

Empire State Development

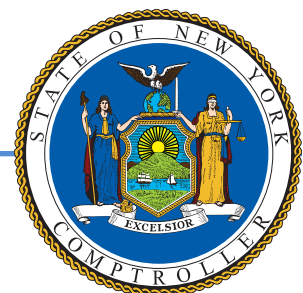
Real Property Portfolio

Report 2022-S-14 | August 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objectives

To determine whether Empire State Development (ESD) fully and accurately accounted for and reported on its real property holdings and the need to either hold or dispose of properties, and if ESD disposed of real property in a manner beneficial to the State. The audit covered the period from April 2019 through June 2023.

About the Program

ESD's mission is to promote a vigorous and growing state economy; encourage business investment and job creation; and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing, and other forms of assistance. ESD, through the Urban Development Corporation Act, can dispose of real property and acquire it to own, hold, improve, and rehabilitate. Furthermore, ESD may transfer to a subsidiary any real property for any project to carry out the purposes of growing the State economy, preventing economic stagnation, encouraging job creation, reducing the level of public assistance to indigent individuals/families, and achieving stable and diversified local economies. ESD's property holdings are diverse in location, size, value, and use; and are distinct to the circumstances (e.g., purchased or transferred) in which ESD came into possession. Economic development projects resulting from the acquisition and disposing of properties align with ESD's mission and include developing affordable housing, redeveloping blighted areas, and encouraging investment in local economies. ESD centrally oversees real estate development, subsidiaries, design and construction, and environmental planning. Most of ESD's properties are owned and managed by individual ESD-owned subsidiary corporations that have unique missions focused on economic development projects in particular geographic areas.

To ensure greater efficiency, transparency, and accountability for the State's public authorities, such as ESD, the State enacted the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009. Both pieces of legislation made key amendments to the Public Authorities Law (PAL) regarding the accounting of, reporting on, and disposal of authorities' real property holdings. Specifically, PAL §2896 requires public authorities to maintain adequate inventory controls and accountability systems for all property under the authority's control; periodically inventory property to determine properties that can be disposed of; and no less than annually publish a report listing all real property of the authority, including full descriptions of properties that were disposed of during the reporting period along with the name of the purchaser. Furthermore, PAL §2897 outlines requirements of public authorities for the disposition of real property.

Additionally, in July 2023, the Executive announced several actions to promote housing growth, as part of what the Executive stated are efforts aimed at addressing New York's housing problems, largely driven by a severe housing shortage. One such action was the issuance of Executive Order 30, which encourages and supports developing housing across the State, particularly multifamily, affordable, and supportive housing.

Key Findings

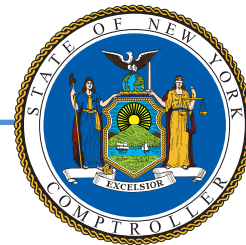
- ESD did not comply with PAL's requirements to publish a report detailing its real property portfolio, including descriptions of properties disposed of during the reporting period. After the engagement of our audit, ESD officials created and published their real property portfolio report in December 2022, which included its inventory of real property and dispositions for the fiscal year ending

March 31, 2022. Prior to the publication of the report, ESD provided us with five inaccurate or incomplete iterations of its property list. Some of the changes to the real property portfolio were a result of expected shifts in ESD's holdings, such as the disposition of properties over time. However, other changes resulted from inaccuracies and incomplete data that occurred because ESD has not established strong processes or procedures to obtain and ensure the reliability of the information it maintains on its real property portfolio. Due to the lack of established processes and procedures, the risk remains that the published listing may continue to be unreliable.

- As of June 2023, ESD reported it owned 130 properties—of those, 71 (55%) are vacant. Notably, three of the vacant properties, former correctional facilities (Downstate, Bayview, and Lincoln), are located in or near New York City and, according to ESD, have potential for use in developing additional housing (including affordable housing). Additionally, 28 (39%) of the 71 vacant properties are located in Niagara Falls and all but one don't have definitive development plans. ESD has issued requests for proposals for all three prisons to be redeveloped.
- ESD disposed of 10 properties below fair market value between April 2019 and May 2023. While each of the 10 disposals was completed in compliance with PAL's requirements, certain below-market transfers for seven properties, disposed of by one of ESD's subsidiaries, did not include sufficient information as to the anticipated economic benefits of the projects compared to the value received and the fair market value of the properties. Specifically, the subsidiary disposed of seven properties acquired as part of the second phase of the State's Buffalo Billion initiative for \$3 that were originally purchased for \$1.36 million.

Key Recommendations

- Develop and implement processes and procedures to ensure ESD's real property portfolio is accurate and required reporting and publishing requirements are met.
- Periodically assess vacant properties and identify solutions that maximize the economic benefits to the surrounding localities and the State, which may include, but not be limited to, collaboration with other State entities to align solutions with the State's goals.
- Establish and implement policies directing ESD and subsidiary management to provide sufficiently detailed information for proposed transfers, especially those below fair market value.



Office of the New York State Comptroller Division of State Government Accountability

August 21, 2024

Hope Knight
Commissioner, President, and CEO
Empire State Development
633 3rd Avenue
New York, NY 10017

Dear Commissioner Knight:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Real Property Portfolio*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 and Article X, Section 5 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
ESD	Empire State Development	<i>Auditee</i>
EO 30	Executive Order 30	<i>Key Term</i>
GPP	General Project Plan	<i>Key Term</i>
PAL	Public Authorities Law	<i>Law</i>
PILOT	Payment in Lieu of Taxes	<i>Key Term</i>
RFP	Request for proposal	<i>Key Term</i>
UDC	Urban Development Corporation	<i>Auditee</i>
USAN	USA Niagara Development Corporation	<i>Auditee Subsidiary</i>

Background

The Urban Development Corporation (UDC)—a New York State public authority—was created in 1968 by the UDC Act to support the State’s economy and prevent economic stagnation. In 1995, to consolidate government operations and improve efficiencies, the operational efforts of the Department of Economic Development, UDC, and other economic development agencies were consolidated and have since operated as Empire State Development (ESD). ESD’s mission is to promote a vigorous and growing state economy; encourage business investment and job creation; and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing, and other forms of assistance. As part of fulfilling its mission, ESD invests in infrastructure and innovation; supports the development of new businesses and industries that will contribute to the development of the economy; provides early-stage support for new ventures (including the research and development of new technologies); and strengthens the State’s innovation-based economy through partnerships with universities.

Public authorities, such as ESD, can make valuable contributions to New York by financing, constructing, and operating capital improvements that benefit the public, and by working with public and private sector partners to spur economic development and meet public needs. To facilitate greater efficiency, transparency, and accountability for the State’s public authorities, the State enacted the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009. Both pieces of legislation made key amendments to the Public Authorities Law (PAL) regarding the accounting of, reporting on, and disposal of authorities’ real property holdings.

Specifically, PAL §2896 requires public authorities to:

- Develop comprehensive guidelines detailing the authority’s policy and instruction on the use, awarding, monitoring, and reporting of contracts for the disposal of property.
 - Guidelines must be approved by the authority and subsequently reviewed and approved annually by the authority’s governing board.
- Maintain adequate inventory controls and accountability systems for all property under the authority’s control.
- Periodically inventory property to determine properties that can be disposed of.
- Produce and no less than annually publish a report listing all real property of the authority, including full descriptions of properties that were disposed of during the reporting period along with the name of the purchaser.

Additionally, ESD is required to annually report—and certify to the accuracy of—information on their real property holdings to the State Comptroller through the Public Authorities Reporting Information System (an online reporting system jointly maintained by the State Comptroller and Authorities Budget Office and used by authorities to comply with reporting requirements).

Furthermore, PAL §2897 outlines requirements of public authorities for the disposition of real property. Properties should be disposed of for their fair market value through sale, exchange, or transfer for cash, credit, or other property based on an independent appraisal. All disposals should be made after publicly advertising for bids, with the following exceptions:

- Disposals may be negotiated or made by public auction, but subject to obtaining such competition as feasible, if:
 - The fair market value of the property does not exceed \$15,000;
 - Bid prices after advertising are not reasonable or have not been independently arrived at in open competition; or
 - The disposal will be to the State or any political subdivision and the estimated fair market value of the property and other satisfactory terms of the disposal are obtained by negotiation.

Authorities must prepare explanatory statements of the circumstances of each disposal made by negotiation when the fair market value exceeds \$100,000; when the property was disposed of by lease if the estimated annual rent over the lease term exceeds \$15,000; or when the property was disposed of by exchange, regardless of value, when any part of the consideration is real property.

PAL §2897 also allows for disposals for less than fair market value in certain instances. These include if the property is transferred to a government or other public entity and the terms and conditions of the transfer require that the ownership and use of the property remain with the government or any other public entity. Below-market transfers are also allowed when the transfer is within the purpose, mission, or governing statute of the public authority.

When proposing below-market transfers, authorities must provide certain information to their boards and the public. This includes a description of the property, an appraisal of the fair market value of the property and any other information establishing the fair market value sought by the board, a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer. Benefits could include, but are not limited to, the kind, number, location, wages, or salaries of jobs created or preserved as required by the transfer, and the benefits, if any, to the communities where the property is located. Lastly, authorities must present to their governing boards a statement of the value to be received compared to the fair market value. Prior to approving disposals for less than fair market value, the board should consider this information and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose as the transfer.

The UDC Act authorizes ESD to acquire real property to own, hold, improve, and rehabilitate; and to sell, lease, transfer, or otherwise dispose of the property. Furthermore, ESD may transfer to any subsidiary any real property for any project to carry out the purposes of growing the State economy, preventing economic

stagnation, encouraging job creation, reducing the level of public assistance to indigent individuals/families, and achieving stable and diversified local economies. ESD's acquisition and disposal of properties is a byproduct of ESD's broader economic development mission to grow and invigorate the State's economy.

Generally, ESD has a non-financial interest in its properties, and any monies received go toward economic development projects. ESD's property holdings vary by location, size, value, and use; and are distinct to the circumstances (e.g., purchased or transferred) in which ESD came into possession. Economic development projects resulting from acquiring and disposing of properties should align with ESD's mission and include developing affordable housing, redeveloping blighted areas, and encouraging investment in local economies. Generally, the acquisition and disposal of properties are part of a broader project defined in a General Project Plan (GPP). The GPP helps define the project's objectives, scope, and anticipated community economic benefits (e.g., affordable housing, schools, open space).

ESD's Real Estate Development and Planning Unit centrally oversees community relations, real estate development, subsidiaries, design and construction, and environmental planning. However, most of ESD's properties are owned and managed by individual ESD-owned subsidiary corporations that have unique missions focused on economic development projects in a particular geographic area. USA Niagara Development Corporation (USAN) is one such subsidiary corporation.

Many of ESD's properties are in long-term leases. Through the lease agreements, ESD transfers the management, development, and operation of the property to the tenant. The use of long-term leases is often an incentive for a developer to utilize and ultimately purchase the property. Under the agreement, the tenant, rather than paying taxes to localities on the full assessed value of the property, makes Payments in Lieu of Taxes (PILOT) that escalate over time. Once the PILOT reaches the full local tax liability, the tenants often can purchase the property outright.

Additionally, in July 2023, the Executive announced several actions to promote housing growth, as part of what the Executive stated are efforts aimed at addressing New York's housing problems, largely driven by a severe housing shortage. One such action was the issuance of Executive Order 30 (EO 30).

ESD Subsidiary: USA Niagara Development Corporation

USAN was formed in 2001 to further economic development and revitalization in the City of Niagara Falls. In March 2019, USAN acquired 31 individual properties valued at \$14.7 million in Niagara Falls as part of the Downtown Strategic Land Acquisition Program. This program was funded through the second phase of New York's Buffalo Billion initiative—a billion-dollar investment in the Buffalo area economy to create thousands of jobs and spur billions in new investment and economic activity over several years. The purpose of the acquisition of these long-dormant properties, located near Niagara Falls State Park, was to remove blight from the downtown area and expand the properties' uses toward establishing a year-round, sustainable neighborhood.

As of June 2023, USAN owns 29 (41%) of the 71 total properties owned by ESD subsidiaries. Ownership of the other 42 properties is split among 15 other ESD subsidiary corporations.

EO 30 encourages and supports developing housing across the State, particularly multifamily, affordable, and supportive housing, by directing Affected State Entities (generally, those authorities and agencies headed by individuals appointed by the Executive) to consider the goal of creating additional housing in any policy or programmatic decisions and, where appropriate, collaborate with other Affected State Entities to achieve that goal. Specifically, all Affected State Entities shall review any parcels of developed or undeveloped land under their ownership to identify potential sites for housing development or if any such parcels could be used to aid in housing development.

Audit Findings and Recommendations

ESD did not comply with PAL’s requirements to publish a report detailing its real property portfolio, including descriptions of properties disposed of during the reporting period. After the engagement of our audit, ESD officials created and published their real property portfolio report in December 2022, which included its inventory of real property and dispositions for the fiscal year ending March 31, 2022. Prior to the publication of the report, ESD provided us with five inaccurate or incomplete iterations of its property list. Due to the lack of established processes and procedures to ensure the reliability of the listing, the risk remains that the published listing may continue to be unreliable.

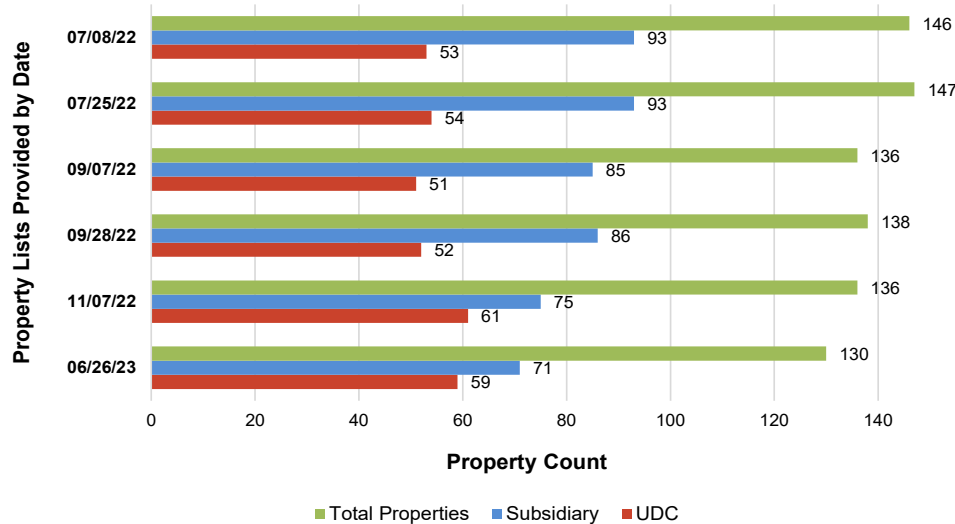
As of June 2023, ESD reported it owned 130 properties—of those, 71 (55%) are vacant. Notably, three of the vacant properties, former correctional facilities (Downstate, Bayview, and Lincoln), are located in or near New York City. ESD identified these properties for potential in developing additional housing (including affordable housing) in line with the goals of EO 30—requests for proposals (RFPs) have been issued for all three properties. Also, of the 71 vacant properties, 28 (39%) are in Niagara Falls, owned by USAN, and all but one don’t have definitive development plans. We also recommend ESD improves the detail of information management receives and uses when determining whether transactions, especially those below fair market value, should be made.

Reporting and Accounting of Real Property

In July 2022, after we initially requested ESD’s real property listing, officials stated that they hadn’t completed the report despite annually certifying to the Comptroller that an accurate list was maintained and published. However, officials stated they planned to compile the listing of real property and issue the report online. In December 2022, the real property listing was completed and published online, and was subsequently updated in June 2023.

Publishing an accurate inventory of potentially available property for development can generate interest from entities in various industries and spur discussions among investors about potential uses, which may include building affordable housing. Both are important to support local communities and economies and encourage business investments and job creation. Further, publicly reporting the State’s disposition and holding of real property is important to support transparency in government. However, for these benefits to be effectively realized, the information published needs to be accurate and complete. Prior to the initial publication of the report in December 2022, officials provided us with several iterations of its property lists that were incomplete or inaccurate, resulting in fluctuations to the total properties ESD accounted for in its portfolio (see Figure).

ESD Real Property List Changes



The initial real property list, provided to us on July 8, 2022, had a total of 146 properties (53 owned by ESD and 93 owned by ESD subsidiaries). Between July 8, 2022 and September 28, 2022, ESD provided three additional lists. The lists were amended for various reasons, such as formatting issues, inclusion of duplicate properties, and adding or removing properties due to ownership status, such as which entity owned the property (ESD or a subsidiary).

Officials stated that the list provided on September 28, 2022, would be the final property list. However, after receiving this list, based on our analysis of 2021 property assessment data from local assessment rolls¹ provided by the Department of Taxation and Finance and available on the State’s [Open Data](https://data.ny.gov/Government-Finance/Property-Assessment-Data-from-Local-Assessment-Roll/7vem-aaz7/data) website, and 2019 property assessment data from local assessment rolls provided by the New York City Department of Finance² and available on the City’s [Open Data](https://data.cityofnewyork.us/City-Government/Property-Valuation-and-Assessment-Data/yjxr-fw8i/data) website, we identified 48 additional properties that had ESD or an ESD subsidiary reported as the property owner but were not on the list ESD provided. We provided ESD officials with information on these 48 properties. Subsequently, ESD reviewed these properties and, after considering reasons such as transfers of ownership and property groupings, provided us an updated list in November 2022 that included seven additional properties.³ In June 2023, ESD provided its final property update, which included the addition of one other property.⁴ Notably, this property was included in

1 <https://data.ny.gov/Government-Finance/Property-Assessment-Data-from-Local-Assessment-Roll/7vem-aaz7/data>

2 <https://data.cityofnewyork.us/City-Government/Property-Valuation-and-Assessment-Data/yjxr-fw8i/data>

3 The difference in property counts between the 9/28 and the 11/7 lists was the result of ESD consolidating 10 subsidiary-owned properties into three properties; transferring four properties from subsidiary-owned to UDC-owned; and adding five properties to be UDC-owned.

4 The difference of six less total properties is the result of ESD removing seven properties based on them being disposed of and adding the one property based on our tax assessment data analysis.

the list of 48 properties we provided ESD with in September 2022. As of June 2023, ESD reportedly owns 130 properties, including 59 (45%) properties owned by ESD and 71 (55%) properties owned by ESD-subsidary corporations.

Some of the changes to the real property portfolio were a result of expected shifts in ESD's holdings, such as the disposition of properties over time. However, other changes resulted from inaccuracies and incomplete data that occurred because ESD has not established strong processes or procedures to obtain and ensure the reliability of the information it maintains on its real property portfolio. As a result, the risk remains that the published listing may continue to be unreliable.

ESD attributes our findings to several factors, including the management of properties being spread across several teams of employees within ESD and that most properties are managed by subsidiaries. In October 2022, ESD hired a new employee to head its Real Estate and Development Planning Unit. In response to our preliminary findings, officials stated the new management has instituted quarterly meetings to review the acquisition and disposition of property to ensure ESD's property inventory is accurate and required reporting and publishing requirements are met.

Vacant Property

As of June 2023, ESD reported it owned 130 properties—of those, 71 (55%) are considered vacant, including both vacant parcels and parcels with vacant buildings. When actively developing land, ESD or its subsidiary creates a development plan that details the overall strategy of ESD, the subsidiary, or a developer for the proper planning and sustainable development of an area, and generally consists of a written statement and accompanying maps. The plan usually includes broad goals for specific topics (e.g., housing, infrastructure, community facilities) that are reinforced by more detailed policies and objectives.

Notably, three of the vacant properties, former correctional facilities (Downstate, Bayview, and Lincoln), are located in or near New York City, which according to a report⁵ issued by the New York City Comptroller, is experiencing the tightest housing market in over 50 years. Rental vacancy rates fell to a multi-decade low of 1.4%, down dramatically from 4.5% in 2021 and 3.63% in 2017. The vacancy rate of apartments that rent below \$1,650 was less than 1%. According to ESD, these properties were developed to support hundreds to thousands of people and have strong infrastructure and utility systems, including water, electricity, and waste treatment. Therefore, based on their assessment, there is a potential for these properties to be used to further the goals of EO 30 to create additional housing (including affordable housing) in the State. ESD issued RFPs for all three properties that included a housing component.

Of the 71 vacant properties, 28 (39%) are in Niagara Falls and owned by USAN. USAN acquired 24 of these properties in 2019 with the broad goal of developing

5 <https://comptroller.nyc.gov/reports/spotlight-new-york-citys-housing-supply-challenge/>

them to support the economic growth of the area. USAN developed a strategic development plan and worked to make these properties available for development by issuing several RFPs between 2016 and 2023 for 17 vacant properties, including three RFPs issued between September 2021 and March 2023 for 15 vacant properties. While ESD officials stated USAN remains committed to developing or redeveloping all the acquired properties, some properties have shown to be more desirable to developers and, ultimately, 28 of USAN's properties remain vacant, with all but one having no established plan for development.

Only 12 of the 71 vacant properties currently have ongoing development plans. While some of the remaining properties cannot be developed (e.g., some are remaining parcels from a larger development project), several others can. For more information on vacant land owned by ESD or an ESD subsidiary, click on the image to view our interactive map.



Photo Source: [gettyimages.com/CHRISsadowski](https://www.gettyimages.com/CHRISsadowski) (92266946)

Officials stated ESD continues to implement the policy directives of the Executive and EO 30 and has placed significant emphasis on housing and affordable housing. For example, officials stated that they have issued three separate RFPs to redevelop the closed prisons with affordable housing components. To carry out these policy directives, a complete and accurate inventory is a prerequisite.

Property Disposals Below Fair Market Value

Between April 2019 and May 2023, ESD and its various subsidiaries disposed of 14 properties. Four were disposed of at or above their fair market value; for example, one property was disposed of through a negotiated transfer for \$1.5 million (\$50,000 more than the fair market value) to develop additional corporate office space in downtown Albany. The other 10 disposals were below fair market value and completed through various methods, such as soliciting for public bids via RFPs, or through negotiated sales.

While each of the 10 disposals was completed in compliance with PAL's requirements, certain below-market transfers for seven properties disposed of by USAN did not include detailed information as to the anticipated economic benefits of the projects compared to the value received and the fair market value of the properties.

In March 2019, USAN, as part of a strategic land acquisition program funded through the second phase of the State’s Buffalo Billion initiative, acquired 31 properties for the fair market value of \$14.7 million in the city of Niagara Falls. After acquiring these properties, USAN developed strategies to use the properties for new mixed-use developments. As of June 2023, USAN disposed of seven properties for a total of \$3 after purchasing these properties for \$1.36 million (see Table).

USAN Properties Disposed of for Less Than Fair Market Value (Niagara Falls)

Transaction	Property Address	RFP Issued	Disposal Date	Purchase Price	Sale Price	Project	Current Status
1	466 3rd St.	July 2019	10/20/21	\$200,000	\$1	Mixed-use commercial residential	Completed October 2022
2	500 3rd St. 512 3rd St. 518 3rd St. 503 Main St.	July 2019	11/21/22– 5/11/2023	\$965,000	\$1	Mixed-use commercial	Currently available for lease (as of May 2024)
3	554 3rd St. 558 3rd St.	N/A*	7/30/21	\$195,000	\$1	Mixed-use commercial residential	Expected completion June 2024

*These properties were not included in the July 2019 RFP and were disposed of through negotiation between USAN and the developer. The developer owned adjacent properties and the transfer incentivized the continuation of a mixed-use development including residential, commercial, and retail space.

The circumstances of each below-market transfer vary. For instance, for Transaction 1, USAN issued an RFP in July 2019 but received no responses; however, in November 2020, a developer sent USAN a proposal to develop the property. The result was a sale of the property for \$1 to the developer. Transaction 2 was the product of a single proposal received in response to the July 2019 RFP, and Transaction 3 was a result of negotiations between USAN and a corporation that owned nearby properties to incentivize further development of the area.

For each of these disposals, USAN presented the information that complied with the minimum requirements of the PAL to its board for approval. However, the information presented lacked detail to more effectively evaluate the transactions prior to their approval beyond broad generalizations about new developments.

PAL requires State authorities’ boards to consider the expected benefits of the transfer, as well as the value of the transfer, compared to the fair market value of the property. However, for each transaction, USAN’s board was presented with only general statements and information on the benefits of the proposed projects. For example, the expected benefits of the projects included the creation of new jobs but failed to provide any specific information on the number and type of jobs that would result from the projects; or referenced increases in the tax base but again failed to provide specific information—or even a range—of how much tax revenue the locality might expect. Similarly, when comparing the expected benefits against the properties’ values, the information included vague statements, such as “new development” and “continuation of tourism-related economic and recreational activity,” with limited or no details. Without providing more substantial information on the expected economic

benefits, it would be difficult for USAN's board to fully assess whether each proposed project would substantiate the below-market transfer.

ESD officials stated that USAN complied with all PAL requirements when approving the below-market transfers. They contend that PAL does not require specific economic benefits if the transfer agreement does not require them. Officials stated these properties were acquired as part of the strategic land acquisition program to remove blight from the downtown area and expand the density of uses there toward the establishment of a year-round, sustainable neighborhood. ESD officials stated they believe this has been accomplished through transferring the properties to developers. Also, officials further stated that job creation and an increase in tax revenue were only secondary objectives for development and were not requirements of the transfer. While we recognize sales below fair market value may be necessary to further the broader economic development goals of the State, management should use high-quality information to make informed decisions. Therefore, we recommend ESD improve the detail of information that management receives and uses when determining whether transactions, especially those below fair market value, should be made.

The other three properties, located in New York City, disposed of for below fair market value had justifications sufficiently detailed to understand why the below-market transfers were warranted. For example, one of the below-market transfers was the result of a proposal received pursuant to an RFP for the long-term lease and development that meet New York City's goals of mixed-use development, including office, retail, cultural spaces, and mixed-income housing. ESD officials believed the proposals received more accurately reflected the actual and arm's length value of the property than the appraisal, and the chosen proposal was the only one that included co-developers that would be anchor tenants. The other two below-market transfers included multiple amendments to a long-term lease, including a term extension and rent schedule modification, for the City's Restoration Plaza providing job training and placement services, business development services, and arts and cultural programming to the Bedford-Stuyvesant and surrounding areas. Neither ESD nor the State receives any monetary compensation for this project. All lease revenues are paid to New York City and these transactions preserve that structure.

Recommendations

1. Develop and implement processes and procedures to ensure ESD's real property portfolio is accurate and required reporting and publishing requirements are met.
2. Periodically assess vacant properties and identify solutions that maximize the economic benefits to the surrounding localities and the State, which may include, but not be limited to, collaboration with other Affected State Entities to align solutions with the State's goals.

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3. Establish and implement policies directing ESD and subsidiary management to provide sufficiently detailed information for proposed transfers, especially those below fair market value.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine whether ESD fully and accurately accounted for and reported on its real property holdings and the need to either hold or dispose of properties, and if ESD disposed of real property in a manner beneficial to the State. The audit covered the period from April 2019 through June 2023.

To accomplish our objective and assess related internal controls, we reviewed State laws and ESD policies and procedures. We also interviewed ESD and ESD-subsidary officials to understand their processes related to the accounting, acquisition, and disposal of real property. We reviewed RFPs and GPPs for properties either currently vacant or disposed of.

We reviewed all 14 dispositions for compliance with applicable State laws and USAN Corporation Board minutes related to its disposition of seven properties for less than fair market value.

We obtained property lists, including acquisitions and disposals, from ESD, and assessed the reliability of the data by interviewing officials knowledgeable about the properties and confirming ownership status of the properties using external sources. As described in the body of this report, we found ESD's property list to be unreliable, as it contained inaccurate and incomplete records of properties.

We obtained and analyzed 2021 property assessment data from local assessment rolls provided by the New York State Department of Taxation and Finance and available on the State's [Open Data](#) website and 2019 property assessment data from local assessment rolls provided by the New York City Department of Finance and available on the City's [Open Data](#) website. We identified parcels owned by ESD or any of ESD's subsidiary corporations. We provided ESD with parcels identified as being owned by ESD or a subsidiary and not included on ESD's property list for confirmation of ownership.

As part of our audit procedures, we used Geographic Information System (GIS) software for geographic analysis and imported the results of this analysis into Tableau to create visualizations (an interactive map) to enhance understanding of our report. To increase ease of use, we made minor locational changes to these visualizations. These changes do not materially affect the accuracy or interpretation of underlying data or visualizations.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 and Article X, Section 5 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 2803 of the Public Authorities Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, including some duties on behalf of public authorities. For ESD, these include operating the State's accounting system, reporting ESD as a discrete component unit in the State's financial statements, and approving selected contracts. These duties could be considered management functions for the purpose of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent audit of ESD's oversight and administration of its real property portfolio.

Reporting Requirements

We provided a draft copy of this report to ESD officials for their review and formal written comment. We considered their response in preparing this report and have attached it in its entirety at the end of the report. ESD officials expressed exception with certain statements in the report and offered explanation in response to some findings. ESD officials indicated steps they have taken to address parts of our recommendations. We address certain aspects of their response in our State Comptroller's comments.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner, President, and CEO of the Empire State Development shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments



July 10, 2024

Heather Pratt
Audit Director
Office of the State Comptroller
State Government Accountability
110 State Street
Albany, NY 12236

RE: Response to OSC’s Audit Findings Regarding ESD’s Real Property Portfolio

Dear Heather Pratt:

Thank you for the opportunity to comment on the Office of the State Comptroller’s (“OSC”) Draft Audit Report 2022-S-14 (“Draft Audit Report”) regarding Empire State Development’s (“ESD”) Real Property Portfolio.

Background

ESD’s acquisition and disposition of property is a byproduct of ESD’s broader economic development mission. In general, ESD’s priority in land acquisition and disposition is not to profit or create revenue, but rather to construct, reconstruct, rehabilitate or improve a project in accordance with the Urban Development Corporation Act of 1968 (“UDC Act”).

ESD’s property holdings are diverse in geography, size, value, and use, and distinct to the circumstances in which ESD, serving its broader economic development purpose, came into a parcel’s possession. Each property is derivative of how ESD is fulfilling its mission to invigorate the state’s economy and represents initiatives that ESD has undertaken over the past 56 years since the State Legislature passed the UDC Act creating the Urban Development Corporation, such as developing affordable housing, redeveloping blighted areas, and encouraging local investment in towns and cities across the state.

Most of ESD’s property is owned and managed by its subsidiaries. Each subsidiary has a unique mission focused on economic development projects in a specific geographic area. Almost half of the properties are in long-term leases that began with an initial development/construction project and are now managed by the long-term tenant. They do not require day-to-day or even monthly or annual management by ESD staff. Another large portion are vacant and awaiting development.

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OSC's Recommendations

Following this audit process, OSC made three recommendations.

A. Develop and implement processes and procedures to ensure ESD's real property portfolio is accurate and required reporting and publishing requirements are met.

ESD published its annual list of real property to its website on December 30, 2022, and December 22, 2023, which can be found at <https://esd.ny.gov/sites/default/files/ESD-Real-Property-Report-as-of-033123.pdf>. ESD will continue to post a real property list annually. ESD hired a Real Estate Asset Manager and has instituted quarterly meetings to review the acquisition and disposition of property to ensure that property lists are up to date, and that all required reporting and publishing requirements are met. In addition, ESD has added functionality to its project tracking system to assist in tracking the status of its real property and maintaining pertinent documentation. Contrary to OSC's assertion, ESD has instituted processes and procedures to ensure the accuracy of the annual published list of real property and disposition.

[Comment 1](#)

B. Periodically assess vacant properties and identify solutions that maximize the economic benefits to the surrounding localities and the State, which may include, but not be limited to, collaboration with other State entities to align solutions with the State's goals.

With certain exceptions of properties that are remnants from older development projects from the 1960s and 1970s, ESD has development plans for vacant property that it has acquired. The Draft Audit Report focuses on USA Niagara's (USAN) 28 vacant properties. These 28 properties are part of a larger investment in Niagara Falls to remove blight from the area and support neighborhoods. The 28 properties located in Niagara Falls are 28 separate tax parcels; however, they are not 28 independent properties appropriate for separate development opportunities. In the Draft Audit Report, OSC incorrectly claims that these 28 vacant properties lack definitive development plans.

[Comment 2](#)

Nine of the properties (535 2nd Street, 539 2nd Street, 541 2nd Street, 549 2nd Street, 555 2nd Street, 559 2nd Street, 563 2nd Street, 569 2nd Street, and 579 2nd Street) were subject to an RFP issued in March of 2023, have had a preferred developer selected by the USAN Board of Directors and are in the disposition process as part of the planned development.

Five properties (460 2nd Street, 411 1st Street, 427 1st Street, 102 Niagara Street, and 130 Niagara Street) are being amalgamated and subdivided into a public plaza as part of the larger multi-party Heritage Gateways development project, which may also include an RFP for private development if space permits.

Two additional properties (101 Buffalo Avenue and 305 Buffalo Avenue) are planned to be the subject of a future RFP for private development following the completion of the Heritage Gateways project.

Another two properties (333 1st Street and 217 Old Falls Street) are being amalgamated, subdivided, disposed of and developed following an RFP issued in September of 2021. One preferred developer for part of the site has already been selected, and USAN is in negotiations with another developer for the balance of the site.

304 Rainbow Boulevard has been developed into a public square called Cataract Commons pursuant to a General Project Plan approved in March of 2019.

407 8th Street is being disposed to the City of Niagara Falls for use in a joint project with the New York State Department of Transportation.

201 Rainbow Boulevard was the subject of an RFP, a preferred developer has been selected and the property is subject to a land disposition and development agreement.

Of the remaining seven parcels:

- 1) 441 3rd Street has been the subject of two RFPs and has failed to garner an acceptable redevelopment proposal.
- 2) 578 3rd Street, 582 3rd Street, and 213 Walnut Avenue were the subject of a recent RFP, but no development agreement has yet been signed.
- 3) 415-1/2 4th Street is a partial lot that is not suitable for development due to its size. USAN has sought to sell this parcel to an adjoining landowner who chose not to make an offer.
- 4) 492 Main Street and 528 2nd Street will be amalgamated, and an RFP will be issued for future private development.

With regard to the correctional facilities discussed in the Draft Audit Report, ESD has issued RFPs to develop the Downstate, Bayview and Lincoln Correctional Facilities for purposes of economic development. These plans well preceded the initiation of this audit. The correctional facilities are progressing through the procurement process; all three facilities have conditionally designated developers currently. Additionally, on January 30, 2024, ESD transferred the Livingston Correctional Facility to the Livingston County Industrial Development Agency for purposes of generating economic development of the property.

In Onondaga County there are currently two properties under contract: 8208 Sixty Road and Brundage Road in Baldwinsville, New York. Additionally, all other Onondaga County properties included in ESD's Real Property Report are currently being advertised for sale.

The JDA property located in Silver Springs, Florida has been appraised, and ESD is pursuing sale of this property.

A property that is part of the Atlantic Yards project, parcels B12 and B13 located at 595 Dean Street, Brooklyn, New York, was transferred to TF Cornerstone on October 10, 2023. This was a

development sale leaseback in which the developer initially transferred title to ESD for purposes of development. Following completion, ESD transferred title back to the developer.

Finally, as of April 12, 2024, Harlem Community Development Corporation (HCDC), a subsidiary of ESD, has disposed of five condominium units located at 233-235 West 125 St., New York, New York to Danforth Development Partners, LLC consisting of the Hotel, Low Income Residential, Mixed Income Residential, Garage and Commercial units. On the same date, HCDC acquired the “Cultural Unit” condominium as planned per the General Project Plan for the Victoria Theater Land Use Improvement and Civic Project.

ESD continues to implement the policy directives of the Governor’s office and Executive Order 30 and places significant emphasis on housing and affordable housing where appropriate for the location.

- C. **Establish and implement policies directing ESD and subsidiary management to provide sufficiently detailed information for proposed transfers, especially those below fair market value.**

OSC’s Draft Audit Report incorrectly asserts that USA Niagara, an ESD subsidiary, did not provide sufficient information to its Board about expected benefits; specifically, types of jobs, average salaries, or the expected increases in local tax revenue.

[Comment 3](#)

Pertinent to the analysis, New York State Public Authorities Law §2897(7)(b)(iii) requires the following information be provided to directors for dispositions of property below fair market value:

a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved ***as required by the transfer***, the benefits, if any, to the communities in which the asset is situated ***as are required by the transfer***.

[Emphasis supplied].

A plain reading of this section demonstrates that the information mentioned must be included *if* such benefits are required by the transfer. The properties in Niagara Falls referenced in the Draft Audit Report were acquired, along with several other properties, as part of the strategic land acquisition program funded through the second phase of the State’s “Buffalo Billion” Economic Development Initiative. The program’s stated purpose is to assemble long-dormant properties located near Niagara Falls State Park to remove blight from the downtown area and expand the density of uses there toward the establishment of a year-round, sustainable neighborhood. This mission was accomplished by acquiring these vacant, underutilized, and blighted properties and transferring them to developers to densify and revitalize an important commercial corridor in

Niagara Falls. The Board materials for each project described this goal. The Board materials also set forth additional, ancillary benefits of these projects, based upon information available to staff at the time the Board considered each transfer.

Items like job creation and increases to tax revenue, while important objectives, were not requirements of the transfer. In addition, some of the information the preliminary report suggests should be included – such as expected increases to local tax revenue – cannot be measured with certainty until a specific use of the property is determined and the property is assessed by the local taxing jurisdiction. Unlike other ESD grants and loan programs, where job creation and retention are both requirements and benefits of the program, this strategic land acquisition program did not have job creation or increasing tax revenue as requirements. As such, USAN/ESD's disclosures to the Board met the applicable requirements of the Public Authorities Law, and actually exceeded them, by providing additional information beyond what was required based upon information staff had available at the time.

Conclusion

ESD's real property portfolio aligns with its economic development mission to promote a vigorous, inclusive and growing state economy, and to assist in the development of underutilized property to spur community revitalization, housing, and commercial activity.

Thank you for the opportunity to comment on the Draft Audit Report.

Sincerely,

Felisa Hochheiser

Felisa Hochheiser
Director of Compliance

State Comptroller's Comments

1. As stated on page 10 of our report, ESD did not create or publish a real property listing until after our audit was engaged and auditors requested it. Therefore, any procedures ESD may have established to ensure the accuracy of this listing would have been subsequent to our audit engagement.
2. The properties we found with no development plans did not have plans when we requested information during our audit; however, ESD may have subsequently further developed these properties since our initial review, as reflected in their response. We amended the final report to exclude 201 Rainbow Boulevard from our findings.
3. As stated on page 14 of our report, we recognize ESD met the minimum requirements of the Public Authorities Law. However, we recommend ESD improve the detail and quality of the information provided to its board, especially for transfers made below fair market value, to provide decision-makers with the highest quality information to provide assurance that the transactions are legitimate and support the achievement of ESD's objectives and mission.

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