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STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
LANSING



DR. WILLIAM E. MORITZ
DIRECTOR

January 29, 2016

Commandant (CG-BRG-2)
U.S. Coast Guard Headquarters
Stop 7418
2703 Martin Luther King Jr. Avenue
Washington, DC 20593-7418

RE: Public Notice 09-01-16

This letter and the attached exhibits are submitted on behalf of the Michigan Department of Natural Resources (MDNR) in response to Public Notice 09-01-16, relating to the Detroit International Bridge Company's permit application for the Ambassador Bridge Enhancement Project. Specifically, the MDNR wishes to express concern about a statement included in the public notice document itself.

The first paragraph of page one of Public Notice 09-01-16 states that, "The applicant and owner of the existing Ambassador Bridge, the Detroit International Bridge Company (DIBC), has entered into an agreement with the City of Detroit allowing DIBC to construct the project as originally proposed and evaluated in the 2009 Coast Guard *Final Environmental Assessment (EA)* using portions of Riverside Park located in Detroit, Michigan."

Unfortunately, as set forth more fully below and in the attached exhibits, the City of Detroit (City) lacks the legal authority to convey the relevant portions of Riverside Park. Therefore, the land exchange agreement (agreement), at this time, cannot and does not properly convey to DIBC the right to use portions of Riverside Park for the Ambassador Bridge Enhancement Project.

The agreement (a copy of which is attached as Exhibit A to this comment letter) calls for, among other things, the City to first convey an air rights easement above Riverside Park and, later a portion of the Riverside Park land to DIBC in exchange for both monetary payment and the exchange of a nearby parcel of land currently owned by DIBC.

Specifically, the agreement calls for two different closing dates. At the first closing date, the City will convey to DIBC an air rights easement over portions of Riverside Park. In exchange, DIBC will convey to the City a nearby parcel of land upon which an abandoned warehouse is located, as well as a payment of \$3 million. (Exhibit A, 2.C, 2.D., and 3.A.)

At the second closing date, the City will convey to DIBC the Riverside Park site, as well as an acknowledgment that DIBC can use the air rights easement above the park site. In exchange, DIBC will convey a waterfront easement to the City for the purposes of constructing and maintaining a pedestrian walkway along the waterfront. (Exhibit A, 4.E. and 5.A.)

However, because the City purchased and improved Riverside Park with funds obtained through state and federal grant programs, neither of the transactions called for in the agreement, including the conveyance of an air rights easement, can lawfully take place without approval from both the MDNR and the United States National Park Service. Approval is unlikely to be granted in this case, at least in the foreseeable future, because the warehouse parcel offered in exchange for the recreational property is fully occupied by a fenced-off warehouse and parking lot, and is encumbered by an existing lease.

The grant funding which the City used to purchase and improve Riverside Park came from the Michigan Natural Resources Trust Fund and the United States Land and Water Conservation Fund.

Michigan Natural Resources Trust Fund

The Michigan Natural Resources Trust Fund (NRTF) was established in what is now Part 19, Natural Resources Trust Fund, of the Michigan Natural Resources and Environmental Protection Act and placed in the Michigan Constitution in 1984. The NRTF receives interest and earnings from an investment that was created using funds received by the State of Michigan from oil, gas, and other mineral leases. The NRTF is used to make grants to state and local government agencies for the acquisition of lands for recreational uses or the development of public recreational facilities. Mich. Const. art. 9, § 35; Mich. Comp. Laws § 324.1901 *et seq.*

NRTF funds were provided to the City by the MDNR for development of Riverside Park pursuant to an NRTF Development Project Agreement dated September 1, 1998. (Exhibit B.) The NRTF Development Project Agreement provides that the City cannot lawfully convey the park land "except with the written approval and consent" of the MDNR, and that the park must remain open to the public and must be used for recreational purposes. (Exhibit B, ¶ 10.) The NRTF Development Project Agreement further provides that, should the City breach the agreement, the MDNR may seek specific performance of the agreement or monetary damages. (Exhibit B, 11.)

There is a method by which an NRTF grant recipient (such as the City) can apply to the MDNR for approval to convert dedicated park land to a non-recreational use. This is set forth in NRTF Board Policy 94.1. (Exhibit E.) However, it is unlikely that such approval would be granted by the MDNR in this case, at least in the foreseeable future, because NRTF Board Policy 94.1 requires that, in exchange for converting dedicated park land to a non-recreational use, the NRTF grantee must provide a substitute parcel for use as dedicated park land, and this substitute parcel must be at

least equivalent to the converted parcel in both monetary value and recreational value. (Exhibit E, p 19.)

The parcel that DIBC has agreed to convey to the City in exchange for Riverside Park is fenced off and has a warehouse and parking lot on it, and may be contaminated. The MDNR is not likely to approve the conversion of dedicated park land in exchange for a site that contains both a warehouse and a parking lot, because the warehouse site does not offer equivalent recreational value.

Absent MDNR approval, conveyance of any portion of Riverside Park by the City to any entity, including air rights, would constitute a violation of the September 1, 1998 NRTF Development Project Agreement for which the MDNR could seek specific performance.

Land and Water Conservation Fund

The Land and Water Conservation Fund (LWCF) is a federal fund administered by the United States National Park Service, which is a bureau of the Department of Interior.

Michigan law allows the MDNR to request LWCF funds from the Department of Interior and convey those funds to local units of government in Michigan *only* if the local unit of government uses those funds to acquire or develop land "for public outdoor recreation use." Mich. Comp. Laws § 324.70304.

Once a local unit of government has acquired or developed land with LWCF funds, it cannot lawfully convert that land to any other use without the approval of the federal government. 54 U.S.C. § 200305(f)(3). Similar to the MDNR's policy, the federal government can only approve a conversion of property that was acquired or developed with LWCF funds if it finds the proposed conversion to be "in accord with the then existing comprehensive statewide outdoor recreation plan" and only "upon such conditions as [it] deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location." *Id.*

Additionally, it is not the City that would seek the federal approval to convert the Riverside Park property. Rather, the City would have to demonstrate to the MDNR that the proposed conversion would satisfy federal law, and then the MDNR could request the conversion. As explained above, it is unlikely that the MDNR would consider the warehouse site to be the recreational equivalent of Riverside Park at this time, and so it is unlikely that the MDNR would request the necessary federal approval on behalf of the City unless and until substantial changes have been made to the warehouse site.

Even if the MDNR were to request federal approval for the proposed conversion, there would need to be an extensive federal review process. Federal law requires that, before any conversion be approved, there must be an Environmental Assessment under the National Environmental Policy Act, unless the proposed conversion is a "small

conversion.”¹ Based on communications between the MDNR and the National Park Service, the conversion contemplated in the agreement would not constitute a “small conversion,” and therefore an Environmental Assessment would most likely be required before the federal government could approve the proposed conversion.

In summary, the transactions described in the agreement between the City and DIBC cannot lawfully take place without state and federal approval, neither of which have been obtained, both of which are unlikely at this time and under present conditions. This includes the conveyance of an air rights easement, because such a transaction would constitute a conversion of a portion of Riverside Park (the air rights), which cannot lawfully occur without the necessary approvals. For these reasons, the statement in Public Notice 09-01-16 that the agreement between DIBC and the City will allow DIBC “to construct the project as originally proposed and evaluated in the 2009 Coast Guard *Final Environmental Assessment (EA)* using portions of Riverside Park located in Detroit, Michigan” is inaccurate and should not provide the basis for the Coast Guard to proceed with DIBC’s permit application.

Sincerely,



Dr. William E. Moritz
Director
517-284-6367

Attachments

cc: Mr. Eric Brown, Governor’s Washington, DC Office
Mr. Trevor VanDyke, Legislative Liaison and Policy Advisor, MDNR

¹ This requirement is set forth in chapters 4-6 of the National Parks Service Land and Water Conservation Fund Manual, which is available online at <http://www.nps.gov/ncrc/programs/lwcf/manual/lwcf.pdf>.