of establishing a bike path and utility corridor in COMM. 17E-5(2017). This Property is adjacent to Route 5 in the City of Lackawanna. As a condition of purchase, the County of Erie must become a party to that certain New York State Brownfield Cleanup Program (BCP) Brownfield Site Cleanup Agreement (BCA) that affects the Property.

FISCAL IMPLICATIONS

The County of Erie will purchase the Property from the ILDC for the nominal amount of ten dollars (\$10.00). There will be no impact to the Erie County budget.

REASONS FOR RECOMMENDATION

The ILDC has acquired an approximately 150 acre parcel of real property of the former Bethlehem Steel Site from Tecumseh Redevelopment Inc. (Tecumseh). The Property is contained within this larger parcel of property. The Property is intended to be a bike path and utility corridor. Erie County has recently completed Phase I of the bike path along NYS Route 5. It had been the intention of Erie County to have ownership of the Property as the ILDC indicated this intention as part of its land purchase and Property acquisition negotiations with Tecumseh.

BACKGROUND INFORMATION

The Property has been planned to be used for the continuation of the Shoreline Trail that now extends from the Niagara County line south to the Buffalo/Lackawanna border. Sites enrolled within and remediated under the BCP are able to obtain certain liability relief from New York State. The Property is enrolled within the BCP as memorialized within that certain BCA by and between Tecumseh, ILDC, and the New York State Department of Environmental Conservation (DEC). The land purchase agreement by and between Tecumseh and the ILDC and the related Declaration of Environmental Covenants placed upon the Property requires the ILDC and all future owners of the Property to be bound by and assume, perform, undertake and discharge all of the terms, conditions and responsibilities of the BCA, as a condition precedent to permitting Tecumseh, the ILDC, and the County of Erie to obtain the liability protections contained with the BCP and BCA. In order to become a party to the BCA affecting the Property, the DEC requires that the County of Erie provide proof that it has the authority to enter into the BCA.

CONSEQUENCES OF NEGATIVE ACTION

Failure to adopt this resolution will then cause Erie County to not become party to the BCA affecting the Property and will result in the inability of the ILDC to convey the Property to Erie County as so desired for the benefit of the residents of Erie County and all users of the Property. Future use as a public utility corridor may be hindered as well.

STEPS FOLLOWING APPROVAL

Upon approval of this resolution by the Erie County Legislature, an agreement between Erie County, Tecumseh, the ILDC, and the DEC will be executed and Erie County will be added as an additional party to the existing BCA affecting the Property.

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF ENVIRONMENT AND PLANNING

RE: Transfer of Shoreline Trail Property at the former Bethlehem Steel Site from the Buffalo and Erie County Industrial Land Development Corporation to Erie County

WHEREAS, the County of Erie desires to remediate brownfield properties and clear former industrial sites for productive reuse; and

WHEREAS, the Buffalo and Erie County Industrial Land Development Corporation (ILDC), has as one of its goals and authorities, the ability to hold industrial property for management and improvement; and

WHEREAS, the ILDC has recently acquired approximately 150 acres of former Bethlehem Steel Site property (ILDC Property) from Tecumseh Redevelopment Inc. (Tecumseh) for redevelopment as a modern industrial park; and

WHEREAS, the Shoreline Trail is a walking and biking trail extending from the Niagara County line to the Buffalo/Lackawanna border immediately adjacent to the ILDC Property; and

WHEREAS, it is the goal of Erie County and New York State to continue the Shoreline Trail from the Buffalo/Lackawanna boarder to Dona Street in the City of Lackawanna and eventually to Woodlawn Beach State Park in the Town of Hamburg, said continuation to traverse along the ILDC Property within a certain fifty-foot wide right-of-way (Property) located within and upon the ILDC Property; and

WHEREAS, the ILDC land purchase agreement with Tecumseh that enabled the ILDC to take title to the ILDC Property as described above is subject to certain covenants and agreements set forth in the Declaration of Covenants (Declaration) that runs with the land and binds the ILDC and its successors and/or assigns requiring that all subsequent land owners be bound by the existing Brownfield Cleanup Program (BCP) and Brownfield Site Cleanup Agreement (BCA) affecting the both the ILDC Property and the Property; and

WHEREAS, real property subject to a BCA that is remediated in accordance with the BCP allows those entities that are parties to a BCA to obtain certain liability relief and protections from New York State; and

WHEREAS, to enable the continuation of the Shoreline Trail as described herein, Erie County must acquire title to the Property; and

WHEREAS, Erie County has completed construction of the Shoreline Trail upon the Property; and

WHEREAS, the Property is enrolled with the BCP and currently subject to a BCA executed by and between the ILDC, Tecumseh, and the New York State Department of Environmental Conservation (DEC); and

WHEREAS, Erie County has previously approved of the purchase of the Property pursuant to that certain resolution adopted by the Erie County Legislature on October 5, 2017 and more particularly described as Resolution No. COMM. 17E-5(2017); and

WHEREAS, to comply with the Declaration, and to obtain the protections provided to parties that are bound by the BCA and the BCP, it is necessary that Erie County becomes a party to the BCA affecting the Property.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive is authorized to negotiate and execute any and all documents and agreements with the ILDC, Tecumseh, and the DEC, including but not limited to, a BCP "Application to Amend Brownfield Cleanup Agreement and Amendment" currently affecting the Property, thereby permitting Erie County to become a party to the BCP and the BCA affecting the Property; and be it further

RESOLVED, that the County Executive, is authorized, on behalf of Erie County, to execute and submit any and all BCP related documents to the DEC to properly comply with the BCA and to obtain the protections of the BCP; and be it further

RESOLVED, that the Clerk of the Legislature be directed to send certified copies of this resolution to the County Executive; the Director of the Division of Budget and Management; the County Comptroller; the Director of Real Property Tax Services; the County Attorney; the Commissioner of the Department of Environment and Planning; and Christopher S. Pawenski in the Department of Environment and Planning.