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Type of document . Site Number . Year-Month . File Year-Year or Report name . pdf

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example: report . Site Number . Year-Month . Report Name . pdf

Project Site numbers will be proceeded by the following:

Municipal Brownfields - B

Superfund - HW

Spills - SP

ERP - E

VCP - V

BCP - C

RECORD OF DECISION AMENDMENT

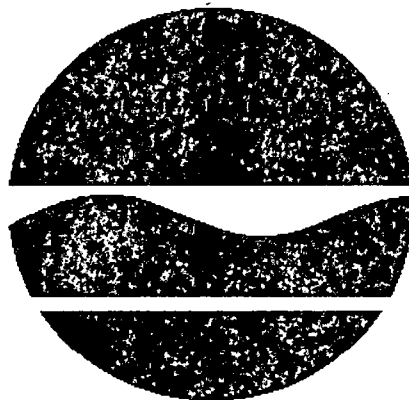
Tract II Highland Avenue Site

State Superfund Project

Niagara Falls, Niagara County

Site No. 932136

March 2012



Prepared by
Division of Environmental Remediation
New York State Department of Environmental Conservation

DECLARATION STATEMENT RECORD OF DECISION AMENDMENT

Tract II Highland Ave
State Superfund Project
Niagara Falls, Niagara County
Site No. 932136
March 2012

Statement of Purpose and Basis

This document presents the remedy for the Tract II Highland Ave. site, a Class 2 inactive hazardous waste disposal site. The remedial program was chosen in accordance with the New York State Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 375, and is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan of March 8, 1990 (40CFR300), as amended.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (the Department) for the Tract II Highland Ave site and the public's input to the proposed Record of Decision Amendment presented by the Department. A listing of the documents included as a part of the Administrative Record is included in Appendix B of the ROD.

Description of Selected Remedy

The elements of the proposed amended remedy are as follows:

1. A remedial design program to verify the components of the conceptual design and provide the details necessary for the construction of the remedial program. To maximize the net environmental benefit, Green remediation and sustainability efforts are considered in the design and implementation of the remedy to the extent practicable, including;
 - using renewable energy sources;
 - reducing green house gas emissions;
 - encouraging low carbon technologies;
 - foster green and healthy communities;
 - conserve natural resources;
 - increase recycling and reuse of clean materials;

- preserve open space and working landscapes;
 - utilize native species and discourage invasive species establishment during restoration;
 - promote recreational use of natural resources;
2. Development and submittal of a work plan to assess the extent of radionuclides at the site and development of plans necessary to address handling and disposal requirements for radiological waste material.
 3. Excavation and off-site disposal of contaminated waste and fill materials from the western portion of the site that exceed Part 375 commercial use SCOs;
 4. Contaminated wastes, soil and debris will be excavated and characterized prior to relocation and/or placement of the cover system. Excavated material that is below the hazardous waste leachability criteria for lead of 5.0 mg/l would be consolidated above the water table and covered with a soil cover. Excavated material that exceeds the hazardous waste leachability criteria for lead of 5.0 mg/l would be either sent off-site for disposal or treated by a stabilization technique. Prior to treatment excavated materials would be screened to separate soil and debris. Treated material that has been rendered non-hazardous and meets the land disposal criteria will be consolidated above the water table and covered with a soil cover. Soils exhibiting concentrations of lead that is too high and cannot be stabilized to meet the required leachability criteria will be disposed of off-site at an approved disposal facility. Debris that is sorted from the soil will be characterized and sent off site to an appropriate facility for disposal. Excess treated soil, that exceeds the fill capacity of the excavation and/or final site grades, will be removed off-site for disposal. Treatment on site will meet the basic requirements of Parts 373 & 374 for handling and treating hazardous waste;
 5. An ex-situ solidification/stabilization process that uses a solidifying or stabilizing agent to bind the excavated soil into a low permeability mass will be used to treat the characteristic lead contamination. Under this process the contaminated soil will be excavated and mixed in a temporary mixing facility (i.e., pug mill, mixer, etc.) with solidifying or stabilizing agents (typically portland cement) or other binding agents. The soil and agent are mixed to a concrete like slurry that is placed in the subsurface on-site resulting in a solidified monolith of low permeable material. The solidified mass will then be covered with a soil cover as described below, to prevent direct exposure to the solidified mass. The resulting solid matrix reduces or eliminates mobility of contamination and reduces or eliminates the matrix as a source of groundwater contamination.
 6. A site cover will be required over the entire site to allow commercial and/or passive recreational use of the site. The cover will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper one foot of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required, it will be a minimum of one foot of

soil for areas of commercial development and two feet of soil for area designated for recreational use, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for commercial use and recreational use, respectively. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d);

7. Creation of clean utility corridors through the consolidated material in order to accommodate future re-development;
8. Backfill and grading of the western excavation areas with available clean concrete and brick building debris, supplemented as needed with clean backfill soils. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d);
9. In-place demolition of the underground parking garage on the western portion of the site;
10. Imposition of an institutional control in the form of an environmental easement for the property that:
 - (a) requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3).;
 - (b) land use is subject to local zoning laws, the remedy allows the use and development of the controlled property for commercial and industrial uses;
 - (c) restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the Department, NYSDOH, County DOH, or City Authority;
 - (d) prohibits agricultural or vegetable gardens on the controlled property; and
 - (e) requires compliance with the Department approved Site Management Plan;
11. A Site Management Plan is required, which includes the following:
 - (a) an Institutional Control Plan that identifies all use restrictions for the site and details the steps and media-specific requirements necessary to assure the institutional controls remain in place and effective. This plan includes, but may not be limited to:
 - (i) an Excavation Plan for the western portion of the site which details the provisions for management of future excavations in areas of remaining contamination;
 - (ii) descriptions of the provisions of the environmental easement for the western portion of the site including any land use restrictions;
 - (iii) maintaining site access controls and Department notification; and

(iv) the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

(b) a Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:

(i) monitoring groundwater quality and elevation to assess the performance and effectiveness of the remedy;

(ii) soil cover system inspection and maintenance, as necessary, to ensure its function is not impaired by erosion or activities at the site;

(iii) a schedule of monitoring and frequency of submittals to the Department;

New York State Department of Health Acceptance

The New York State Department of Health (NYSDOH) concurs that the remedy for this site is protective of human health.

Declaration

The selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action to the extent practicable, and is cost effective. This remedy utilizes permanent solutions and alternative treatment or resource recovery technologies, to the maximum extent practicable, and satisfies the preference for remedies that reduce toxicity, mobility, or volume as a principal element.

March 28, 2012

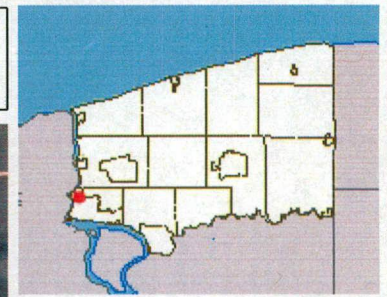


Date

Robert W. Schick, P.E., Acting Director
Division of Environmental Remediation



Niagara County On-Line Mapping Application



Legend

Parcels

0 376.08 752.2 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
THIS MAP IS NOT TO BE USED FOR NAVIGATION

NIAGARA COUNTY
DEPARTMENT OF REAL PROPERTY SERVICES

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

1: 4,513



3223 Highland Ave

Address: **3223 Highland Ave**

Municipality: Niagara Falls

Owner Name: Tulip Molded Plastics

Section-Block-Lot: 144.23-1-2



3211 Highland Ave

Address: **3211 Highland Ave**

Municipality: Niagara Falls

Owner Name: Tulip Molded Plastics

Section-Block-Lot: 144.23-1-5



3213 Highland Ave

Address: **3213 Highland Ave**

Municipality: Niagara Falls

Owner Name: Tulip Molded Plastics

Section-Block-Lot: 144.23-1-4



3215 Highland Ave

Address: **3215 Highland Ave**

Municipality: Niagara Falls

Owner Name: Tulip Molded Plastics

Section-Block-Lot: 144.23-1-3



3301 Highland Ave

Address: **3301 Highland Ave**

Municipality: Niagara Falls

Owner Name: Tulip Molded Plastics

Section-Block-Lot: 130.18-2-4



3125 Highland Ave

Address: **3125 Highland Ave**

Municipality: Niagara Falls

Owner Name: Tulip Molded Plastics

Section-Block-Lot: 144.23-1-7



3219 Highland Ave

Address: **3219 Highland Ave**

Municipality: Niagara Falls

Owner Name: Tulip Molded Plastics

Section-Block-Lot: 144.06-2-1



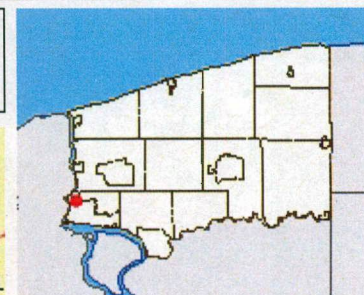
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Address: **3205 Highland Ave**

Municipality: Niagara Falls

Owner Name: Tulip Molded Plastics

Section-Block-Lot: 144.23-1-6



Parcels

WGS_1984_Web_Mercator_Auxiliary_Sphere
THIS MAP IS NOT TO BE USED FOR NAVIGATION

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1: 4,513





Niagara County "On- Map"

Putting Niagara County, New York "On The Map!"



Sign in



Address: **3301 Highland Ave**
Municipality: Niagara Falls
Owner Name: Tulip Molded Plastics
Section-Block-Lot: 130.18-2-4

Details

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Tulip Molded Plastics

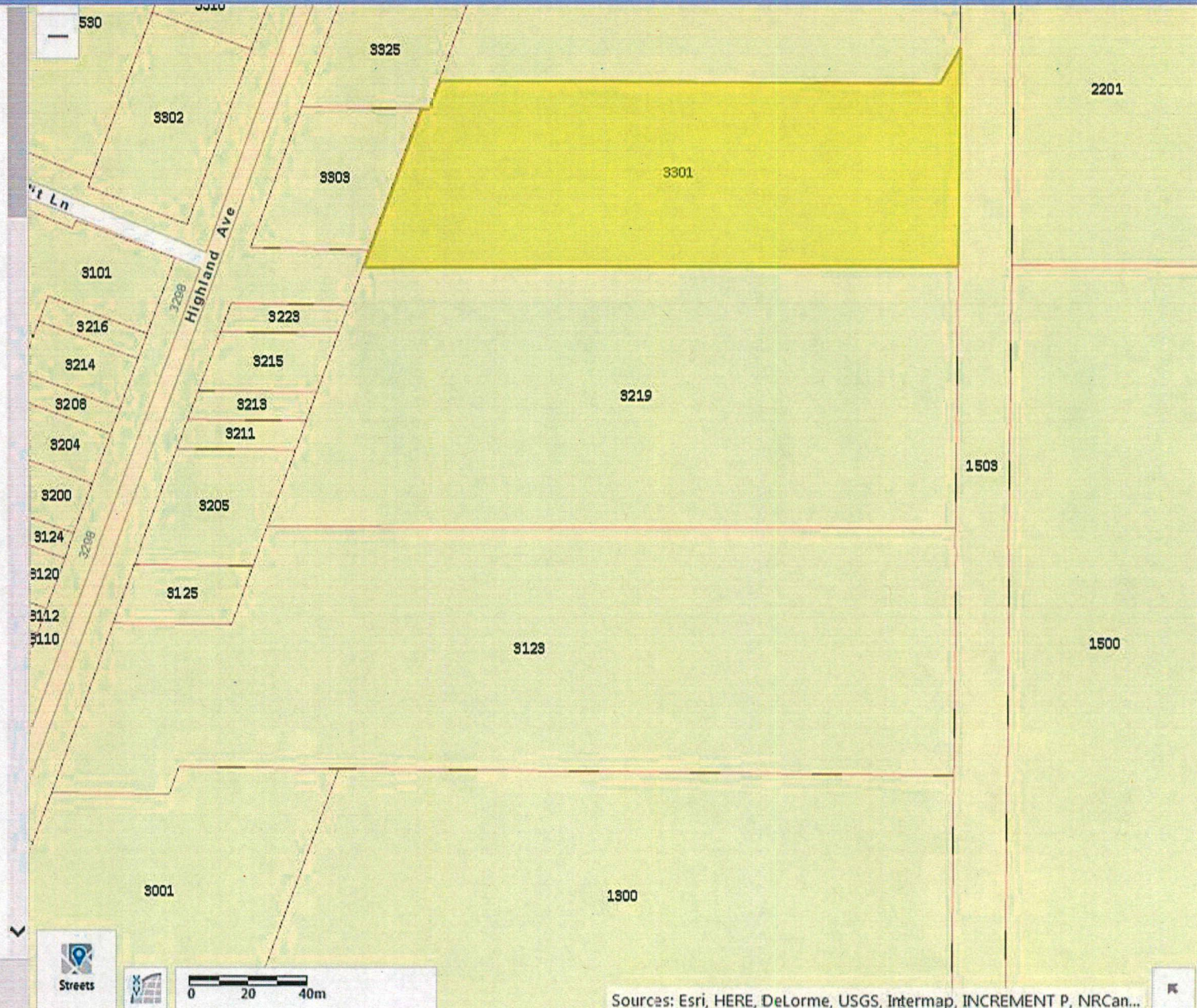
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Highland Ave

PRCLNUMB
3301

PRCLMUNI
Niagara Falls

BLDGSTYL

SFLA



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan...



Niagara County "On- Map"

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Sign in



Address: **3219 Highland Ave**
Municipality: Niagara Falls
Owner Name: Tulip Molded Plastics
Section-Block-Lot: 144.06-2-1

Details

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Tulip Molded Plastics

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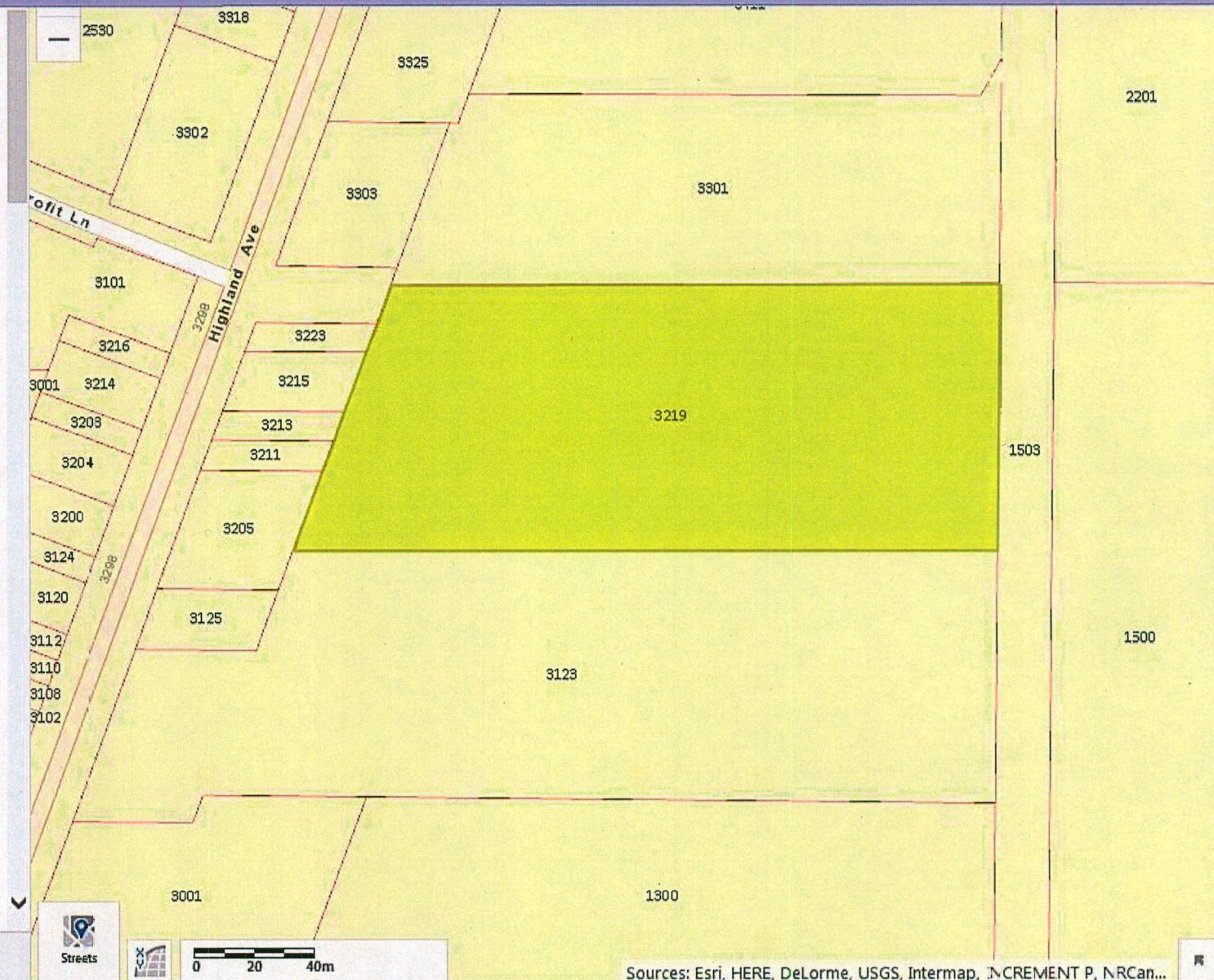
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Niagara Falls

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Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan...





Niagara County "On- Map"

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Sign in



Address: 3223 Highland Ave
Municipality: Niagara Falls
Owner Name: Tulip Molded Plastics
Section-Block-Lot: 144.23-1-2

Details

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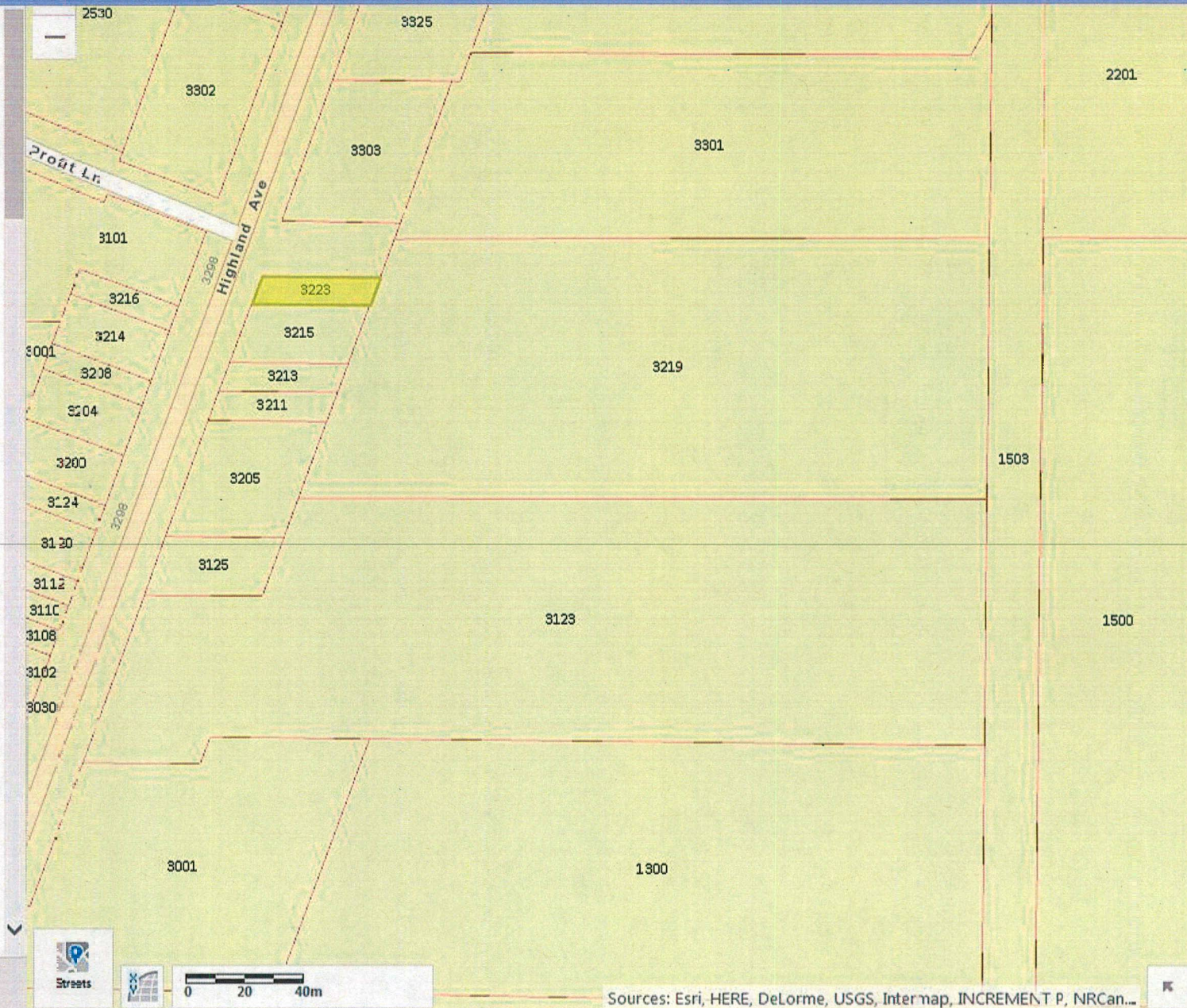
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Niagara Falls

BLDGSTYL

SFLA



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan...



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Sign in



Address: **3215 Highland Ave**
Municipality: Niagara Falls
Owner Name: Tulip Molded Plastics
Section-Block-Lot: 144.23-1-3

Details

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Tulip Molded Plastics

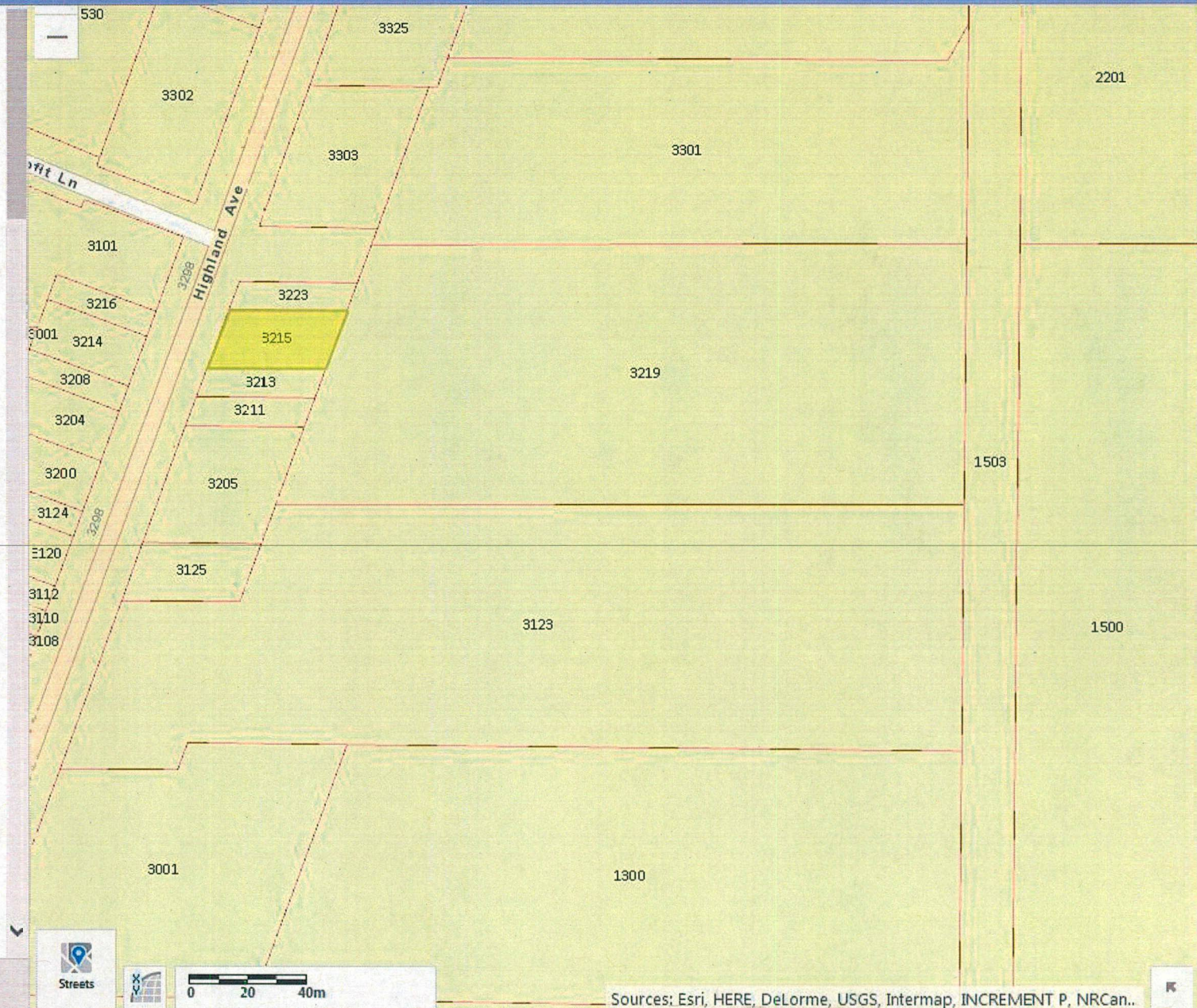
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Niagara Falls

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SFLA



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan...



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Sign in



Address: **3213 Highland Ave**
Municipality: Niagara Falls
Owner Name: Tulip Molded Plastics
Section-Block-Lot: 144.23-1-4

Details

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Tulip Molded Plastics

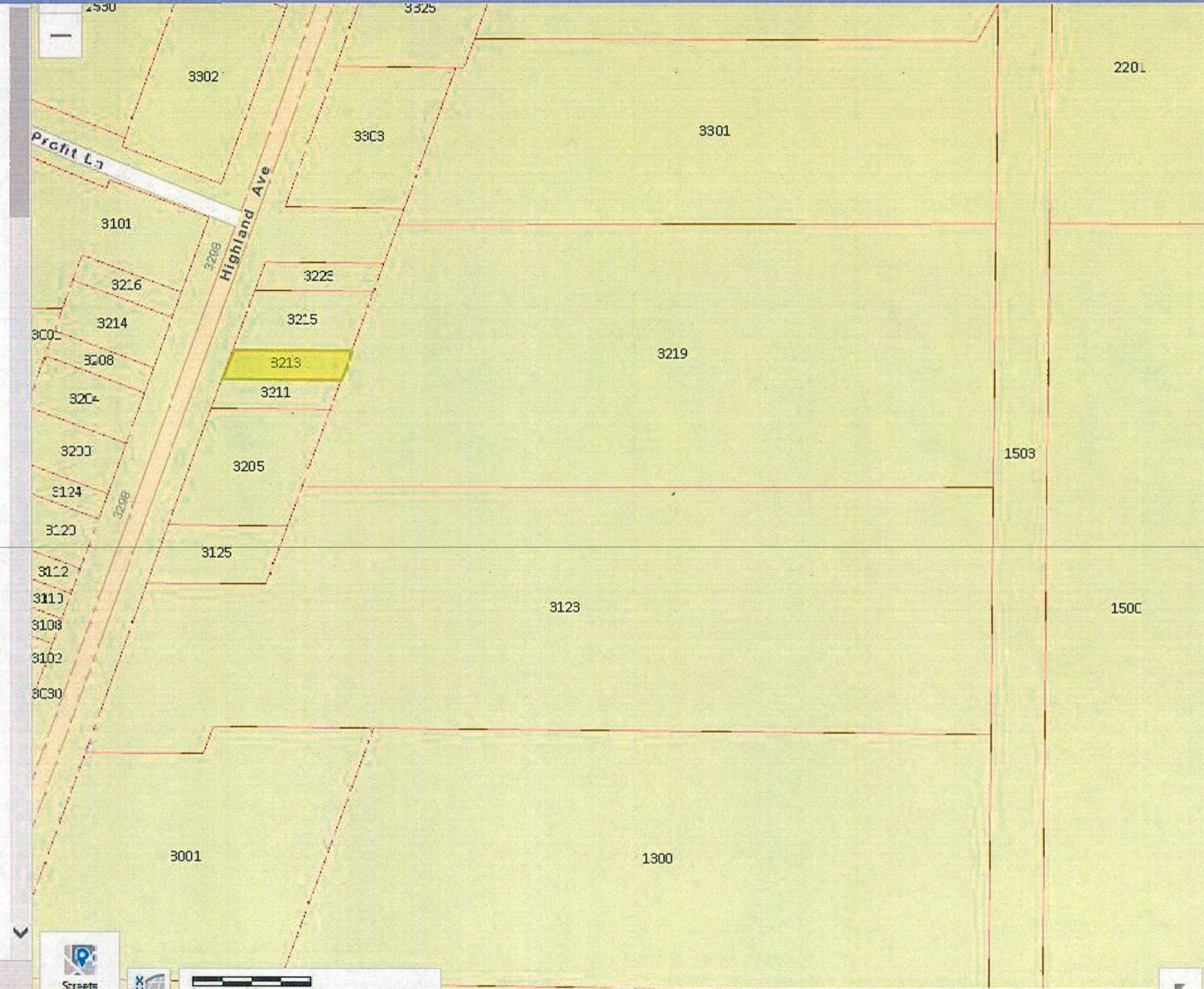
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PRCLMUNI
Niagara Falls

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SFLA



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan...



Niagara County "On- Map"

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Sign in



Address: **3211 Highland Ave**
Municipality: Niagara Falls
Owner Name: Tulip Molded Plastics
Section-Block-Lot: 144.23-1-5

Details

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PIN
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Tulip Molded Plastics

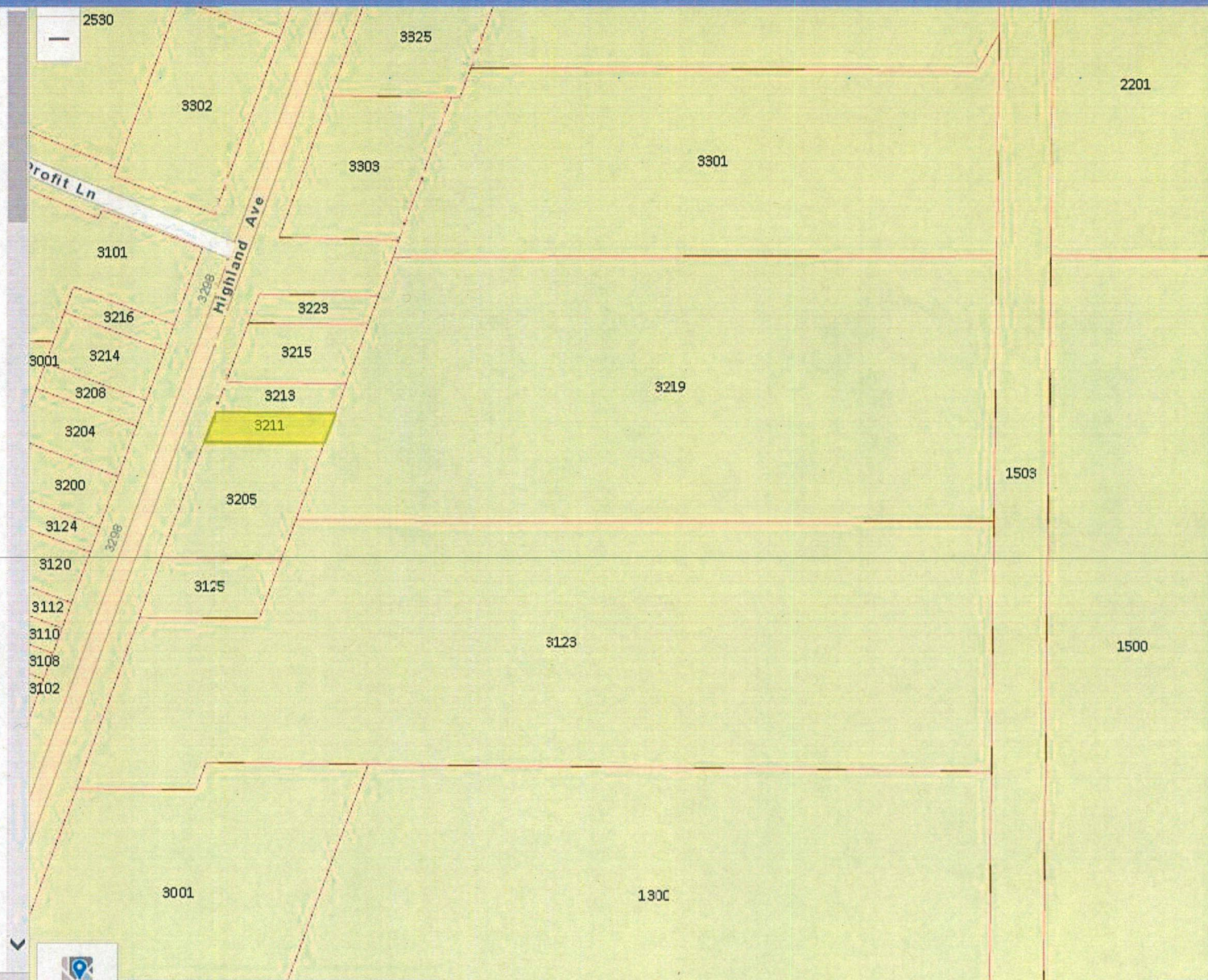
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PRCLNUMB
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PRCLMUNI
Niagara Falls

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Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan...



Niagara County "On- Map"

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Sign in



Address: **3205 Highland Ave**
Municipality: Niagara Falls
Owner Name: Tulip Molded Plastics
Section-Block-Lot: 144.23-1-6

Details

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144.23-1-6

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YCOORD
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Tulip Molded Plastics

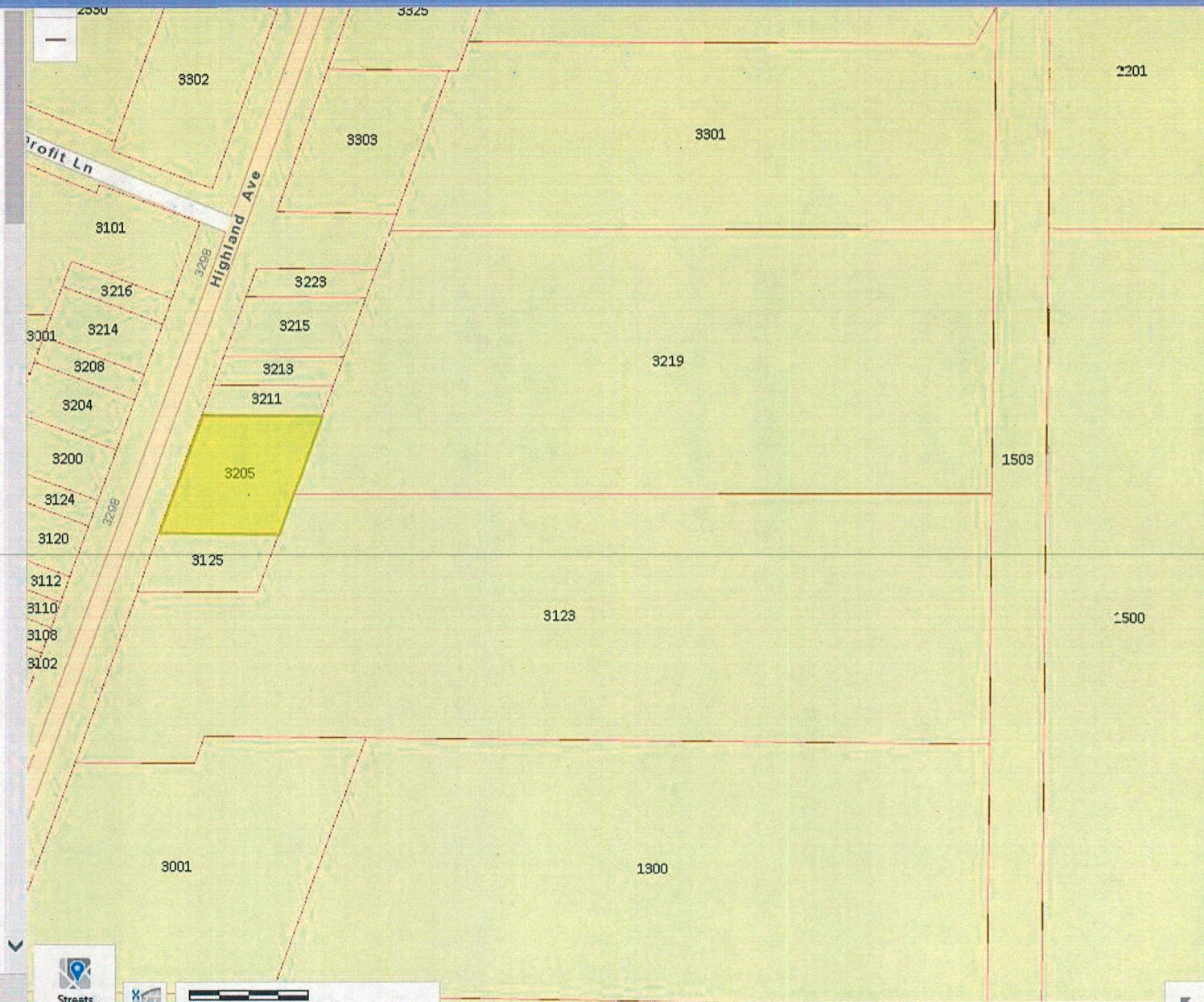
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Highland Ave

PRCLNUMB
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PRCLMUNI
Niagara Falls

BLDGSTYL

SFLA



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Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan...



Niagara County "On- Map"

Putting Niagara County, New York "On The Map"



Sign in



Address: **3125 Highland Ave**
Municipality: Niagara Falls
Owner Name: Tulip Molded Plastics
Section-Block-Lot: 144.23-1-7

Details

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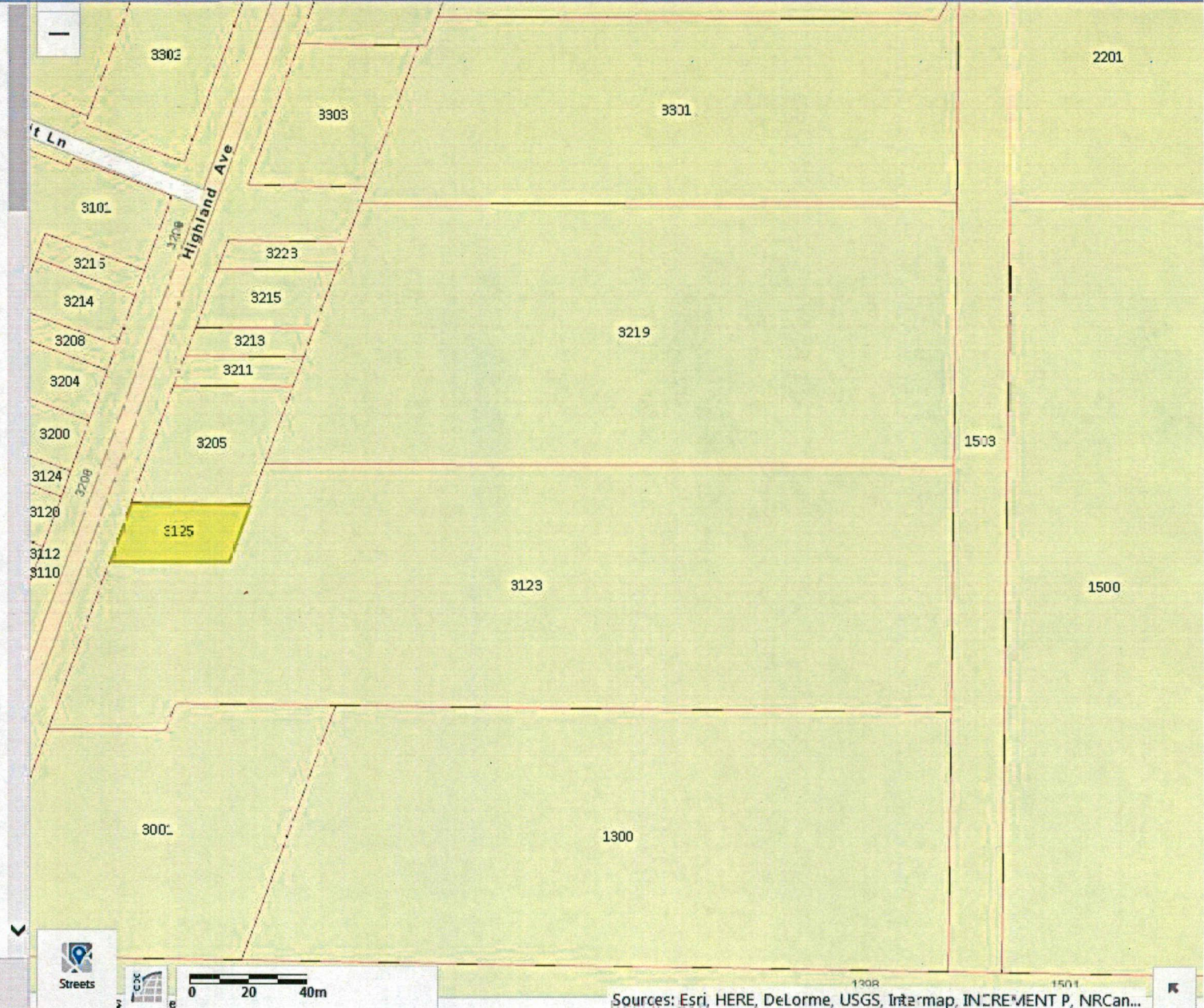
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Niagara Falls

BLDGSTYL

SFLA



Streets



0 20 40m

Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan...



Niagara County "On- Map"

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Sign in



Address: 2201 College Ave
Municipality: Niagara Falls
Owner Name: Industrial Properties LLC
Section-Block-Lot: 130.19-1-2.1

Details

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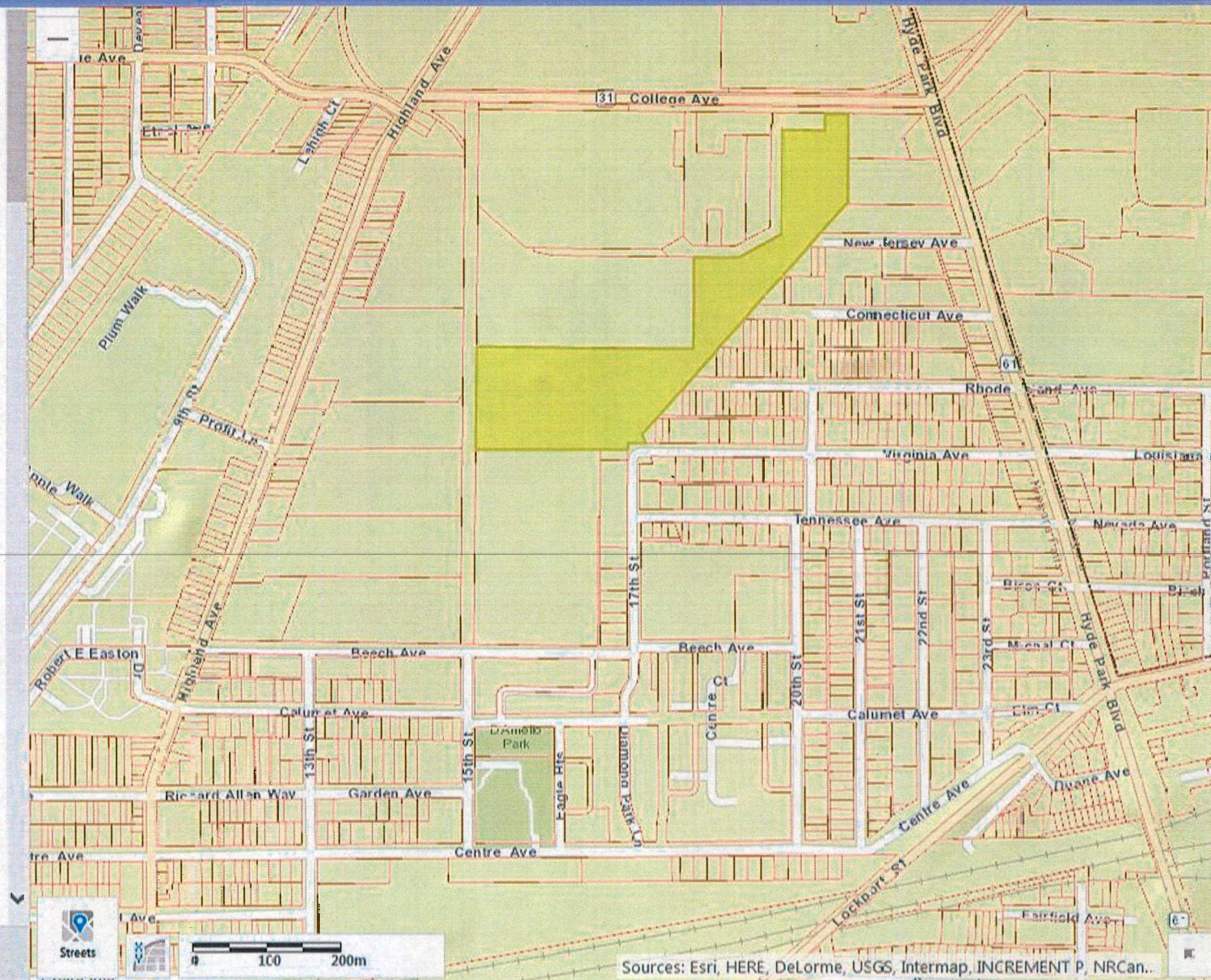
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OWNRNAME
Industrial Properties LLC

PRCLSTREET
College Ave

PRCLNUMB
2201

PRCLMUNI
Niagara Falls



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan.



Niagara County "On-Map"

Putting Niagara County, New York "On The Map!"

[Sign in](#)

1503 College Ave



I want to...



Description

Address: **1503 College Ave**

Municipality: Niagara Falls

Owner Name: Niagara Mohawk Power Corp

Section-Block-Lot: 130.18-2-13

Details

OBJECTID_1

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130.18-2-13

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Niagara Mohawk Power Corp

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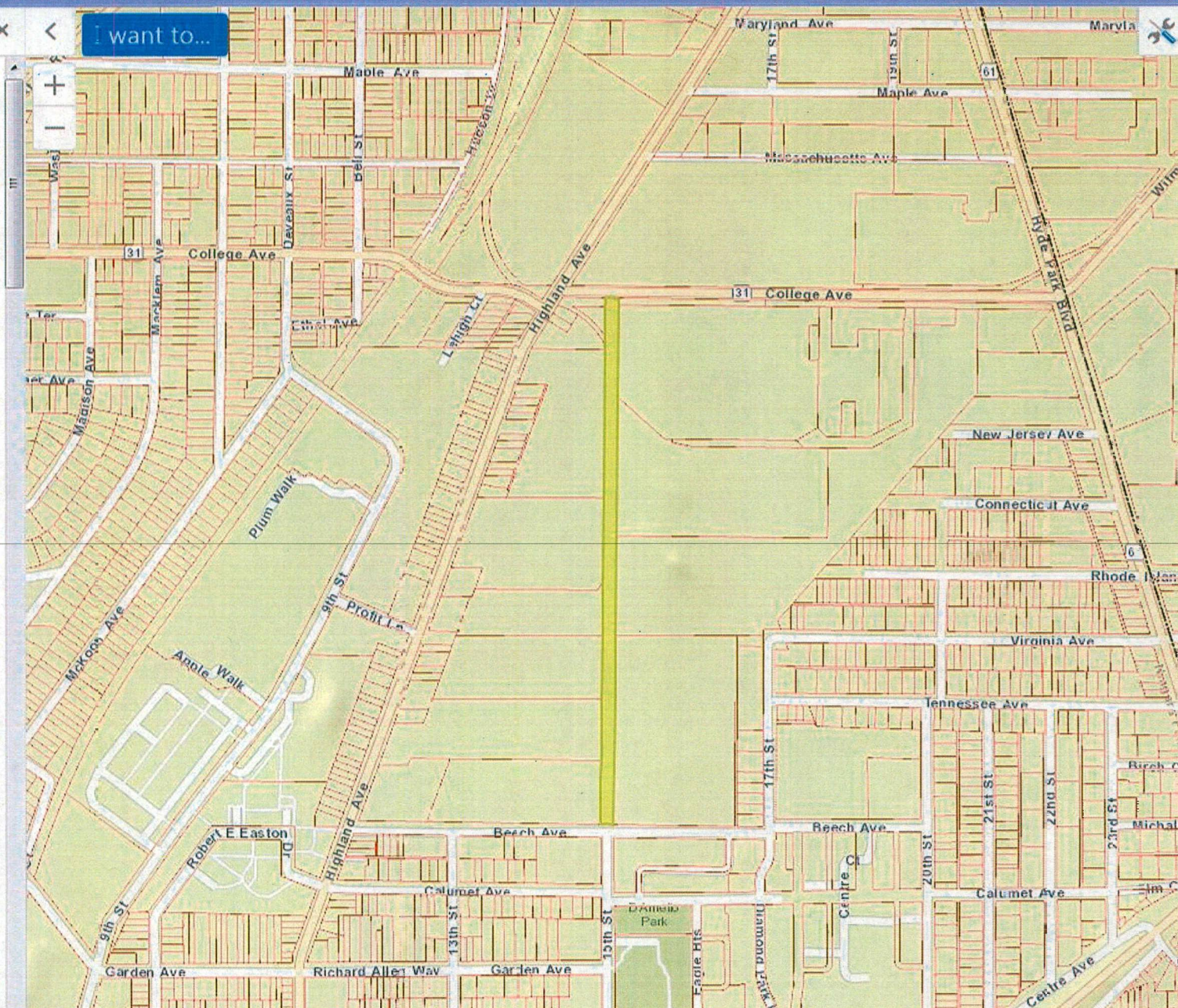
College Ave

PRCLNUMB

1503

PRCLMUNI

Niagara Falls



15' strip from Brightfields II
to Brightfields

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 7th day of MARCH, 2017 between Owner(s) Brightfields Corporation, having an office at 333 Ganson Street, Buffalo, New York 14203, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 3201 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: a portion of Section 144.06 Block 2 Lot 27.1, being the same as that property conveyed to Grantor by deed dated April 7, 2016 and recorded in the Niagara County Clerk's Office in Instrument No. 2016-05895. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.302 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 and last revised October 31, 2016 prepared by Kenneth L. Slaughenhoupt, L.L.S. of Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation

established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: B9-0777-08-03, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining

contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held
by the New York State Department of Environmental Conservation**

pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:
(i) are in-place;
(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: 932136
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.
8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.
9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.
10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Brightfields Corporation.

By: _____

Print Name: Jon M. Williams

Title: President Date: 2/6/17

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF Erie)

On the 6th day of February, in the year 20 17, before me, the undersigned, personally appeared Jon M. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Nancy L. Mazur
Notary Public - State of New York

NANCY L. MAZUR
Notary Public, State of New York
Qualified in Erie County No. 1702630
My Commission Expires 11 30, 2017

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:


Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 7th day of March, in the year 2017, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2018

SCHEDULE "A" PROPERTY DESCRIPTION

**Environmental Easement Description for Superfund Site No. 932136
15 Foot Strip from Brightfields II to Brightfields**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and according to a map made by Julius Frehsee with changes by Porter, Jones and Schaeffer and filed November 18, 1899 under Cover No. 158 now in Book 18 of Microfilmed Maps at page 1736 and being more particularly bounded and described as follows:

Beginning at the north east corner of Old Lot 251 as shown on Map by Niagara Boundary & Mapping Services filed in Niagara County Clerk's Office March 31, 2016 in Instrument No. M2016-00008;

Thence along the east line of said Old Lot 251 S 0°54'30"W a distance of 15.00 feet to a point;

Thence N 88°58'03"W a distance of 879.79 feet to a point in the centerline of alley as shown on said Map by Julius Frehsee;

Thence along said centerline of said alley N 20°42'42"E a distance of 15.93 feet to a point on the north line of Old Lot 250 as shown on Map by Niagara Boundary & Mapping Services filed in Niagara County Clerk's Office March 31, 2016 in Instrument No. M2016-00008;

Thence along the north line of Old Lot 250 and Old Lot 251 S 88°58'03"E a distance of 874.39 feet to the Point or Place of Beginning, containing 13,156 square feet or 0.302 acre more or less.

Western Commercial
Lot 1250

AMENDMENT TO ENVIRONMENTAL EASEMENT

This Amendment to Environmental Easement is made as of this 7th day of March 2014, by and between The People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation ("NYSDEC" or the "Department") with its headquarters located at 625 Broadway, Albany, New York 12233, and Brightfields II Corporation ("Grantor") with its offices located at 333 Ganson Street, Buffalo, New York 14203.

RECITALS

1. Grantor is the owner of certain land known and designated on the tax map of the City of Niagara Falls, County of Niagara and State of New York as tax map parcel number: Section 144.06 Block 2 Lot 25.1, being a portion of the property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458.
2. The Department and Grantor entered into that certain Environmental Easement ("Easement Agreement") dated as of December 1, 2014 and recorded in the Niagara County Clerk's Office on December 15, 2014 as Instrument No. 2014-21584. Capitalized terms used herein without definition have the meanings ascribed to them in the Environmental Easement Agreement.
3. Pursuant to Section 1, 2, 3, 4, and 5 of the Easement Agreement, Grantor granted the Department rights and interests that run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of the Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of certain maintenance, monitoring or operation requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the stated purpose.
4. Pursuant to Section 2 A of the Easement Agreement, the Controlled Property may only be used for Commercial and Industrial uses described in 6 NYCRR §375-1.8(g) and may only be used consistent with controls set out in that Section 2 A of the Easement Agreement.
5. This Amendment to Environmental Easement is filed solely in order to revise the legal description for the Controlled Property that was attached as Schedule "A" to that Environmental Easement dated as of December 1, 2014 and recorded in the Niagara County Clerk's Office on December 15, 2014 as Instrument No. 2014-21584.
6. Pursuant to Section 8 of the Easement Agreement, the Department agrees to amend the Easement Agreement in the manner prescribed by Article 9 of the Real Property Law.

AMENDMENT OF ENVIRONMENTAL EASEMENT

- A. The above recitals are hereby incorporated into this Amendment of Environmental Easement.
- B. The Department and Grantor hereby agree that the 4th Whereas clause of the Environmental Easement is hereby amended to read as follows:

WHEREAS, Grantor, is the owner of real property located at the address of 3001 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel number: Section 144.06 Block 2 Lot 25.1, being a portion of the property conveyed to Grantor by deed dated December 1, 2014 and recorded in the Niagara County Clerk's Office as Instrument No. 2014-21584. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.677 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 and last revised October 31, 2016 prepared by Kenneth L. Slaughenhoupt, L.L.S. of Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule "A" – Amended Description of Controlled Property; and

- C. The Department and Grantor hereby agree that the metes and bounds description of the Controlled Property attached hereto as "Schedule "A" – Amended Description of Controlled Property" shall replace the original metes and bounds description attached as Schedule "A" to the December 1, 2014 Environmental Easement.
- D. All other terms of the December 1, 2014 Environmental Easement shall remain in effect.
- E. This Amendment of Environmental Easement inures to and binds the parties hereto and their respective successors and assigns.
- F. This Amendment of Environmental Easement shall be governed by and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Grantor has caused this Amendment to Environmental Easement to be signed in its name.

Brightfields II Corporation.

By: _____

Print Name: Jon M. Williams

Title: President Date: 2/6/17

Grantor's Acknowledgment

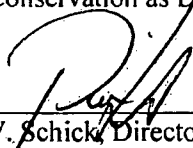
STATE OF NEW YORK)
) ss:
COUNTY OF Erie)

On the 6th day of February, in the year 20 17, before me, the undersigned, personally appeared Jon M. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Nancy L. Mayur
Notary Public - State of New York

NANCY L. MAYUR
Notary Public - State of New York
No. 17390
Exp. 12/31/2017

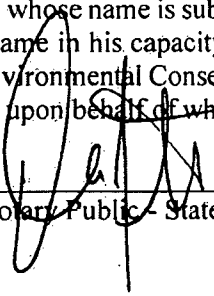
**THIS AMENDMENT OF THE ENVIRONMENTAL EASEMENT IS HEREBY
ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through
the Department of Environmental Conservation as Designee of the Commissioner,**

By: 
Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 7th day of March, in the year 2017, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2018

SCHEDULE "A" AMENDED DESCRIPTION OF CONTROLLED PROPERTY

**ENVIRONMENTAL EASEMENT DESCRIPTION FOR SUPERFUND SITE No. 932136
Brightfields – New Lot 1250**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Beginning at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

Thence S.88°43'18"E along the northerly line of Beech Avenue a distance of 274.00 feet to a point;

Thence N.20°42'42"W a distance of 291.15 feet to a point;

Thence N88°58'03"W a distance of 138.49 feet to a point on the former centerline of a 16.5 foot wide alley;

Thence S20°42'42"W along the former centerline of a 16.5 foot wide alley a distance of 15.93 feet to the centerline of former Carolina Avenue;

Thence N88°58'03"W along the centerline of Carolina Avenue a distance of 135.93 feet to the east line of Highland Avenue;

Thence S20°42'42"W along the east line of Highland Avenue a distance of 273.97 feet to the Point or Place of Beginning, containing 1.677 acres of land more or less.

Park Lot 1251

AMENDMENT TO ENVIRONMENTAL EASEMENT

This Amendment to Environmental Easement is made as of this 7th day of MARCH 2017 by and between The People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation ("NYSDEC" or the "Department") with its headquarters located at 625 Broadway, Albany, New York 12233, and Brightfields II Corporation ("Grantor") with its offices located at 333 Ganson Street, Buffalo, New York 14203.

RECITALS

1. Grantor is the owner of certain land known and designated on the tax map of the City of Niagara Falls, County of Niagara and State of New York as tax map parcel number: Section 144.06 Block 2 Lot 25.2, being a portion of the property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458.
2. The Department and Grantor entered into that certain Environmental Easement ("Easement Agreement") dated as of December 1, 2014 and recorded in the Niagara County Clerk's Office on December 15, 2014 as Instrument No. 2014-21585. Capitalized terms used herein without definition have the meanings ascribed to them in the Environmental Easement Agreement.
3. Pursuant to Section 1, 2, 3, 4, and 5 of the Easement Agreement, Grantor granted the Department rights and interests that run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of the Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of certain maintenance, monitoring or operation requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the stated purpose.
4. Pursuant to Section 2 A of the Easement Agreement, the Controlled Property may only be used for Restricted-Residential, Commercial and Industrial uses described in 6 NYCRR §375-1.8(g) and may only be used consistent with controls set out in that Section 2 A of the Easement Agreement.
5. This Amendment to Environmental Easement is filed solely in order to revise the legal description for the Controlled Property that was attached as Schedule "A" to that Environmental Easement dated as of December 1, 2014 and recorded in the Niagara County Clerk's Office on December 15, 2014 as Instrument No. 2014-21585.
6. Pursuant to Section 8 of the Easement Agreement, the Department agrees to amend the Easement Agreement in the manner prescribed by Article 9 of the Real Property Law.

AMENDMENT OF ENVIRONMENTAL EASEMENT

- A. The above recitals are hereby incorporated into this Amendment of Environmental Easement.
- B. The Department and Grantor hereby agree that the 4th Whereas clause of the Environmental Easement is hereby amended to read as follows:

WHEREAS, Grantor, is the owner of real property located at the address of 3201 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel number: Section 144.06 Block 2 Lot 25.2, being a portion of the property conveyed to Grantor by deed dated December 1, 2014 and recorded in the Niagara County Clerk's Office as Instrument No. 2014-21585. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 5.011 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 and last revised October 31, 2016 prepared by Kenneth L. Slaughenhoupt, L.L.S. of Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule "A" – Amended Description of Controlled Property; and

- C. The Department and Grantor hereby agree that the metes and bounds description of the Controlled Property attached hereto as "Schedule "A" – Amended Description of Controlled Property" shall replace the original metes and bounds description attached as Schedule "A" to the December 1, 2014 Environmental Easement.
- D. All other terms of the December 1, 2014 Environmental Easement shall remain in effect.
- E. This Amendment of Environmental Easement inures to and binds the parties hereto and their respective successors and assigns.
- F. This Amendment of Environmental Easement shall be governed by and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Grantor has caused this Amendment to Environmental Easement to be signed in its name.

Brightfields II Corporation:

By: _____

Print Name: Jon M. Williams

Title: President Date: 2/6/17

Grantor's Acknowledgment

STATE OF NEW YORK)

) ss:

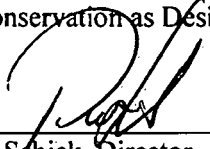
COUNTY OF Erie)

On the 6th day of February, in the year 20 17, before me, the undersigned, personally appeared Jon M. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Nancy L. Mayer
Notary Public - State of New York

NANCY L. MAYER
Notary Public - State of New York
No. 133339
11.10.2017

**THIS AMENDMENT OF THE ENVIRONMENTAL EASEMENT IS HEREBY
ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through
the Department of Environmental Conservation as Designee of the Commissioner,**

By: 
Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 7th day of March, in the year 2017, before me, the undersigned, personally
appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory
evidence to be the individual whose name is subscribed to the within instrument and acknowledged
to me that he executed the same in his capacity as Designee of the Commissioner of the State of
New York Department of Environmental Conservation, and that by his signature on the instrument,
the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2018

SCHEDULE "A" AMENDED DESCRIPTION OF CONTROLLED PROPERTY

ENVIRONMENTAL EASEMENT DESCRIPTION FOR SUPERFUND SITE No. 932136

Brightfields - Lot 1251

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Commencing at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

Thence S.88°43'18"E along the northerly line of Beech Avenue a distance of 274.00 feet to the POINT OR PLACE OF BEGINNING;

Thence S.88°43'18"E along the northerly line of Beech Avenue a distance of 839.99 feet to the intersection of the north line of Beech Avenue with the west line of the former Fifteenth Street;

Thence N.00°54'11"E a distance of 277.75 feet to a point;

Thence N88°58'03"W a distance of 741.30 feet to a point;

Thence S20°42'42"W a distance of 291.15 feet to the northerly line of Beech Avenue and the Point or Place of Beginning, containing 5.011 acres of land more or less.

Western Commercial
Lot 1250

AMENDMENT TO ENVIRONMENTAL EASEMENT

This Amendment to Environmental Easement is made as of this ____ day of _____ 201__, by and between The People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation ("NYSDEC" or the "Department") with its headquarters located at 625 Broadway, Albany, New York 12233, and Brightfields II Corporation ("Grantor") with its offices located at 333 Ganson Street, Buffalo, New York 14203.

RECITALS

1. Grantor is the owner of certain land known and designated on the tax map of the City of Niagara Falls, County of Niagara and State of New York as tax map parcel number: Section 144.06 Block 2 Lot 25.1, being a portion of the property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458.
2. The Department and Grantor entered into that certain Environmental Easement ("Easement Agreement") dated as of December 1, 2014 and recorded in the Niagara County Clerk's Office on December 15, 2014 as Instrument No. 2014-21584. Capitalized terms used herein without definition have the meanings ascribed to them in the Environmental Easement Agreement.
3. Pursuant to Section 1, 2, 3, 4, and 5 of the Easement Agreement, Grantor granted the Department rights and interests that run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of the Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of maintenance, monitoring or operation requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the stated purpose.
4. Pursuant to Section 2 A of the Easement Agreement, the Controlled Property may only be used for Commercial and Industrial uses described in 6 NYCRR §375-1.8(g) and may only be used consistent with controls set out in that Section 2 A of the Easement Agreement.
5. This Amendment to Environmental Easement is filed solely in order to revise the legal description for the Controlled Property that was attached as Schedule "A" to that Environmental Easement dated as of December 1, 2014 and recorded in the Niagara County Clerk's Office on December 15, 2014 as Instrument No. 2014-21584.
6. Pursuant to Section 8 of the Easement Agreement, the Department agrees to amend the Easement Agreement in the manner prescribed by Article 9 of the Real Property Law.

Stet

certain

AMENDMENT OF ENVIRONMENTAL EASEMENT

A. The above recitals are hereby incorporated into this Amendment of Environmental Easement.

B. The Department and Grantor hereby agree that the 4th Whereas clause of the Environmental Easement is hereby amended to read as follows:

[Handwritten: Deleted Clause, October 3, 2016]

WHEREAS, Grantor, is the owner of real property located at the address of 3001 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel number: Section 144.06 Block 2 Lot 25.1, being a portion of the property conveyed to Grantor by deed dated December 1, 2014 and recorded in the Niagara County Clerk's Office as Instrument No. 2014-21584. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.677 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 and last revised ~~April 2016~~ prepared by Kenneth L. Slaughenhoupt, L.L.S. of Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule "A" – Amended Description of Controlled Property; and

C. The Department and Grantor hereby agree that the metes and bounds description of the Controlled Property attached hereto as "Schedule "A" – Amended Description of Controlled Property" shall replace the original metes and bounds description attached as Schedule "A" to the December 1, 2014 Environmental Easement.

D. All other terms of the December 1, 2014 Environmental Easement shall remain in effect.

E. This Amendment of Environmental Easement inures to and binds the parties hereto and their respective successors and assigns.

F. This Amendment of Environmental Easement shall be governed by and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Grantor has caused this Amendment to Environmental Easement to be signed in its name.

Brightfields II Corporation:

By: _____

Print Name: _____

Title: _____ Date: _____

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, in the year 20 __, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public - State of New York

**THIS AMENDMENT OF THE ENVIRONMENTAL EASEMENT IS HEREBY
ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through
the Department of Environmental Conservation as Designee of the Commissioner,**

By: _____
Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

SCHEDULE "A" AMENDED DESCRIPTION OF CONTROLLED PROPERTY

ENVIRONMENTAL EASEMENT DESCRIPTION FOR SUPERFUND SITE No. 932136

Brightfields – New Lot 1250

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Beginning at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

- ✓ Thence S.88°43'18"E along the northerly line of Beech Avenue a distance of 274.00 feet to a point;
- ✓ Thence N.20°42'42"W a distance of 291.15 feet to a point;
- ✓ Thence N88°58'03"W a distance of 138.49 feet to a point on the former centerline of a 16.5 foot wide alley;
- ✓ Thence S20°42'42"W along the former centerline of a 16.5 foot wide alley a distance of 15.93 feet to the centerline of former Carolina Avenue;
- ✓ Thence N88°58'03"W along the centerline of Carolina Avenue a distance of 135.93 feet to the east line of Highland Avenue;
- ✓ Thence S20°42'42"W along the east line of Highland Avenue a distance of 273.97 feet to the Point or Place of Beginning, containing 1.677 acres of land more or less.

DEC 15 2014

WAYNE F. JAGOW
NIAGARA COUNTY CLERK

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 1st day of December, 2014, between Owner(s) Brightfields II Corporation, having an office at 333 Ganson Street, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 3001 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 144.06 Block 2 Lot 25.1; being the same as that property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.989 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 prepared by Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is

extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: B9-0777-08-03, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Cover System Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv) ;

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation

Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by

Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: 932136
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Brightfields II Corporation:

By: _____

Print Name: _____

Jon M. Williams

Title: President

Date: 8/18/14

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)


On the 18th day of August, in the year 2014, before me, the undersigned, personally appeared Don M. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Nancy L. Mazur
Notary Public - State of New York

NANCY L. MAZUR
Notary Public, State of New York
Qualified in Erie County No. 1765930
My Commission Expires 11 30, 2016

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE
PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of
Environmental Conservation as Designee of the Commissioner,

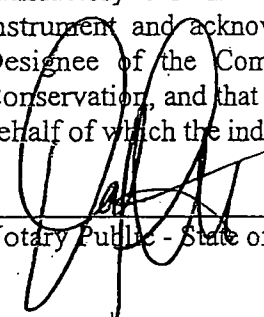
By:


Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 1st day of December, in the year 2014, before me, the undersigned,
personally appeared Robert W. Schick, personally known to me or proved to me on the basis of
satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within
instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as
Designee of the Commissioner of the State of New York Department of Environmental
Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon
behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2018

Lot 250

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Beginning at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

✓ Thence S88°43'18"E along the northerly line of Beech Avenue a distance of 313.77 feet to a point;

✓ Thence N°20'42'42"W a distance of 307.26 feet to a point on the northerly line of Carolina Avenue (not opened);

✓ Thence N88°58'03"W along said northerly line of Carolina Avenue a distance of 178.31 feet to a point on the former centerline of a 16.5 foot wide alley;

✓ Thence S20°42'42"W along the former centerline of a 16.5 foot wide alley a distance of 31.86 feet to the centerline of Carolina Avenue;

✓ Thence N88°58'03"W along the centerline of Carolina Avenue a distance of 135.93 feet to the east line of Highland Avenue;

✓ Thence S20°42'42"W along the east line of Highland Avenue a distance of 273.97 feet to the Point or Place of Beginning, containing 1.989 acres of land more or less.

Total Acreage: 1.989 +/-acres

Doc. Id. #2797804

Park

Lot 1251

AMENDMENT TO ENVIRONMENTAL EASEMENT

This Amendment to Environmental Easement is made as of this ____ day of _____ 201__, by and between The People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation ("NYSDEC" or the "Department") with its headquarters located at 625 Broadway, Albany, New York 12233, and Brightfields II Corporation ("Grantor") with its offices located at 333 Ganson Street, Buffalo, New York 14203.

RECITALS

1. Grantor is the owner of certain land known and designated on the tax map of the City of Niagara Falls, County of Niagara and State of New York as tax map parcel number: Section 144.06 Block 2 Lot 25.2, being a portion of the property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458. ✓
2. The Department and Grantor entered into that certain Environmental Easement ("Easement Agreement") dated as of December 1, 2014 and recorded in the Niagara County Clerk's Office on December 15, 2014 as Instrument No. 2014-21585. Capitalized terms used herein without definition have the meanings ascribed to them in the Environmental Easement Agreement.
3. Pursuant to Section 1, 2, 3, 4, and 5 of the Easement Agreement, Grantor granted the Department rights and interests that run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of the Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of maintenance, monitoring or operation requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the stated purpose.
certain
- ✓ 4. Pursuant to Section 2 A of the Easement Agreement, the Controlled Property may only be used for ~~Restricted Residential~~, Commercial and Industrial uses described in 6 NYCRR §375-1.8(g) and may only be used consistent with controls set out in that Section 2 A of the Easement Agreement. ✓
5. This Amendment to Environmental Easement is filed solely in order to revise the legal description for the Controlled Property that was attached as Schedule "A" to that Environmental Easement dated as of ~~December 1, 2014~~ and recorded in the Niagara County Clerk's Office on December 15, 2014 as Instrument No. 2014-21585. ?
6. Pursuant to Section 8 of the Easement Agreement, the Department agrees to amend the Easement Agreement in the manner prescribed by Article 9 of the Real Property Law.

AMENDMENT OF ENVIRONMENTAL EASEMENT

- A. The above recitals are hereby incorporated into this Amendment of Environmental Easement.
- B. The Department and Grantor hereby agree that the 4th Whereas clause of the Environmental Easement is hereby amended to read as follows:

WHEREAS, Grantor, is the owner of real property located at the address of ³²⁰¹3001 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel number: Section 144.06 Block 2 Lot 25.2, being a portion of the property conveyed to Grantor by deed dated December 1, 2014 and recorded in the Niagara County Clerk's Office as Instrument No. 2014-21585. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 5.011 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 and last revised October 31, 2016 prepared by Kenneth L. Slaughenhoupt, L.L.S. of Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule "A" – Amended Description of Controlled Property; and

- C. The Department and Grantor hereby agree that the metes and bounds description of the Controlled Property attached hereto as "Schedule "A" – Amended Description of Controlled Property" shall replace the original metes and bounds description attached as Schedule "A" to the December 1, 2014 Environmental Easement.
- D. All other terms of the December 1, 2014 Environmental Easement shall remain in effect.
- E. This Amendment of Environmental Easement inures to and binds the parties hereto and their respective successors and assigns.
- F. This Amendment of Environmental Easement shall be governed by and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Grantor has caused this Amendment to Environmental Easement to be signed in its name.

Brightfields II Corporation:

By: _____

Print Name: _____

Title: _____ Date: _____

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, in the year 20 __, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public - State of New York

**THIS AMENDMENT OF THE ENVIRONMENTAL EASEMENT IS HEREBY
ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through
the Department of Environmental Conservation as Designee of the Commissioner,**

By: _____
Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

SCHEDULE "A" AMENDED DESCRIPTION OF CONTROLLED PROPERTY

**ENVIRONMENTAL EASEMENT DESCRIPTION FOR SUPERFUND SITE No. 932136
Brightfields - Lot 1251**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Commencing at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

✓ Thence S.88°43'18"E along the northerly line of Beech Avenue a distance of 274.00 feet to the POINT OR PLACE OF BEGINNING;

✓ Thence S.88°43'18"E along the northerly line of Beech Avenue a distance of 839.99 feet to the intersection of the north line of Beech Avenue with the west line of the former Fifteenth Street;

✓ Thence N.00°54'11"E a distance of 277.75 feet to a point;

✓ Thence N88°58'03"W a distance of 741.30 feet to a point;

✓ Thence S20°42'42"W a distance of 291.15 feet to the northerly line of Beech Avenue and the Point or Place of Beginning, containing 5.011 acres of land more or less.

OK

DEC 15 2014

Lot 251

WAYNE F. JAGOW
NIAGARA COUNTY CLERK

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 1st day of December, 2014, between Owner(s) Brightfields II Corporation, having an office at 333 Ganson Street, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 3201 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 144.06 Block 2 Lot 25.2, being the same as that property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 5.001 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 prepared by Niagra Boundary and Mapping Service, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is

extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: B9-0777-08-03, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),
Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial
as described in 6 NYCRR Part 375-1.8(g)(2)(iv) ;**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining

contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation

Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

- (1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).
- (2) the institutional controls and/or engineering controls employed at such site:
 - (i) are in-place;
 - (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
 - (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
- (3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;
- (4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;
- (5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;
- (6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and
- (7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by

Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: 932136
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Brightfields II Corporation:

By: _____

Print Name: Jon M. Williams

Title: President Date: 8/18/14

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

On the 18th day of AUGUST, in the year 2014, before me, the undersigned, personally appeared JOHN M WILLIAMS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Nancy L Mazur
Notary Public - State of New York

NANCY L. MAZUR
Notary Public, State of New York
Qualified in Erie County No. 1765930
My Commission Expires 11 30, 2016

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: _____

Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 1st day of December, in the year 2014, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2015

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Commencing at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

Thence S88°43'18"E along the northerly line of Beech Avenue a distance of 313.77 feet to the POINT OR PLACE OF BEGINNING;

Thence S88.43'18"E along the northerly line of Beech Avenue a distance of 800.22 feet to the intersection of the north line of Beech Avenue with the west line of the former Fifteenth Street;

Thence N00°54'11"E a distance of 292.75 feet to a point on the northerly line of Carolina Avenue (not opened);

Thence N88°58'03"W along said northerly line of Carolina Avenue a distance of 696.08 feet to a point;

Thence S20°42'42"W a distance of 307.26 feet to the northerly line of Beech Avenue and the Beech Avenue and the Point or Place of Beginning, containing 5.001 acres of land more or less.

Total Acreage: 5.001 +/- acres

Doc. Id. #2797805

Lot 252
ORIGINAL FILED

DEC 15 2014

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW
WAYNE F. JAGOW
NIAGARA COUNTY CLERK

THIS INDENTURE made this 1st day of December, 2014, between Owner(s) Brightfields II Corporation, having an office at 333 Ganson Street, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 3079 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 144.06 Block 2 Lot 2.1, being the same as that property conveyed to Grantor by deed dated April 4, 2014 and recorded in the Niagara County Clerk's Office in Instrument No. 2014-05458. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 11.067 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 prepared by Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is

extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: B9-0777-08-03, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv) ;

Cover System

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation

Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by

Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: 932136
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Brightfields II Corporation:

By: 

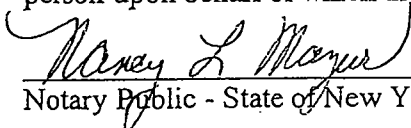
Print Name: Jon M. Williams

Title: President Date: 8/13/14

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

On the 18th day of AUGUST, in the year 2014, before me, the undersigned, personally appeared JOHN M. WILLIAMS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public - State of New York

NANCY L. MAZUR
Notary Public, State of New York
Qualified in Erie County No. 1765930
My Commission Expires 11 30, 2016

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: _____

Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 15th day of December, in the year 2014 before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2018

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Beginning at the intersection of the northerly line of Beech Avenue with the easterly line of the former Fifteenth Street;

Thence N00°54'11"E along the said easterly line of Fifteenth Street a distance of 862.28 feet to a point on the northerly line of Lot 34 of the New York State Mile Reserve;

Thence S89°40'00"E along the northerly line of Lot 34 of the New York State Mile Reserve a distance of 559.41 feet to the northwesterly corner of Lot 218 of the Re-subdivision of Lots on 17th Street, Niagara Falls, NY according to a Map made by Wallace P. Keller, P.E., L.S. and recorded in the Niagara County Clerk's Office on January 5, 1960 in Map Book 64 of Maps at Page 1595, now filed in Book 40 of Microfilmed Maps at page 4000;

Thence S00°28'15"W along the westerly line of Lots 218, 217, 216, 215, 214, 213 and part of Lot 212 of said Re-subdivision a distance of 299.61 feet to the northeasterly corner of a 10 foot wide alley;

Thence N89°04'07"W along the northerly line of said alley a distance of 10.00 feet to a point;

Thence S00°28'15"W along the westerly line of said Alley a distance of 571.90 feet to a point on the northerly line of Beech Avenue;

Thence N88°43'18"W along the northerly line of Beech Avenue a distance of 555.97 feet to the Point or Place of Beginning, containing 11.067 acres of land more or less.

Total Acreage: 11.067 +/- acres

Doc. Id. #2797808

Lot 250 (Western Commercial)

Tax Parcel 144.06-2-25.1 7.98 acres 3001 Highland Ave

Lot 251 (Park)

Tax Parcel 144.06-2-25.2 5.00 acres 3201 Highland Ave

1503 College Ave

Tax Parcel 130.18-2-13 1.187 acres (Former 15th St.)

Lot 252 (Eastern Commercial)

Tax Parcel 144.06-2-2.1 11.067 acres 3079 Highland Ave

Total 19.244 acres

Tulip Molded Plastics

SBL 144.06-2-1 3279 Highland Ave



RECEIVED

LETTER OF TRANSMITTAL

DEC 27 2016

NYS DEC
REGION 9

1050
Int.
Reviewed
1/17/17

December 22, 2016

To NYS Department of Environmental Conservation File no. 8612191
Attention Mr. Brian Sadowski
Address 270 Michigan Avenue Buffalo, NY 14203
Re Lockport Landfill 2016 Annual Groundwater Monitoring, Sampling and Inspection Reports

We are sending you the following items: ☒ Attached ☐ Under separate cover

☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of Letter ☐ Change Order ☐ Invoices ☒ Other

Copies	Date	No.	Description
1			Regular Site Inspection Report
1			Sampling and Analysis Report
1			CD of Regular Site Inspection & Sampling and Analysis Report

These are transmitted:

☒ For review ☐ Approved as submitted ☐ Resubmit _____ copies for approval
☒ For your use ☐ Approved as noted ☐ Submit _____ copies for distribution
☒ As requested ☐ Returned ☐ Return _____ corrected prints
☐ For Signature ☐ For bids due ☐ For review and remittance

Remarks:

Cc: File - 8612191
Rolando Moreno, Lockport

Signed: Dave Rowlinson

If enclosures are not as noted, kindly notify us at once.

Dieffenbach, Timothy (DEC)

From: Dieffenbach, Timothy (DEC)
Sent: Tuesday, April 04, 2017 4:40 PM
To: Bradford D Burns (DEC) (bradford.burns@dec.ny.gov)
Cc: McIntosh, Mary (DEC); Putzig, Bart X (DEC); Foster, Patrick E (DEC)
Subject: Site No. C932157 - Tract I
Attachments: letter.c932157.2017-04-04PRR Comment Letter.docx

Brad,

Can you please look at the attached draft letter, specifically item 2. ?

I would like to know if you are in agreement with my comments regarding the boundaries of the Tract I and Tract II sites and my statement that the property transfer from Brightfields II Corp. to Brightfields Corp. (fifteen foot wide strip of land) should not result in any revision to the environmental easement for the Tract I site.

Please let me know if you have any suggested changes to the letter.

Thanks, Tim

Timothy E. Dieffenbach
Engineering Geologist 2
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2915
timothy.dieffenbach@dec.ny.gov
Office:(716) 851-7220
Fax:(716) 851-7252

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7220 | F: (716) 851-7226
www.dec.ny.gov

April 4, 2017

Brightfields Corporation
Jon M. Williams
333 Ganson Street
Buffalo, NY 14203

Dear Jon M. Williams (as the Certifying Party):

Site Management (SM) Periodic Review Report
(PRR) Response Letter
Tract I Highland Avenue, Niagara Falls
Niagara County
Site No.: C932157

I have reviewed your Periodic Review Report (PRR) and IC/EC Certification for the period 01/16/2016 to 01/16/2017 and have the following comments:

1. Section I., first paragraph, references the document as the first Periodic Review Report (PRR) for the Tract I Site. This is the second PRR for the Tract I Site and should be changed accordingly.
2. Section III., second paragraph, states, "In preparation for redevelopment, it was necessary to add some property to the parcel to accommodate the proposed construction. A copy of the land surveys indicating the revised boundary of Tract I and the adjacent Tract II parcel is attached for your records. The environmental easements have been revised, and it is understood that this action in no way changed the BCP boundary."
Although property from Brightfields II Corp. has been transferred to Brightfields Corp. it does not change the boundaries of the Tract II or Tract I sites. Furthermore, the property transfer should not result in any revision to the environmental easement for the Tract I site.
The attached land surveys maps are of property owned by Brightfields II Corp. (new Lot 1251 and Lot 1250). The land surveys maps showing New Lot 1253 (the Tract I Site) and the property transferred from Brightfields II Corp. to Brightfields Corp. (fifteen foot wide strip of land) should be attached.
3. Enclosure 2, Box 2, should only be signed if the answer to either question 6 or 7 is No and a Corrective Measures Work Plan is attached to the PRR. Since the answer to both questions 6 and 7 is yes and no Corrective Measures Work Plan is required, Box 2 should not be signed or dated.



Department of
Environmental
Conservation

Please make the above changes and re-submit the PRR. If you have any questions, please contact me at 716-851-7220 or e-mail: timothy.dieffenbach@dec.ny.gov

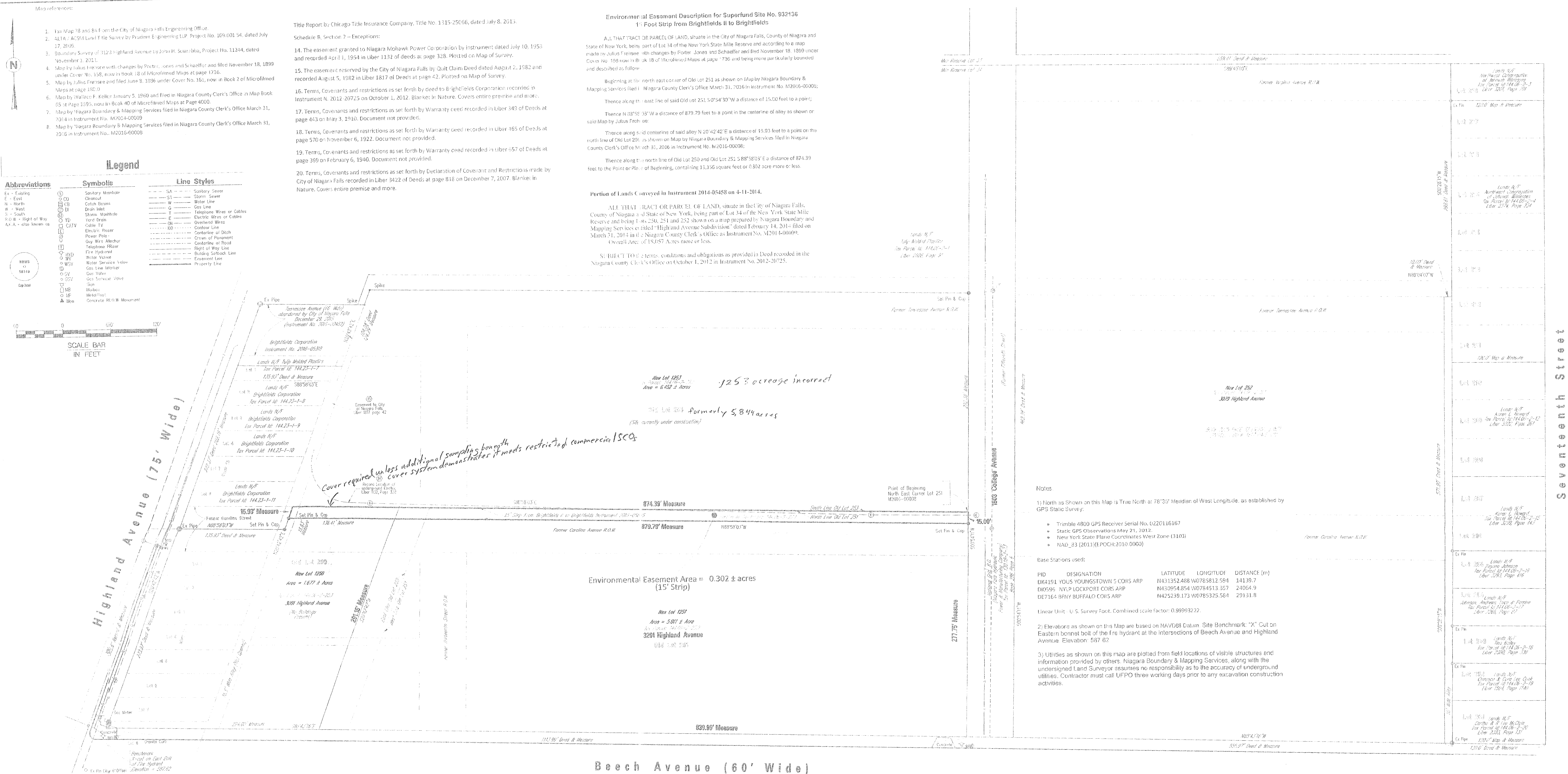
Sincerely,

Timothy Dieffenbach
Project Manager

TD/tm

ec: Timothy Dieffenbach, Project Manager
Matthew Forcucci, DOH Project Manager
Bart Putzig, Albany-DEC
Mary McIntosh

cc: Jon M. Williams, Brightfields Corporation
John Yensan, Ontario Specialty Contracting, Inc.



This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the New York Environmental Conservation Law.

THE ENGINEERING AND INSTITUTIONAL CONTROLS FOR THIS EASEMENT ARE SET FORTH IN THE SITE MANAGEMENT PLAN (SMP). A COPY OF THE SMP MUST BE OBTAINED BY ANY PARTY WITH AN INTEREST IN THE PROPERTY. THE SMP CAN BE OBTAINED FROM THE NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 625 BROADWAY, ALBANY, NY 12233 OR AT DEC@GW.DEC.STATE.NY.US

ENGINEERING/INSTITUTIONAL CONTROLS

- Cover System - The cover system is a permanent control. Procedures for the inspection and maintenance of this cover are provided in the Monitoring Plan in the Site Management Plan (SMP).
- Compliance with the Environmental Easement and the SMP by the Grantor and the Grantor's successors and assigns;
- All Engineering Controls must be operated and maintained as specified in the SMP;
- All Engineering Controls on the Controlled Property must be inspected at a frequency and in a manner defined in the SMP;
- Groundwater, soil vapor and other environmental or public health monitoring must be performed as defined in the SMP;
- Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;
- The use and development of the site is limited to Commercial and Recreational uses only as described in 6NYCRR Part 375-6.7(d).
- The property may not be used for a higher level of use, such as Restricted Residential use without additional remediation and amendment of the Environmental Easement as approved by the NYS DEC;
- All future utilities on the property that will disturb remaining contaminated material must be conditioned in accordance with the SMP;
- The use of the groundwater underlying the property is prohibited without treatment rendering it safe for intended use;
- The site owner or non-adjoining party will submit to NYSDEC a written statement that certifies, under penalty of perjury, that: (1) controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls were approved by the NYS DEC; and (2) nothing has occurred that impairs the ability of the controls to protect public health and environment or that constitute a violation or failure to comply with the SMP.

Map Showing
ALTA / NISPS Land Title Survey

Property Owned
by
Brightfields II Corporation
15 foot strip
Instrument: 2014-05458
3201 Highland Avenue, Niagara Falls, NY
For Record: 144,087-2-252
Superfund Site No. 320106

Niagara Boundary
And Mapping Services

760 Niagara Street
Niagara Falls, NY 14202
716-251-5084
Fax: 716-251-9858
E-Mail: ALTA@NBSURV.COM

UNIVERSITY OF NIAGARA
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2013 Uniform Standard Detail Requirements for ALTA and NISPS Land Title Surveys, jointly established and adopted by ALTA and NISPS, and includes the terms of Table A thereon. The fieldwork was completed on April 8, 2016.

Date of Plot or Map: October 31, 2016

Geometric 1: Scale of Plot or Map: New York State License Number 50349

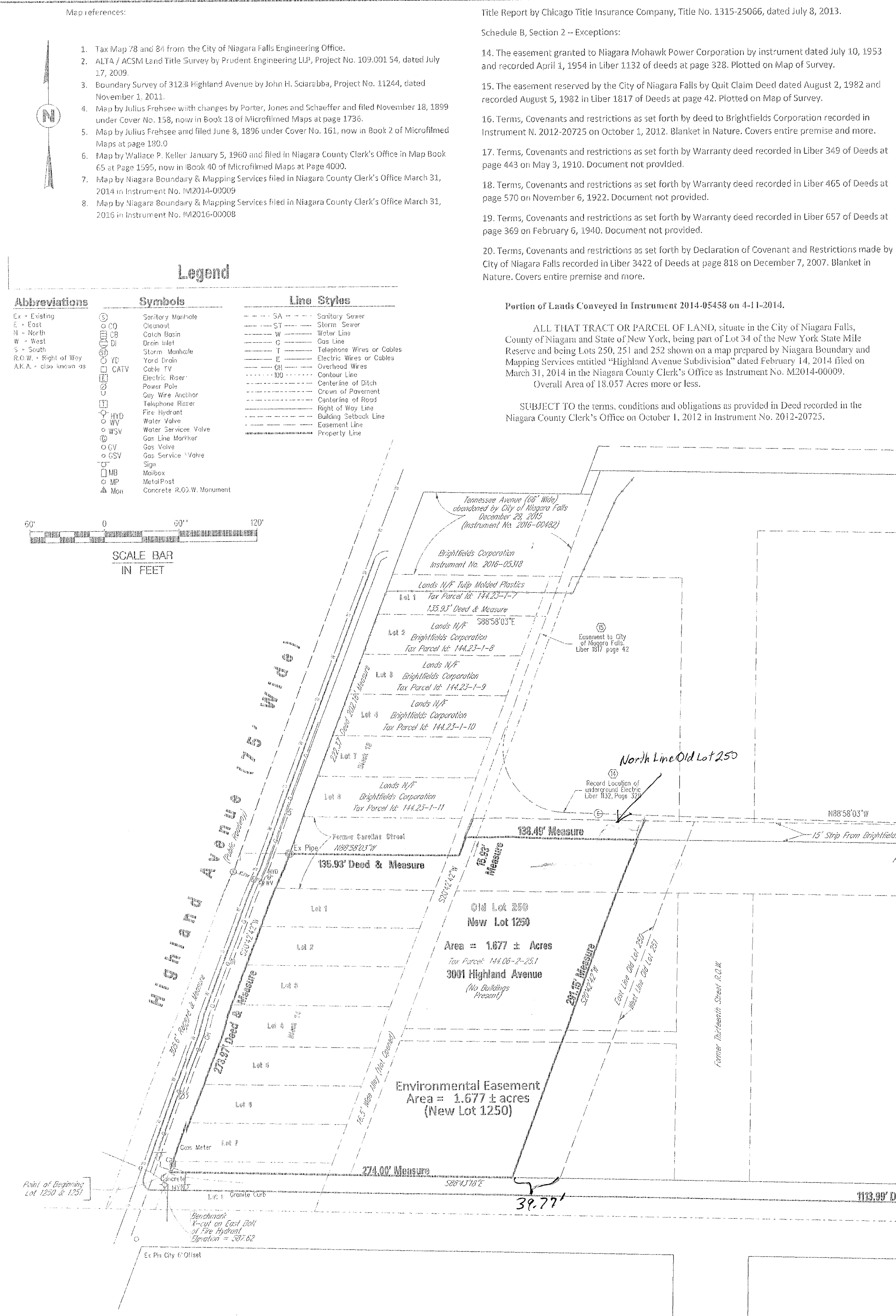
LOT	SECTION	TOWNSHIP	RANGE
84		Niagara Falls	
City		Niagara	
COUNTY		Niagara	
STATE		New York	
DATE		February 14, 2014	
SCALE		1" = 60'	
JOB NO.		792815	15 foot wide Environmental Easement
REVISIONS			

REVISIONS

1. This map is a reproduction of the original map. The original map is the only one that is valid. This map is a reproduction of the original map. The original map is the only one that is valid.

2. This map is a reproduction of the original map. The original map is the only one that is valid. This map is a reproduction of the original map. The original map is the only one that is valid.

ALL ENGINEERING AND INSTITUTIONAL CONTROLS FOR THIS EASEMENT ARE SET FORTH IN THE SITE MANAGEMENT PLAN (SMP). A COPY OF THE SMP MUST BE OBTAINED BY ANY PARTY WITH AN INTEREST IN THE PROPERTY. THE SMP CAN BE OBTAINED FROM THE NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 625 BROADWAY, ALBANY, NY 12233 OR AT DEC@GW.DEC.STATE.NY.US

**ENGINEERING / INSTITUTIONAL CONTROLS**

- Cover System – The cover system is a permanent control. Procedures for the inspection and maintenance of this cover are provided in the Monitoring Plan & the Site Management Plan (SMP).
- Compliance with the Environmental Easement and the SMP by the Grantor and the Grantor's successors and assigns;
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- Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;
- The use and development of the site is limited to Commercial and Recreational uses only as described in 6NYCRR Part 375-6.7(d).
- The property may not be used for a higher level of use, such as Restricted Residential use without additional remediation and amendment of the Environmental Easement as approved by the NYSDEC;
- All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;
- The use of the groundwater underlying the property is prohibited without treatment rendering it safe for intended use;
- The site owner or remedial party will submit to NYSDEC a written statement that certifies, under penalty of perjury, that: (1) controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls were approved by the NYSDEC; and, (2) nothing has occurred that impairs the ability of the controls to protect public health and environment or that constitute a violation or failure to comply with the SMP

Surveyors Certification:

Certified To: (1)The People of the State of New York acting through their Commissioner of the Department of Environmental Conservation, (2) Brightfields Corporation, (3) Chicago Title Insurance Company.

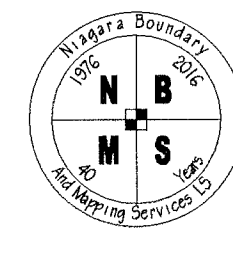
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes No Items of Table A thereof. The fieldwork was completed on February 14, 2014.

Date of Plat or Map: April 1, 2016

Kenneth L. Sclaughaupt New York State License Number 50349

Niagara Boundary
And Mapping Services

761 Coyne Street
Lewiston, NY 14092
716.297.9554
FAX: 716.297.9556
E-MAIL: KLS@NBSMAOL.COM



UNAUTHORIZED ALTERATION OR ADDITION TO THIS SURVEY MAP IS A VIOLATION OF SECTION 2205, PROVISION 2 OF THE NEW YORK STATE EASEMENT LAW.
THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATE OR LOCAL THAT MAY BE REVEALED BY AN EXAMINATION OF SUCH

LOT	SECTION	TOWNSHIP	RANGE
34			
Mile Reserve			
City	Niagara Falls		
COUNTY	Niagara		
STATE	New York		
DATE	February 14, 2014		
SCALE	1" = 60'		
JOB NO.	7928 Lot 250 Environmental Easement		
REVISIONS			

Map Showing
ALTA / ACSM Land Title Survey
of
Property Owned
by
Brightfields II Corporation
(Lot 250) **1250**

Instrument: 2014-05458
3201 Highland Avenue Niagara Falls, NY
Tax Parcels: 144.06-2-25.1
Superior: Site No. 3-25-26

"ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY MARKED WITH AN ORIGINAL OF THE LAND SURVEYOR'S UNDOUBTED SEAL SHALL BE CONSIDERED TO BE VALID TRUE COPIES."

THIS SURVEY WAS PREPARED FOR THE PARTIES AND PURPOSE INDICATED HEREON. ANY EXTENSION OF THE USE BEYOND THE PARTIES OR PURPOSE INDICATED IS EXPRESSLY FORBIDDEN WITHOUT WRITTEN RELEASE OR PERMISSION OF THE UNDERSIGNED.

Kenneth L. Sclaughaupt Lic. No. 50349

RECORD OF DECISION AMENDMENT

Tract II Highland Avenue Site

State Superfund Project

Niagara Falls, Niagara County

Site No. 932136

March 2012



Prepared by
Division of Environmental Remediation
New York State Department of Environmental Conservation

DECLARATION STATEMENT RECORD OF DECISION AMENDMENT

Tract II Highland Ave
State Superfund Project
Niagara Falls, Niagara County
Site No. 932136
March 2012

Statement of Purpose and Basis

This document presents the remedy for the Tract II Highland Ave. site, a Class 2 inactive hazardous waste disposal site. The remedial program was chosen in accordance with the New York State Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 375, and is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan of March 8, 1990 (40CFR300), as amended.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (the Department) for the Tract II Highland Ave site and the public's input to the proposed Record of Decision Amendment presented by the Department. A listing of the documents included as a part of the Administrative Record is included in Appendix B of the ROD.

Description of Selected Remedy

The elements of the proposed amended remedy are as follows:

1. A remedial design program to verify the components of the conceptual design and provide the details necessary for the construction of the remedial program. To maximize the net environmental benefit, Green remediation and sustainability efforts are considered in the design and implementation of the remedy to the extent practicable, including;
 - using renewable energy sources;
 - reducing green house gas emissions;
 - encouraging low carbon technologies;
 - foster green and healthy communities;
 - conserve natural resources;
 - increase recycling and reuse of clean materials;

- preserve open space and working landscapes;
 - utilize native species and discourage invasive species establishment during restoration;
 - promote recreational use of natural resources;
2. Development and submittal of a work plan to assess the extent of radionuclides at the site and development of plans necessary to address handling and disposal requirements for radiological waste material.
 3. Excavation and off-site disposal of contaminated waste and fill materials from the western portion of the site that exceed Part 375 commercial use SCOs;
 4. Contaminated wastes, soil and debris will be excavated and characterized prior to relocation and/or placement of the cover system. Excavated material that is below the hazardous waste leachability criteria for lead of 5.0 mg/l would be consolidated above the water table and covered with a soil cover. Excavated material that exceeds the hazardous waste leachability criteria for lead of 5.0 mg/l would be either sent off-site for disposal or treated by a stabilization technique. Prior to treatment excavated materials would be screened to separate soil and debris. Treated material that has been rendered non-hazardous and meets the land disposal criteria will be consolidated above the water table and covered with a soil cover. Soils exhibiting concentrations of lead that is too high and cannot be stabilized to meet the required leachability criteria will be disposed of off-site at an approved disposal facility. Debris that is sorted from the soil will be characterized and sent off site to an appropriate facility for disposal. Excess treated soil, that exceeds the fill capacity of the excavation and/or final site grades, will be removed off-site for disposal. Treatment on site will meet the basic requirements of Parts 373 & 374 for handling and treating hazardous waste;
 5. An ex-situ solidification/stabilization process that uses a solidifying or stabilizing agent to bind the excavated soil into a low permeability mass will be used to treat the characteristic lead contamination. Under this process the contaminated soil will be excavated and mixed in a temporary mixing facility (i.e., pug mill, mixer, etc.) with solidifying or stabilizing agents (typically portland cement) or other binding agents. The soil and agent are mixed to a concrete like slurry that is placed in the subsurface on-site resulting in a solidified monolith of low permeable material. The solidified mass will then be covered with a soil cover as described below, to prevent direct exposure to the solidified mass. The resulting solid matrix reduces or eliminates mobility of contamination and reduces or eliminates the matrix as a source of groundwater contamination.
 6. A site cover will be required over the entire site to allow commercial and/or passive recreational use of the site. The cover will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper one foot of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required, it will be a minimum of one foot of

soil for areas of commercial development and two feet of soil for area designated for recreational use, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for commercial use and recreational use, respectively. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d);

7. Creation of clean utility corridors through the consolidated material in order to accommodate future re-development;
8. Backfill and grading of the western excavation areas with available clean concrete and brick building debris, supplemented as needed with clean backfill soils. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d);
9. In-place demolition of the underground parking garage on the western portion of the site;
10. Imposition of an institutional control in the form of an environmental easement for the property that:
 - (a) requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3).;
 - (b) land use is subject to local zoning laws, the remedy allows the use and development of the controlled property for commercial and industrial uses;
 - (c) restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the Department, NYSDOH, County DOH, or City Authority;
 - (d) prohibits agricultural or vegetable gardens on the controlled property; and
 - (e) requires compliance with the Department approved Site Management Plan;
11. A Site Management Plan is required, which includes the following:
 - (a) an Institutional Control Plan that identifies all use restrictions for the site and details the steps and media-specific requirements necessary to assure the institutional controls remain in place and effective. This plan includes, but may not be limited to:
 - (i) an Excavation Plan for the western portion of the site which details the provisions for management of future excavations in areas of remaining contamination;
 - (ii) descriptions of the provisions of the environmental easement for the western portion of the site including any land use restrictions;
 - (iii) maintaining site access controls and Department notification; and

(iv) the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

(b) a Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:

(i) monitoring groundwater quality and elevation to assess the performance and effectiveness of the remedy;

(ii) soil cover system inspection and maintenance, as necessary, to ensure its function is not impaired by erosion or activities at the site;

(iii) a schedule of monitoring and frequency of submittals to the Department;

New York State Department of Health Acceptance

The New York State Department of Health (NYSDOH) concurs that the remedy for this site is protective of human health.

Declaration

The selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action to the extent practicable, and is cost effective. This remedy utilizes permanent solutions and alternative treatment or resource recovery technologies, to the maximum extent practicable, and satisfies the preference for remedies that reduce toxicity, mobility, or volume as a principal element.

March 28, 2012



Date

Robert W. Schick, P.E., Acting Director
Division of Environmental Remediation

RECORD OF DECISION AMENDMENT

Tract II Highland Ave

Niagara Falls, Niagara County

Site No. 932136

March 2012

SECTION 1: SUMMARY AND PURPOSE

The New York State Department of Environmental Conservation (the Department), in consultation with the New York State Department of Health (NYSDOH), has selected a remedy for the above referenced site. The disposal of hazardous wastes at the site has resulted in threats to public health and the environment that would be addressed by the remedy. The disposal or release of hazardous wastes at this site, as more fully described in this document, has contaminated various environmental media. The remedy is intended to attain the remedial action objectives identified for this site for the protection of public health and the environment. This Record of Decision (ROD) identifies the selected remedy, summarizes the other alternatives considered, and discusses the reasons for selecting the remedy.

The New York State Inactive Hazardous Waste Disposal Site Remedial Program (also known as the State Superfund Program) is an enforcement program, the mission of which is to identify and characterize suspected inactive hazardous waste disposal sites and to investigate and remediate those sites found to pose a significant threat to public health and environment.

The Department has issued this document in accordance with the requirements of New York State Environmental Conservation Law and 6 NYCRR Part 375. This document is a summary of the information that can be found in the site-related reports and documents.

SECTION 2: CITIZEN PARTICIPATION

The Department seeks input from the community on all remedies. A public comment period was held, during which the public was encouraged to submit comment on the proposed remedy. All comments on the remedy received during the comment period were considered by the Department in selecting a remedy for the site. Site-related reports and documents were made available for review by the public at the following document repository:

Doris Jones Family Resource Center
3001 9th Street
Niagara Falls, NY 14305
(716) 285-5374
Hours: Mon. - Fri. 8:30 AM - 9pm

NYSDEC Region 9 Offices
Contact: Mr. Tim Dieffenbach, Project Manager
270 Michigan Avenue
Buffalo, NY 14203
(716) 851-7220
Hours: Mon. - Fri. 8:30am - 4:45pm

A public meeting was also held on March 1, 2012 to present the findings of the remedial investigation (RI) and the feasibility study (FS) along with a summary of the proposed remedy. After the presentation, a question-and-answer period was held, during which verbal or written comments were accepted on the proposed remedy.

Comments on the remedy received during the comment period are summarized and addressed in the responsiveness summary section of the ROD in Appendix A.

SECTION 3: SITE DESCRIPTION AND HISTORY

Location: The Tract II Site is a 20 acre parcel located on the northeast corner of Highland and Beech Avenues in the City of Niagara Falls.

Site Features: The site is bordered on the north by a large dilapidated building formerly used as a battery manufacturing facility (the Power City Warehouse Site #932131). Highland Avenue, which has a mix of commercial and residential properties, runs along the west side of the site. Beech Avenue, with mostly residential properties (and a park), runs along the south side of the site. Residential properties and a church border the site to the east. A strip of land owned by the National Grid bisects the Tract II site into the eastern and western portions. The site is also located in the Highland Avenue Brownfield Opportunity Area (BOA).

Current Zoning/Use(s): Current zoning is for industrial use; however, zoning may be changed with the remediation and redevelopment of the site to commercial use to be in conformance with the City's Master Plan.

Historic Use(s): The western portion of the Tract II site was once home to a series of business form manufacturing companies (from 1903-1971). The eastern portion of the Tract II site is believed to have been either directly or indirectly associated with the former manufacturing activities at the adjacent Power City Warehouse. The City currently owns both the Tract II and Power City Warehouse (aka Tract I) sites through tax foreclosures.

The eastern portions of the site have up to 9 feet of waste and fill materials over the native soils. These waste and fill materials include building demolition debris such as brick, concrete, sand, wood, etc. However, also present on the eastern portion of the Tract II site are wastes that were likely associated with the manufacturing activities at the adjacent Power City Warehouse site. These wastes include plastic battery casings and other granular fill materials. In addition, there has been significant illegal dumping of household items along the north-east portion of the site. These wastes include numerous TVs and other items which may have contributed to the contaminants detected in surface soils in this part of the site.

A site investigation was completed by the City under the Environmental Restoration Program (ERP site #B00022) in 2000, and a Record of Decision was issued by the Department in March 2003. The primary site contaminants identified in the ROD were metals and PAHs in site soils. Upon issuance of the 2003 ROD, the City elected not to implement the ROD remedial requirements under the ERP.

The site was determined to pose a significant threat due to the potential for direct human contact with site contaminants, especially metals contaminated surface soils by trespassing youths. The site was therefore listed on the Registry as Site No. 932136 and classified as a Class 2 site in 2008.

A Supplemental Remedial Investigation was completed in October 2009 by DEC. In November 2009 the EPA fenced the site buildings (the remainder of the site is not fenced) to help reduce trespassing. The EPA also removed and cleaned PCB sludge and water from a sump within the underground parking garage as part of an Emergency Removal action that was conducted in 2009 on the adjacent Power City Warehouse property. The garage is located in the western portion of the site and was part of the Moore Business Forms Building,

Site Geology/Hydrogeology: Underlying the waste and fill materials (at depths starting from 1-9 feet below the surface) is a native reddish silty clay soil which extends to the top of bedrock (which occurs at depths from 12-24 feet). With the exception of some very limited areas of perched groundwater, there is no overburden groundwater present at the site.

A Record of Decision was issued previously for OU 01 in March 2003.

A site location map is attached as Figure 1.

SECTION 4: LAND USE AND PHYSICAL SETTING

The Department may consider the current, intended, and reasonably anticipated future land use of the site and its surroundings when evaluating a remedy for soil remediation. For this site, alternatives (or an alternative) that restrict(s) the use of the site to commercial use as described in Part 375-1.8(g) are/is being evaluated in addition to an alternative which would allow for restricted use of the site.

SECTION 5: ENFORCEMENT STATUS

Potentially Responsible Parties (PRPs) are those who may be legally liable for contamination at a site. This may include past or present owners and operators, waste generators, and haulers.

The Department and Honeywell Corporation entered into a Consent Order in October 2011. This Order obligates Honeywell to implement a RD/RA for OU1.

SECTION 6: SITE CONTAMINATION

6.1: Summary of the Remedial Investigation

A Remedial Investigation (RI) has been conducted. The purpose of the RI was to define the nature and extent of any contamination resulting from previous activities at the site. The field activities and findings of the investigation are described in the RI Report.

The following general activities are conducted during an RI:

- Research of historical information,
- Geophysical survey to determine the lateral extent of wastes,
- Test pits, soil borings, and monitoring well installations,
- Sampling of waste, surface and subsurface soils, groundwater, and soil vapor,
- Sampling of surface water and sediment,
- Ecological and Human Health Exposure Assessments.

While the majority of the investigation work was completed by the City of Niagara Falls under the Environmental Restoration Program (ERP) Grant, subsequent sampling was conducted by the Department and Honeywell Corporation in order to further define the extent and characteristics of the contamination on the site.

6.1.1: Standards, Criteria, and Guidance (SCGs)

The remedy must conform to promulgated standards and criteria that are directly applicable or that are relevant and appropriate. The selection of a remedy must also take into consideration guidance, as appropriate. Standards, Criteria and Guidance are hereafter called SCGs.

To determine whether the contaminants identified in various media are present at levels of concern, the data from the RI were compared to media-specific SCGs. The Department has developed SCGs for groundwater, surface water, sediments, and soil. The NYSDOH has developed SCGs for drinking water and soil vapor intrusion. The tables found in Exhibit A list the applicable SCGs in the footnotes. For a full listing of all SCGs, see: <http://www.dec.ny.gov/regulations/61794.html>

6.1.2: RI Information

The analytical data collected on this site includes data for:

- groundwater

- soil

The data have identified contaminants of concern. A "contaminant of concern" is a hazardous waste that is sufficiently present in frequency and concentration in the environment to require evaluation for remedial action. Not all contaminants identified on the property are contaminants of concern. The nature and extent of contamination and environmental media requiring action are summarized in the March 2003 ROD. Additionally, the RI Report contains a full discussion of the data. The contaminant(s) of concern identified for this Operable Unit at this site is/are:

- lead
- polycyclic aromatic hydrocarbons (PAHs)

As illustrated in the original 2003 ROD for OU 1 of this site, the contaminant(s) of concern exceed the applicable SCGs for:

- soil

Since the issuance of the FS and ROD, new information about the site has been obtained. The most significant finding is the presence of levels of lead in site soils for leachability that exceed regulatory limits in the eastern portion of the site. Additionally, radiological scoping surveys were performed in 2012 to determine if this property has radiological impacts similar to those identified at nearby properties in and around Niagara Falls, New York. The survey was a screening effort that was performed to determine if a more comprehensive survey needed to be conducted. Gamma radiation responses ranged from less than 12,000 counts per minute (KCPM) to over 25 KCPM at 3 locations. Findings from the survey are illustrated on Figure 2. Excavation of the test pits indicates slag may be the source of the elevated gamma responses. A work plan to better assess the extent of radionuclides at the site will be developed and submitted for Department approval.

6.2: Interim Remedial Measures

No interim remedial measures were conducted as part of the project.

6.3: Summary of Human Exposure Pathways

This human exposure assessment identifies ways in which people may be exposed to site-related contaminants. Chemicals can enter the body through three major pathways (breathing, touching or swallowing). This is referred to as exposure.

The site is partially fenced, which along with heavy overgrowth, limits public access. However, persons who enter the site could contact contaminants in the soil by walking on the site, digging or otherwise disturbing the soil. Groundwater is not present at the site and the area is served by a public water supply that is not affected by the contamination.

6.4: Summary of Environmental Assessment

This section summarizes the assessment of existing and potential future environmental impacts presented by the site. Environmental impacts may include existing and potential

future exposure pathways to fish and wildlife receptors, wetlands, groundwater resources, and surface water.

The Fish and Wildlife Resources Impact Analysis (FWRIA) for OU 01, which is included in the RI report, presents a detailed discussion of the existing and potential impacts from the site to fish and wildlife receptors. Given the highly urbanized area in the vicinity of the Tract II Site, wildlife resources are limited.

Site groundwater has not been impacted and there is little overburden groundwater present due to the low permeability native soils.

6.5: Summary of the Remediation Objectives

Goals for the cleanup of the site were established in the original ROD. The goals selected for this site are:

- Reduce, control, or eliminate to the extent practicable the contamination present within the soils and fill on site, and thereby eliminate the significant threat posed by the presence of hazardous wastes at the site.
- Eliminate the potential for direct human or animal contact with the contaminated soils or groundwater on site.
- Eliminate the threat to surface waters and sediments by eliminating surface run-off and subsurface releases of fill from the site.
- Prevent, to the extent possible, migration of contaminants at the site to groundwater and surface water.

Further, the remediation goals for the site include attaining to the extent practicable:

- Provide for attainment of SCGs for groundwater quality at the limits of the site.

SECTION 7: SUMMARY OF THE SELECTED REMEDY

To be selected the remedy must be protective of human health and the environment, be cost-effective, comply with other statutory requirements, and utilize permanent solutions, alternative technologies or resource recovery technologies to the maximum extent practicable. The remedy must also attain the remedial action objectives identified for the site, which are presented in Section 6.5. Potential remedial alternatives for the Site were identified, screened and evaluated in the feasibility study (FS) report.

Cost information is presented in the form of present worth, which represents the amount of money invested in the current year that would be sufficient to cover all present and future costs associated with the alternative. This enables the costs of remedial alternatives to be compared on a common basis. As a convention, a time frame of 30 years is used to evaluate present worth

costs for alternatives with an indefinite duration. This does not imply that operation, maintenance, or monitoring would cease after 30 years if remediation goals are not achieved.

For OU: 00

The estimated present worth cost to implement the remedy is \$48,000. The cost to construct the remedy is \$ 0 and the estimated average annual cost is \$2,000.

The elements of the selected remedy are as follows:

Long Term Site Management

For OU: 01

The estimated present worth cost to implement the remedy is \$6,051,000. The cost to construct the remedy is estimated to be \$6,021,000 and the estimated average annual cost is \$2,000.

The elements of the selected remedy are as follows:

1. A remedial design program to verify the components of the conceptual design and provide the details necessary for the construction of the remedial program. To maximize the net environmental benefit, Green remediation and sustainability efforts are considered in the design and implementation of the remedy to the extent practicable, including;
 - using renewable energy sources;
 - reducing green house gas emissions;
 - encouraging low carbon technologies;
 - foster green and healthy communities;
 - conserve natural resources;
 - increase recycling and reuse of clean materials;
 - preserve open space and working landscapes;
 - utilize native species and discourage invasive species establishment during restoration;
 - promote recreational use of natural resources;
2. Development and submittal of a work plan to assess the extent of radionuclides at the site and development of plans necessary to address handling and disposal requirements for radiological waste material.

3. Excavation and off-site disposal of contaminated waste and fill materials from the western portion of the site that exceed Part 375 commercial use SCOs;
4. Contaminated wastes, soil and debris will be excavated and characterized prior to relocation and/or placement of the cover system. Excavated material that is below the hazardous waste leachability criteria for lead of 5.0 mg/l would be consolidated above the water table and covered with a soil cover. Excavated material that exceeds the hazardous waste leachability criteria for lead of 5.0 mg/l would be either sent off-site for disposal or treated by a stabilization technique. Prior to treatment excavated materials would be screened to separate soil and debris. Treated material that has been rendered non-hazardous and meets the land disposal criteria will be consolidated above the water table and covered with a soil cover. Soils exhibiting concentrations of lead that is too high and cannot be stabilized to meet the required leachability criteria will be disposed of off-site at an approved disposal facility. Debris that is sorted from the soil will be characterized and sent off site to an appropriate facility for disposal. Excess treated soil, that exceeds the fill capacity of the excavation and/or final site grades, will be removed off-site for disposal. Treatment on site will meet the basic requirements of Parts 373 & 374 for handling and treating hazardous waste;
5. An ex-situ solidification/stabilization process that uses a solidifying or stabilizing agent to bind the excavated soil into a low permeability mass will be used to treat the characteristic lead contamination. Under this process the contaminated soil will be excavated and mixed in a temporary mixing facility (i.e., pug mill, mixer, etc.) with solidifying or stabilizing agents (typically portland cement) or other binding agents. The soil and agent are mixed to a concrete like slurry that is placed in the subsurface on-site resulting in a solidified monolith of low permeable material. The solidified mass will then be covered with a soil cover as described below, to prevent direct exposure to the solidified mass. The resulting solid matrix reduces or eliminates mobility of contamination and reduces or eliminates the matrix as a source of groundwater contamination.
6. A site cover will be required over the entire site to allow commercial and/or passive recreational use of the site. The cover will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper one foot of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required, it will be a minimum of one foot of soil for areas of commercial development and two feet of soil for area designated for recreational use, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for commercial use and recreational use, respectively. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d);
7. Creation of clean utility corridors through the consolidated material in order to accommodate future re-development;

8. Backfill and grading of the western excavation areas with available clean concrete and brick building debris, supplemented as needed with clean backfill soils. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d);;
9. In-place demolition of the underground parking garage on the western portion of the site;
10. Imposition of an institutional control in the form of an environmental easement for the property that:
 - (a) requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3).;
 - (b) land use is subject to local zoning laws, the remedy allows the use and development of the controlled property for commercial and industrial uses;
 - (c) restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the Department, NYSDOH, County DOH, or City Authority;
 - (d) prohibits agricultural or vegetable gardens on the controlled property; and
 - (e) requires compliance with the Department approved Site Management Plan;
11. A Site Management Plan is required, which includes the following:
 - (a) an Institutional Control Plan that identifies all use restrictions for the site and details the steps and media-specific requirements necessary to assure the institutional controls remain in place and effective. This plan includes, but may not be limited to:
 - (i) an Excavation Plan for the western portion of the site which details the provisions for management of future excavations in areas of remaining contamination;
 - (ii) descriptions of the provisions of the environmental easement for the western portion of the site including any land use restrictions;
 - (iii) maintaining site access controls and Department notification; and
 - (iv) the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.
 - (b) a Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:
 - (i) monitoring groundwater quality and elevation to assess the performance and effectiveness of the remedy;

(ii) soil cover system inspection and maintenance, as necessary, to ensure its function is not impaired by erosion or activities at the site;

(iii) a schedule of monitoring and frequency of submittals to the Department;

APPENDIX A

Responsiveness Summary

RESPONSIVENESS SUMMARY

Tract II Highland Ave.
State Superfund Project
Niagara Falls, Niagara County
Site No. 932136

March 2012

The proposed Record of Decision Amendment (AROD) for the Tract II Site was prepared by the New York State Department of Environmental Conservation (NYSDEC), in consultation with the New York State Department of Health (NYSDOH), and issued to the local document repository on February 15, 2012. The proposed amendment is intended to attain the remedial action objectives identified for this site for the protection of public health and the environment. The amendment identifies the new information which has lead to this proposed amendment and discusses the reasons for the preferred remedy.

A public meeting was held on March 1, 2012, which included a presentation of the remedial investigation (RI) and Focused Feasibility Study (FFS) for the Tract II site, as well as a discussion of the proposed remedy. The meeting provided an opportunity for citizens to discuss their concerns, ask questions and comment on the proposed remedy. These comments have become part of the Administrative Record for this site. The public comment period for the AROD ended on March 15, 2012

This responsiveness summary responds to all questions and comments raised during the public comment period. The following are the comments received, with the Department's responses:

The following are the comments received at the public meeting, with the NYSDEC's responses:

Comment 1: What was the radiation measured with and what type and levels of radiological waste is present on the site?

Response 1: The radiation was measured with a hand held monitoring devise (sodium iodide detector (2 inch by 2 inch) coupled to scalers). The radiological waste is present in slag material and similar to that found at the Norampac/Greenpac Brownfield Clean-up Site, near Pine Ave. & 47th Street, and other sites throughout the Niagara Falls area. The slag material was commonly used as a building sub-base beneath roadways and parking lots. Gama radiation responses ranged from less than 12,000 counts per minute (KCPM) to over 25 KCPM (screening results over 25 KCPM were found at 3 locations along Beech Ave.).

Comment 2: What process would be used to remove the radiological waste?

Response 2: The material will be excavated and trucked to a facility permitted to receive and store radiological waste. This site location will be determined during the bidding of the project.

Comment 3: What traffic route will be used for the trucks?

Response 3: The trucks would most likely travel on City streets from Highland Ave. to College Ave., to Hyde Park Blvd and then to the I-190. A traffic plan will be developed and will be made available for public review. A temporary road with access directly to College Ave is not possible because it would require crossing many right-of-ways and private properties

Comment 4: What safety precautions will be implemented?

Response 4: A Site Health and Safety Plan including a community air monitoring plan will be developed for review and approval. The site will be secured with fencing and air monitoring will take place continuously throughout the demolition and remedial work process.

Comment 5: What are the best practices for dealing with excavation of the radioactive waste?

Response 5: Primarily dust control through wetting with water or foam.

Comment 6: What will be done to inform residents of the project progress?

Response 6: Fact sheets will be developed throughout the remedial process to inform residents of the project progress. Flyers may be distributed and additional public meetings may take place. Copies of reports, plans and fact sheets will be available for review at the document repository located at the Doris Jones Family Resource Building and online through the DEC website. Air monitoring results will be available on-site and at the Doris Jones Family Resource Building.

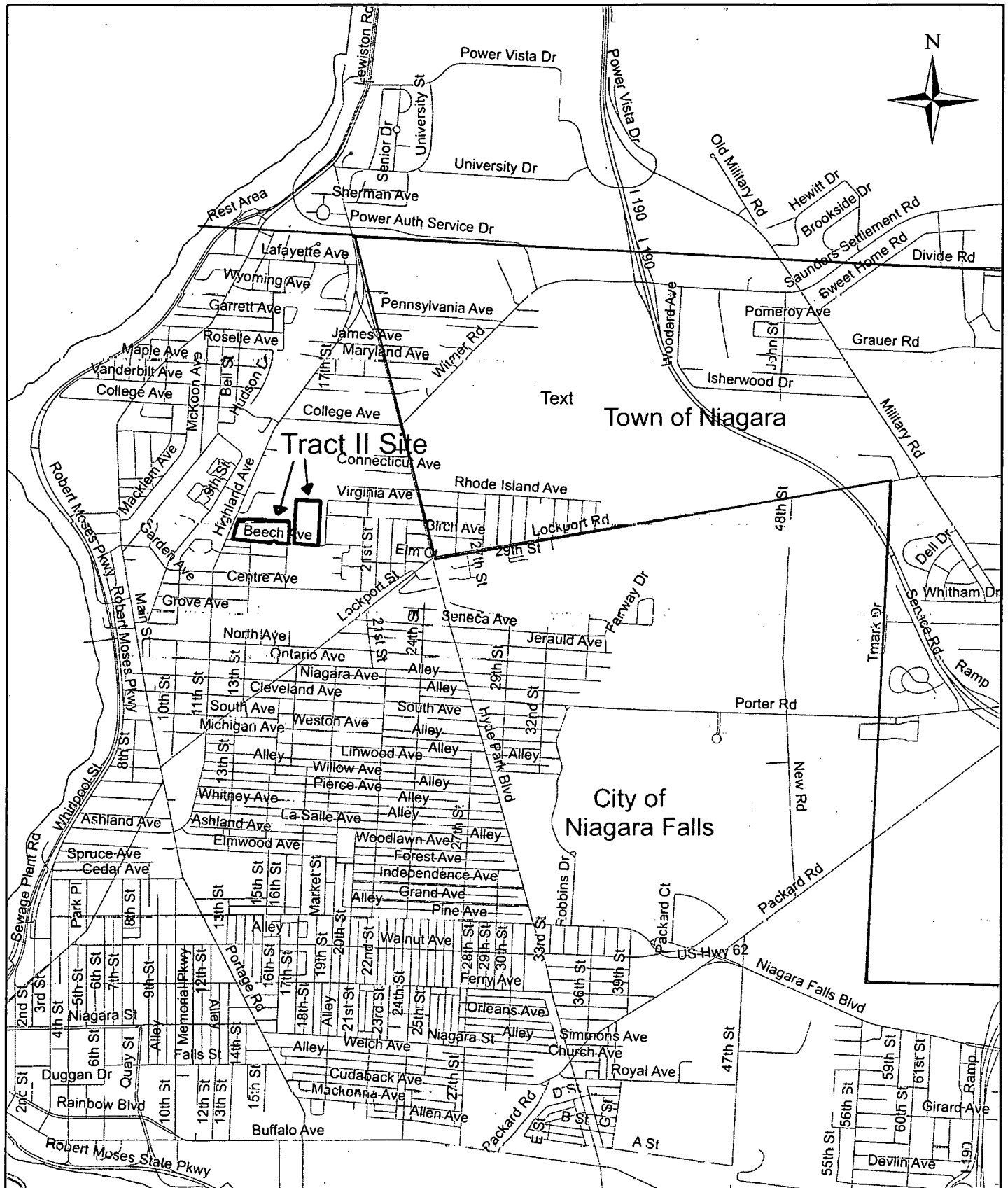
APPENDIX B

Administrative Record

Administrative Record
Tract II Highland Ave.
State Superfund Project
Niagara Falls, Niagara County
Site No. 932136
March 2012

1. City of Niagara Falls, Tract II Site Redevelopment, May 18 1997, Revised July 22, 1998, Application for State funds under 1996 Clean Water/ Clean Air Bond Act, Environmental Restoration Projects - Title 5
2. Ecology and Environment Engineering, P. C., Final Work Plan for Site Investigation and Remedial Action Report (SI/RAR), Tract II Site, November 1998, Prepared for Department of Environmental Services, City of Niagara Falls
3. New York State Department of Environmental Conservation 1996 Clean Water/Clean Air Bond Act, Environmental Restoration Projects - Title 5, Site Assistance Contract (SAC) No. C300726, Tract II Site, Project #No. B00022-9, February 1999
4. Ecology and Environment, P.C. Site investigation and Remedial Alternatives Report, Tract II Site, August 2000, Prepared for City of Niagara Falls, Office of Environmental Services
5. New York State Department of Environmental Conservation, Environmental Restoration, Proposed Remedial Action Plan, Tract II Site, City of Niagara Falls, Niagara County, August 2002
6. New York State Department of Environmental Conservation (NYSDEC), March 2003, Environmental Restoration Record of Decision, Tract II Site, Niagara Falls (C), Niagara County, Site Number B-0022-9
7. EA Engineering, P.C., October 2009, Supplemental Investigation Report Tract II Highland Avenue (9-32-136), Niagara Falls, New York
8. EA Engineering, P.C., March 2010, Basis of Design Report Tract II Highland Avenue (9-32-136), Niagara Falls, New York, Work Assignment D004441-30
NYSDEC, 2007, DER-15 Presumptive/Proven Remedial Technologies, DEC Program Policy
9. NYSDEC, 2010A, Proposed Record of Decision Amendment, Tract II Site, City of Niagara Falls, Niagara County, Registry Number 932136, April 2010
10. AMEC E & I, Inc., Draft Focused Feasibility Study, Tract II Site, Niagara Falls , Niagara County, New York, Site No. 932136, November 2011

Figure 1 - Tract II Site Location

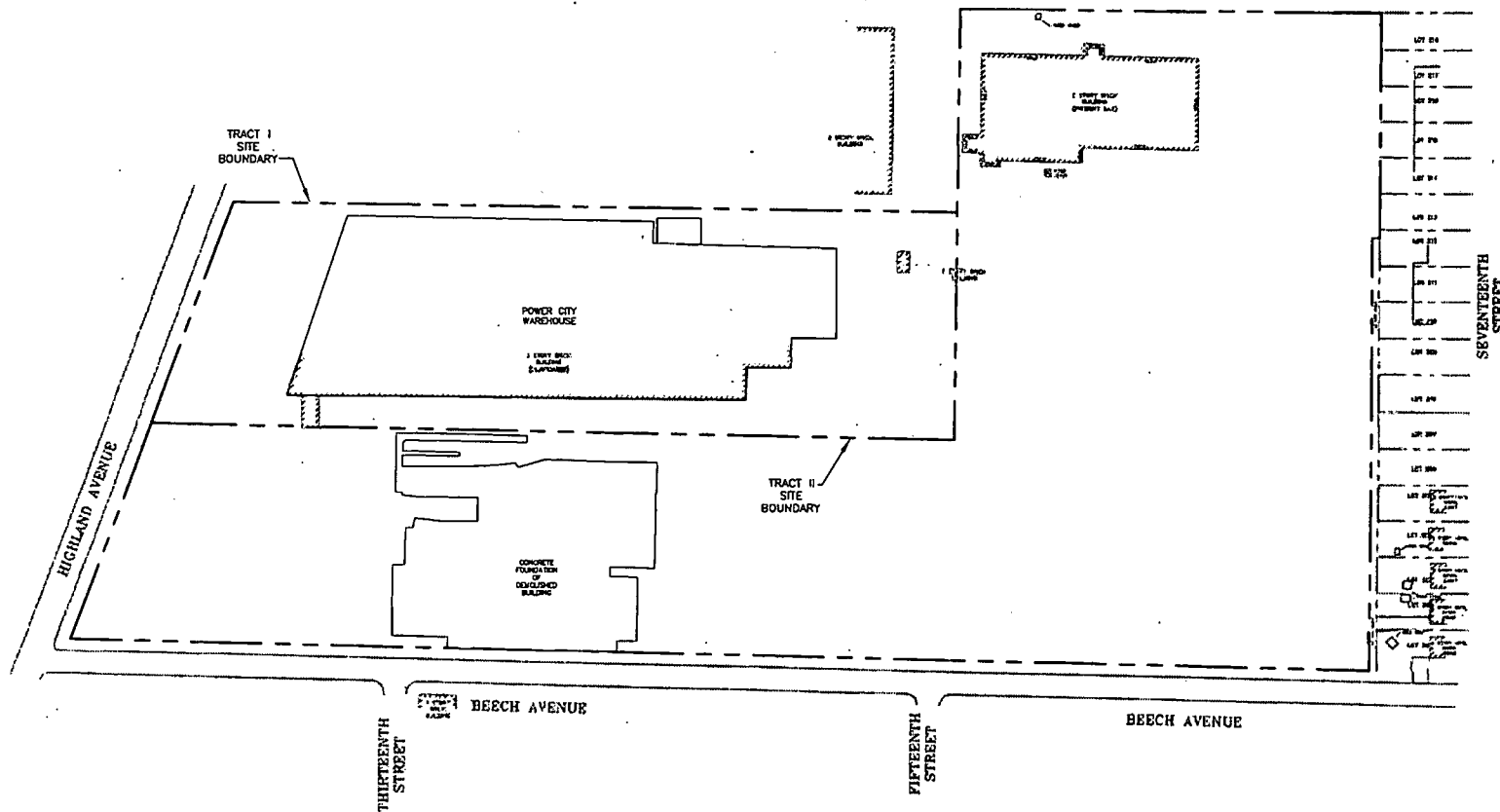


Scale: 1 inch = Approx. 2,500 Feet

Figure 2 - Tract II Site Location



Scale: 1 inch = Approx. 800 Feet



150 0 150
SCALE: 1"=150'

HONEYWELL INTERNATIONAL, INC.
NIAGARA FALLS, NEW YORK

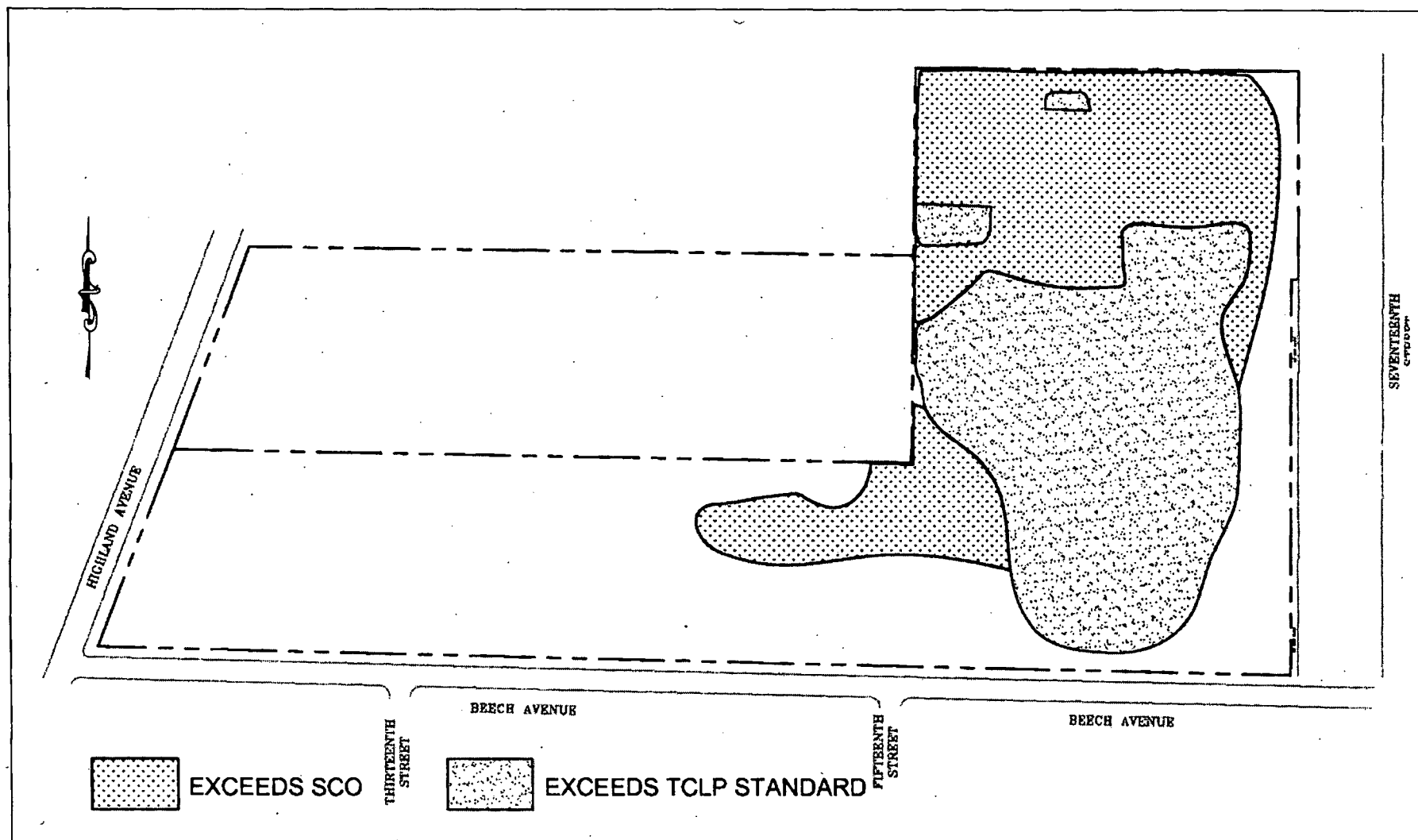
Project No.: 3410100775

MACTEC
Engineering & Consulting Inc.
800 North Bell Avenue, Suite 200
Pittsburgh, PA 15106

TRACT I AND TRACT II
SITE PLAN
FIGURE: 2

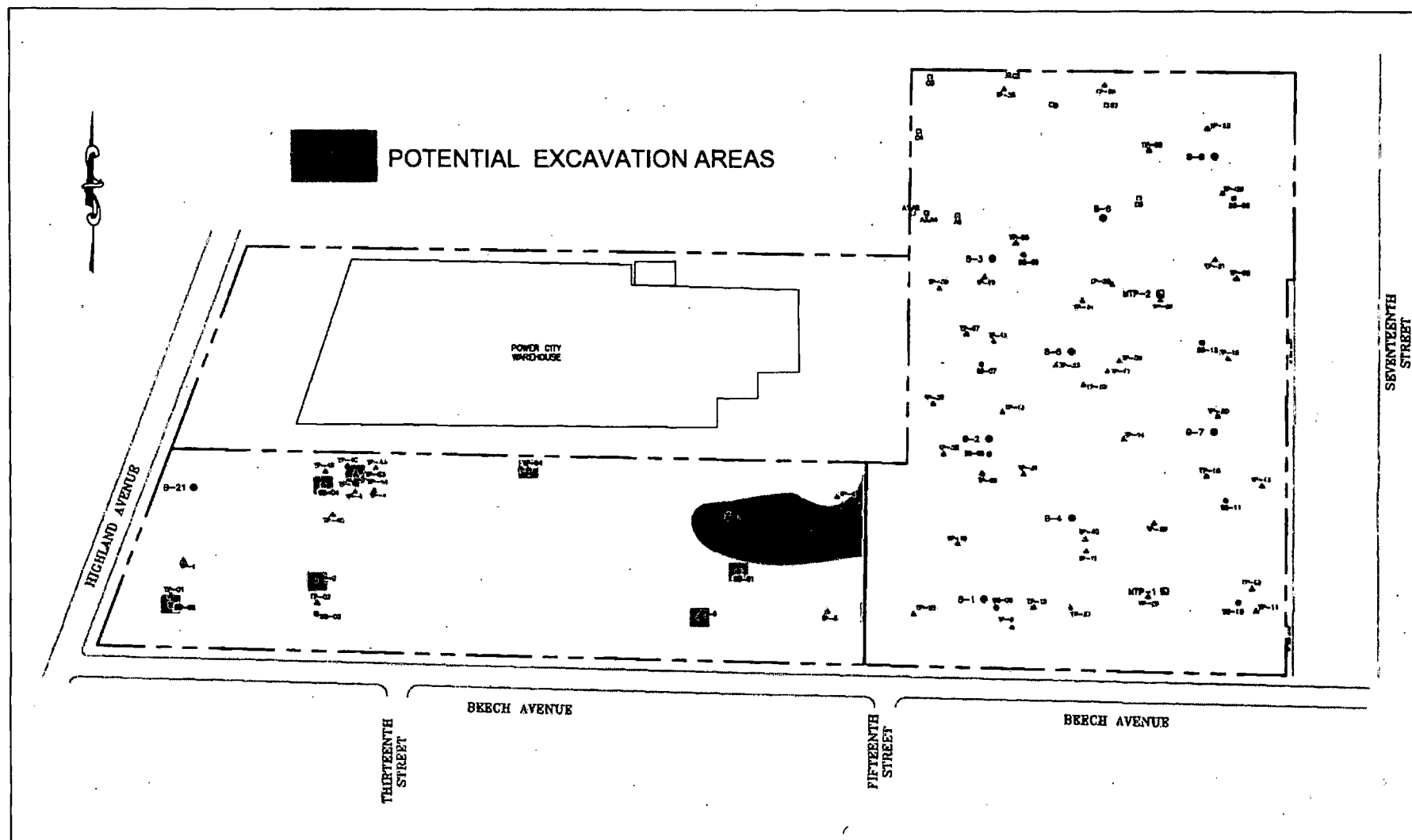
Focused Feasibility Study

Honeywell



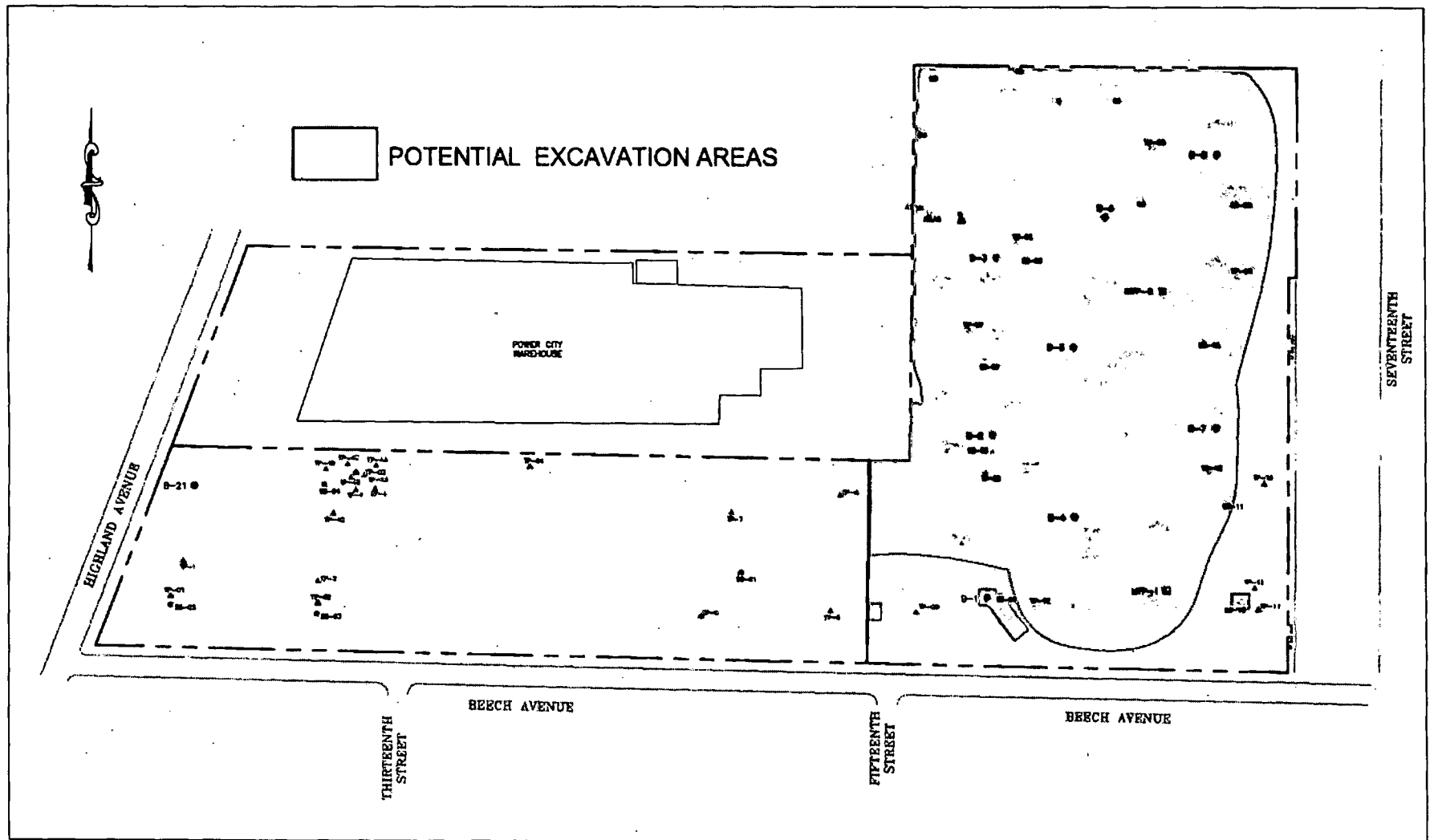
Focused Feasibility Study

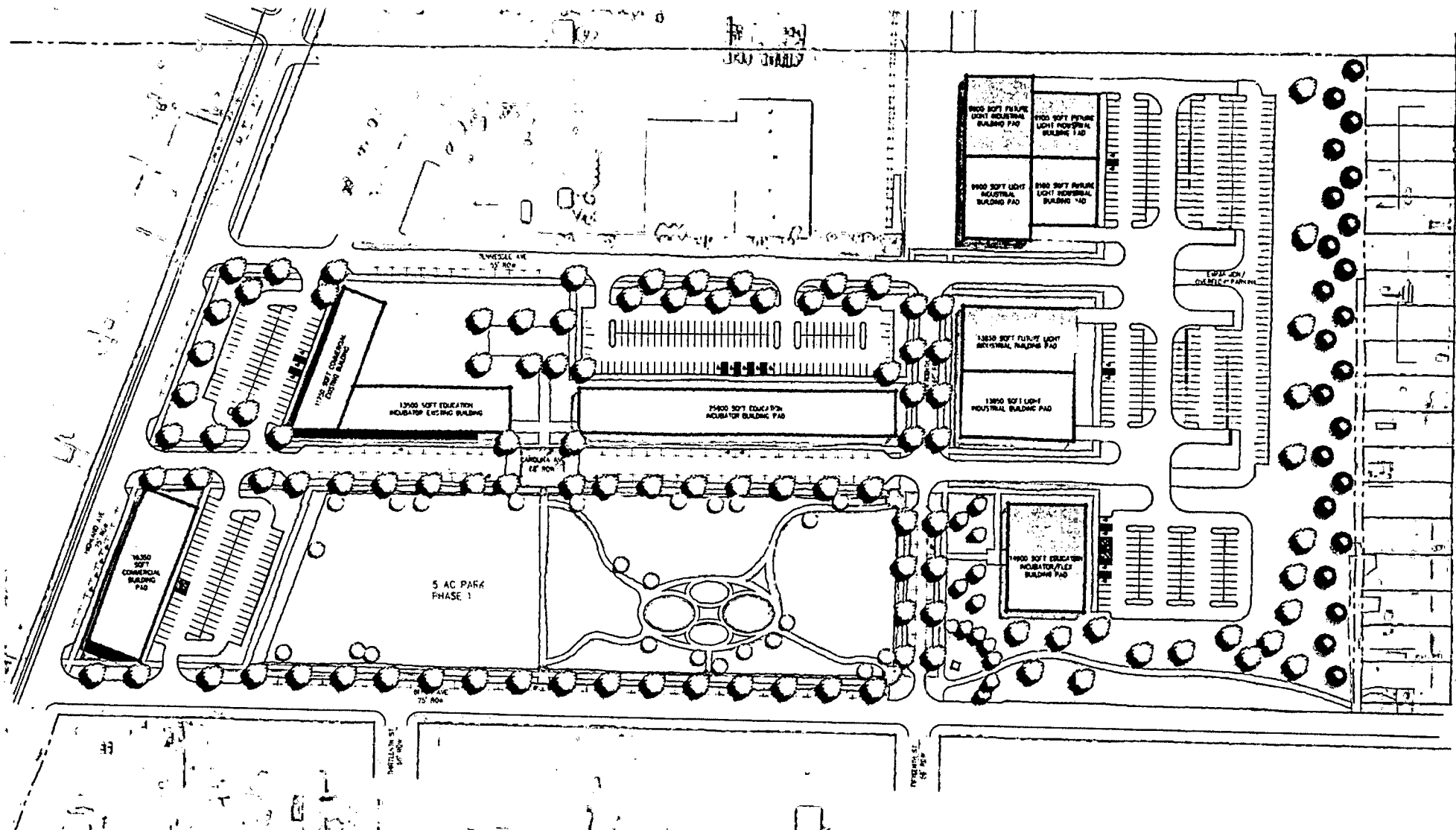
Honeywell



Focused Feasibility Study

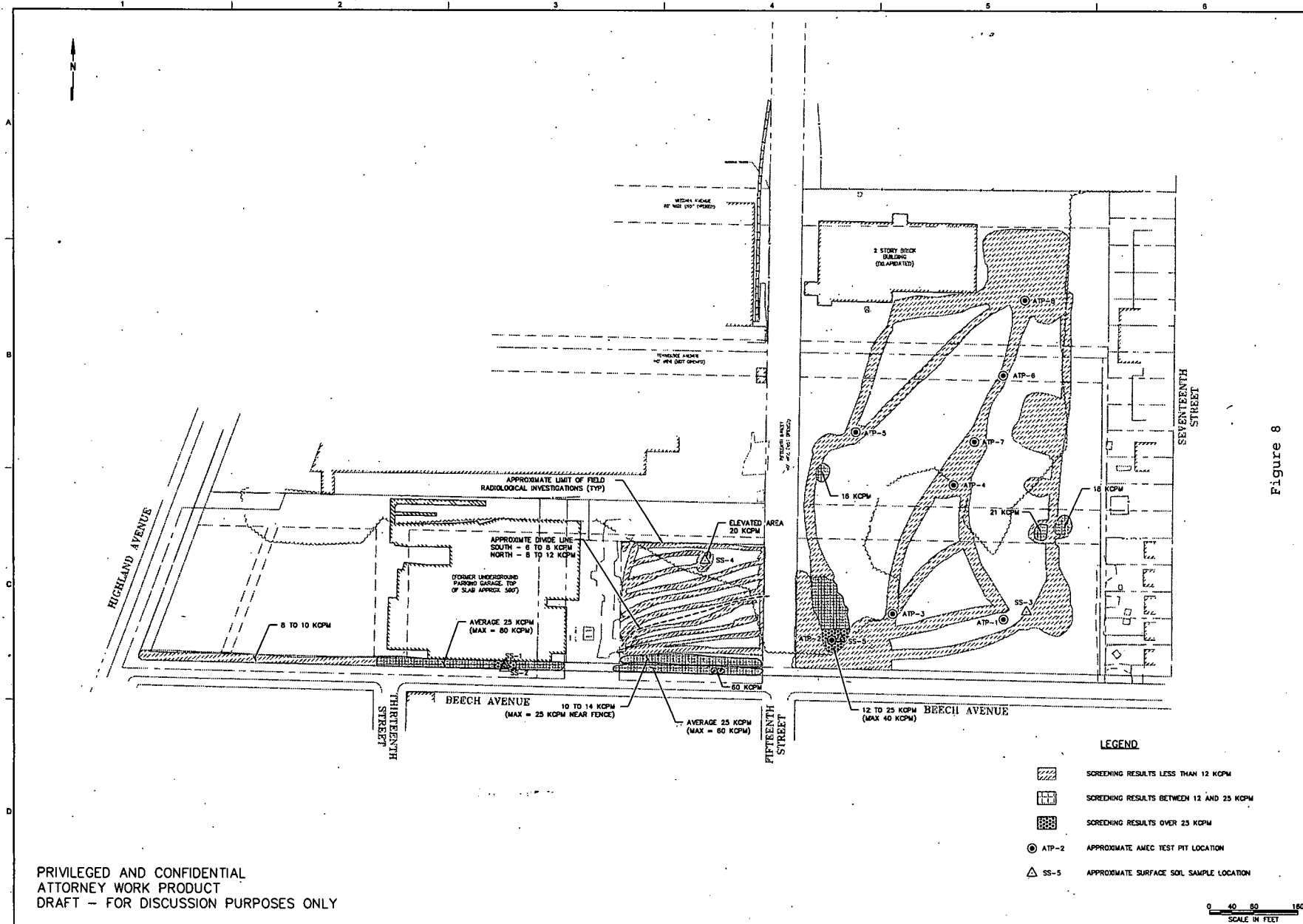
Honeywell





PRELIMINARY DEVELOPMENT PLAN:
CONCEPT 1
NOVEMBER 29, 2011





PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
DRAFT - FOR DISCUSSION PURPOSES ONLY

FILE NAME: 2:\Projects\HONEYWELL\Honeywell Field Radiological Screening Support\Figure 1 - Radiological Field Screening Location Map.dwg PLOT DATE: Fri, 10 Feb 2012 PLOT TIME: 4:41 PM

Honeywell <small>111 COLLEGE AVE. SUITE 100 WESTPORT, NY 10988</small>		TRACT II HIGHLAND AVENUE REMEDIATION DESIGN NIAGARA FALLS, NEW YORK HONEYWELL SITE ID - 832136	
DRAWING STATUS PRELIMINARY		CIVIL FIGURE 1 PRELIMINARY RADIOLOGICAL FIELD SCREENING LOCATION MAP	
amec <small>Environmental & Construction, Inc. 511 Congress Street, Suite 200 Portland, ME 04112 (207) 775-7400</small>		VERIFY SCALE DRAW TO SCALE OR ORIGINAL DRAWING 1" = 40'	
DATE 2/10/12		PROJ 3410-11-0832	
DWG SHEET		OF 0	

THIS DRAWING IS THE PROPERTY OF AMEC. INCLUDING ALL PATENTED AND UNPATENTED INFORMATION AND IT IS TO BE USED ONLY FOR THE PURPOSES SPECIFICALLY IDENTIFIED IN THE DRAWING. NO OTHER USE OR REPRODUCTION OF THIS DRAWING IS PERMITTED WITHOUT THE WRITTEN PERMISSION OF AMEC.

Tract II

15' Strip

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this _____ day of _____, 20__, between Owner(s) Brightfields Corporation, having an office at 333 Ganson Street, Buffalo, New York 14203, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of 3201 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 144.06 Block 2 Lot 27.1, being the same as that property conveyed to Grantor by deed dated April 7, 2016 and recorded in the Niagara County Clerk's Office in Instrument No. 2016-05895. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.302 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 and last revised October 31, 2016 prepared by Kenneth L. Slaughenhoupt, L.L.S. of Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

a
portion of

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is

extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: B9-0777-08-03, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation

Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against

the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: 932136
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the

recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

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IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Brightfields Corporation:

By: _____

Print Name: _____

Title: _____ Date: _____

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, in the year 20 __, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public - State of New York

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: _____

Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

SCHEDULE "A" PROPERTY DESCRIPTION

**Environmental Easement Description for Superfund Site No. 932136
15 Foot Strip from Brightfields II to Brightfields**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and according to a map made by Julius Frehsee with changes by Porter, Jones and Schaeffer and filed November 18, 1899 under Cover No. 158 now in Book 18 of Microfilmed Maps at page 1736 and being more particularly bounded and described as follows:

Beginning at the north east corner of Old Lot 251 as shown on Map by Niagara Boundary & Mapping Services filed in Niagara County Clerk's Office March 31, 2016 in Instrument No. M2016-00008;

Thence along the east line of said Old Lot 251 S 0°54'30"W a distance of 15.00 feet to a point;

Thence N 88°58'03"W a distance of 879.79 feet to a point in the centerline of alley as shown on said Map by Julius Frehsee;

Thence along said centerline of said alley N 20°42'42"E a distance of 15.93 feet to a point on the north line of Old Lot 250 as shown on Map by Niagara Boundary & Mapping Services filed in Niagara County Clerk's Office March 31, 2016 in Instrument No. M2016-00008;

Thence along the north line of Old Lot 250 and Old Lot 251 S 88°58'03"E a distance of 874.39 feet to the Point or Place of Beginning, containing 13,156 square feet or 0.302 acre more or less.

Environmental Easement Description for Superfund Site No. 932136
15 Foot Strip from Brightfields II to Brightfields

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and according to a map made by Julius Frehsee with changes by Porter, Jones and Schaeffer and filed November 18, 1899 under Cover No. 158 now in Book 18 of Microfilmed Maps at page 1736 and being more particularly bounded and described as follows:

Beginning at the north east corner of Old Lot 251 as shown on Map by Niagara Boundary & Mapping Services filed in Niagara County Clerk's Office March 31, 2016 in Instrument No. M2016-00008;

Thence along the east line of said Old Lot 251 S 0°54'30"W a distance of 15.00 feet to a point;

Thence N 88°58'03"W a distance of 879.79 feet to a point in the centerline of alley as shown on said Map by Julius Frehsee;

Thence along said centerline of said alley N 20°42'42"E a distance of 15.93 feet to a point on the north line of Old Lot 250 as shown on Map by Niagara Boundary & Mapping Services filed in Niagara County Clerk's Office March 31, 2016 in Instrument No. M2016-00008;

Thence along the north line of Old Lot 250 and Old Lot 251 S 88°58'03"E a distance of 874.39 feet to the Point or Place of Beginning, containing 13,156 square feet or 0.302 acre more or less.

Should note EE 15' strip part of Lot 1253

ENVIRONMENTAL EASEMENT DESCRIPTION FOR SUPERFUND SITE No. 932136
Brightfields – Lot 1251

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Commencing at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

Thence S.88°43'18"E along the northerly line of Beech Avenue a distance of 274.00 feet to the POINT OR PLACE OF BEGINNING;

Thence S.88°43'18"E along the northerly line of Beech Avenue a distance of 839.99 feet to the intersection of the north line of Beech Avenue with the west line of the former Fifteenth Street;

Thence N.00°54'11"E a distance of 277.75 feet to a point;

Thence N88°58'03"W a distance of 741.30 feet to a point;

Thence S20°42'42"W a distance of 291.15 feet to the northerly line of Beech Avenue and the Point or Place of Beginning, containing 5.011 acres of land more or less.

ENVIRONMENTAL EASEMENT DESCRIPTION FOR SUPERFUND SITE No. 932136
Brightfields – New Lot 1250

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Beginning at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

Thence S.88°43'18"E along the northerly line of Beech Avenue a distance of 274.00 feet to a point;

Thence N.20°42'42"W a distance of 291.15 feet to a point;

Thence N88°58'03"W a distance of 138.49 feet to a point on the former centerline of a 16.5 foot wide alley;

Thence S20°42'42"W along the former centerline of a 16.5 foot wide alley a distance of 15.93 feet to the centerline of former Carolina Avenue;

Thence N88°58'03"W along the centerline of Carolina Avenue a distance of 135.93 feet to the east line of Highland Avenue;

Thence S20°42'42"W along the east line of Highland Avenue a distance of 273.97 feet to the Point or Place of Beginning, containing 1.677 acres of land more or less.

applicable SCO. Sample TP-9, located in the southwest corner of the eastern parcel, contains mercury at a concentration of 8.2 mg/kg and sample SS-10, located on the National Grid property (15th Street), contains mercury at a concentration of 280 mg/kg. Both of these samples exceed the restricted commercial mercury SCO of 2.8 mg/kg.

2.3 SUMMARY OF PREDESIGN STUDY

In July of 2011, Amec conducted a predesign study on the Site. The predesign study was primarily performed on soils from the eastern portion of the Tract II Site. Samples were collected from nine soil borings and two test pits on the Site as shown on **Figure 3**. Additionally, a hand-held X-ray fluorescence (XRF) meter was used to measure real-time lead concentrations for later correlation to laboratory results. A building evaluation was also performed to determine if the buildings could be used during the remediation. The following subsections provide a summary of the results of the predesign sample results.

2.3.1 *Predesign Study Data Collection*

To adequately evaluate remedial alternatives, additional data was collected from the Site to refine the extent and concentration of lead in certain areas, to perform a treatability study for soil stabilization, and to evaluate the on-site buildings. The data required to complete the FFS for the Site consisted of the following:

- **Tract II Predesign Sampling:** Soil samples were collected in the eastern portion of the Site to corroborate previous investigation data. Samples were collected from nine soil borings (B-1 through B-8, and B-21) and two test pits (MTP-1 and MTP-2) to determine if underlying hazardous constituents (UHCs) were present that could affect on-site disposal of the soil (**Figure 3**).
- **Treatability Study:** Soil samples were collected from test pits MTP-1 and MTP-2 for treatability testing by Orin Remediation Technologies (Orin) and WRS Compass. The two treatability tests allowed a comparison of reagents known to be effective for the chemical fixation of lead to determine the most effective reagent for stabilization of lead in soil. Locations MTP-1 and MTP-2 were selected as they represented the highest lead concentrations on the Site.
- **Building Evaluation:** An evaluation was performed of the buildings located on the Site. The volume of the abandoned subterranean parking structure

Additional test pit locations (TP-3, TP-4, TP-4A, TP-4B, and TP-4C) were excavated in the vicinity of E&E test pits TP-3 and TP-4 to visually evaluate the "hot spot" on the former business forms manufacturing property. No samples were collected from these test pits; however, visual inspection indicated that approximately 44 cubic yards of soil were impacted with partially burned materials in this area.

The sample results of the EA Supplemental Investigation within the west-central portion of the Site show the extent of the lead above the applicable DER-10 restricted residential SCO of 400 mg/kg to be limited to three samples (TP-7, SS-09, and SS-12), located in the northern portion of the western parcel, west of 15th Street ROW (**Figure 3**). The sample with the higher lead concentration (TP-7) was analyzed for TCLP lead and the result was less than the limit for TCLP toxicity. The results of samples collected on the western portion of the western parcel also showed surface soil locations containing barium and chromium at concentrations exceeding the potentially applicable SCOs. Sample TP-2, located west of the subterranean parking garage, contained barium at a concentration of 500 mg/kg, which exceeds the restricted residential SCO of 400 mg/kg. In addition, sample TP-5, located east of the subterranean parking garage, contained chromium at a concentration of 170 mg/kg, which exceeds the restricted residential hexavalent chromium SCO of 110 mg/kg. Note that sample TP-5 was analyzed only for total chromium; however, the concentration was compared to the hexavalent chromium SCO in the absence of chromium speciation. In the extreme western portion of the western parcel, none of the samples collected in the Supplemental Investigation contained lead above the restricted commercial SCO. It should be noted; however, that the northeastern portion of this area contains approximately 44 cubic yards of soil containing PAHs above the applicable SCOs.

In the portion of the Tract II Site east of 15th Street (eastern parcel), the EA Supplemental Investigation identified lead in surface soil at concentrations exceeding the restricted commercial soil SCO. The subsurface soil within the area also contained lead in concentrations exceeding the TCLP toxicity standard of 5.0 mg/L to a depth of approximately nine feet. The approximate areas exceeding the restricted commercial surface soil SCO and the TCLP toxicity standard are shown on **Figure 4**.

Additionally, the results of the samples collected on the eastern parcel showed two surface soil locations containing mercury concentrations exceeding the potentially

(PAHs) at concentrations above their respective SCOs. Additionally, the sump sediment sample contained polychlorinated biphenyls (PCBs), metals, volatile organic compounds (VOCs), and semivolatile organic compounds (SVOCs) in excess of the restricted residential SCOs. Asbestos containing materials were also identified in the subterranean garage.

2.2.1.2 Eastern (Former Battery Manufacturing) Parcel

Surface soil samples SS-05 through SS-12, SST2-A through SST2-C, test pit locations TP-05 through TP-12, and monitoring wells MW-1 and MW-4 were located on the eastern (former battery manufacturer) portion of the Site as shown on **Figure 3**. Three samples collected from test pits TP-05, TP-08, and TP-12 were collected as subsurface soil samples. All other samples collected from the eastern portion of the Site were collected as surface soil samples. The results of the E&E investigation on the eastern portion of the Site identified elevated concentrations of lead in surface soil. The concentrations of lead in surface soil on the eastern portion of the Site ranged from 127 mg/kg to 32,500 mg/kg. All of the subsurface soil samples collected in the E&E Site investigation contained lead at concentrations less than the residential SCO of 400 mg/kg. The background sample, collected northeast of the Site, contained 128 mg/kg lead, which was applied as the local soil background concentration. The extent of the lead-impacted soil appeared to span most of the eastern portion of the Site with the exception of the southern 250 feet of the eastern parcel. The elevated lead concentrations were limited to the surface soil; however, only three samples collected in the initial E&E investigation were collected from the subsurface (>2 feet deep) interval.

2.2.2 2008-2009 EA Supplemental Investigation

The EA Supplemental Investigation included the excavation of 40 test pits for the collection of soil samples as shown on **Figure 3**. Seventy-seven soil samples were collected from the test pits, of which, 23 were surface soil samples, and 54 were subsurface soil samples. All of the samples were analyzed for the eight Resource Conservation and Recovery Act (RCRA) metals (arsenic, barium, cadmium, chromium, lead, silver, selenium, and mercury), and 29 of the samples were analyzed for TCLP lead. All of the metals except selenium were detected in the soil samples in concentrations exceeding their respective Part 375 Unrestricted Use SCOs. Additionally, 20 of the samples analyzed for TCLP lead contained leachable lead at concentrations above the 5 mg/L limit for TCLP toxicity.

2.2.1 1998-2000 E&E Site Investigation

In late 1998, E&E conducted the initial investigation of the Site. The E&E investigation consisted of collecting 12 composite surface soil samples from 12 surface locations (SS-01 through SS-12), four surface soil samples from the four monitoring well boring locations (MW-1 through MW-4), and seven surface and five subsurface soil samples from 12 test pits (TP-01 through TP-12) on the Site. One five-point composite background soil sample was collected from an area near 17th Street, outside the northeast corner of the property; one sump sludge, and one sump water sample were collected from a sump in the subterranean garage. Additionally, four monitoring wells were installed and sampled on the Site.

In June 2000, three composite surface soil samples were collected from the perimeter of the dilapidated building. Sample SST2-A was collected as a five-point composite from near the loading dock (southwest corner) of the dilapidated building, sample SST2-B was collected as a three-point composite around debris piles located north of the building, and sample SST2-C was collected as a five-point composite around the western, northern, and eastern perimeter of the building.

The results of this investigation were reported in the *Site Investigation and Remedial Alternatives Report* (E&E, 2000). The following subsections summarize the results for the western and eastern portions of the Site.

2.2.1.1 Western (former Business Forms Manufacturing) Parcel

Surface soil samples SS-01 through SS-04, test pit locations TP-01 through TP-04, the sump sludge and sump water samples, and monitoring wells MW-2 and MW-3 were located on the western (former business forms manufacturer) portion of the Site as shown on **Figure 3**. Samples collected from test pits TP-01 and TP-02 were collected as subsurface soil samples. All other soil samples collected from the western parcel of the Site were surface soil samples.

The results of the samples collected on the western portion of the Site showed four surface soil locations containing constituents at concentrations exceeding the potentially applicable SCOs. Sample TPT2-04-ASO (TP-04), located north of the building foundation, contains lead at 972 mg/kg, which is in excess of the restricted residential lead SCO of 400 mg/kg. Sample numbers TPT2-03-ASO (TP-03), SST2-02-SO (SS-02) and SST2-04-SO (SS-04) contain polycyclic aromatic hydrocarbons

C932157 - Tract I



NIAGARA COUNTY CLERK
WAYNE F. JAGOW

RECEIPT

Receipt Date: 09/12/2014 02:58:33 PM
RECEIPT # 2014211454

Recording Clerk: MKS
Cash Drawer: CASH4
Rec'd Firm: PHILLIPS LYTLE LLP
Rec'd In Person

Instr#: 2014-15342
DOC: EASEMENT
DEED STAMP: 815
OR Party: BRIGHTFIELDS CORP
EE Party: PEOPLE OF THE STATE OF NEW
YORK

Recording Fees

Cover Page	\$8.00
Recording Fee	\$32.00
Cultural Ed	\$14.25
Records Management - County	\$1.00
Records Management - State	\$4.75
TP584	\$5.00

Transfer Tax	
Transfer Tax	\$0.00

DOCUMENT TOTAL: ---->	\$65.00
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Receipt Summary

TOTAL RECEIPT: ---->	\$65.00
TOTAL RECEIVED: ---->	\$80.00

CASH BACK: ---->	\$15.00
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PAYMENTS

Cash ->	\$80.00
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ORIGINAL FILED

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36 2014

OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW
WAYNE F. JAGOW
NIAGARA COUNTY CLERK

THIS INDENTURE made this 8th day of September, 2014, between Owner(s) Brightfields Corporation, having an office at 333 Ganson Street Buffalo, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of portion of 3123 Highland Avenue in the City of Niagara Falls, County of Niagara and State of New York, known and designated on the tax map of the County Clerk of Niagara as tax map parcel numbers: Section 144.06 Block 02 Lot 27.1, being the same as that property conveyed to Grantor by deed dated October 1, 2012 and recorded in the Niagara County Clerk's Office in Liber and Page Instrument No. 2012-20725. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 5.90 +/- acres, and is hereinafter more fully described in the Land Title Survey dated February 14, 2014 prepared by Niagara Boundary and Mapping Services, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is

extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C932157-03-12, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Niagara County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation

Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by

Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: C932157
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Brightfields Corporation:

By: 


Print Name: JON M. WILLIAMS

Title: President

Date: 5/30/2014

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

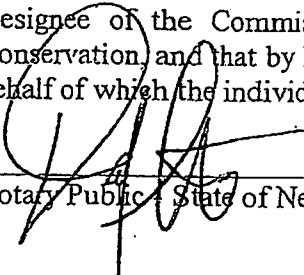
By:


Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 9th day of September, in the year 2014, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2016

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County of Niagara and State of New York, being part of Lot 34 of the New York State Mile Reserve and being more particularly bounded and described as follows:

Commencing at a point on the easterly line of Highland Avenue at its intersection with the northerly line of Beech Avenue;

Thence N20°42' 42"E along the easterly line of Highland Avenue a distance of 273.97 feet to the Point or Place of Beginning;

Thence N88°58'03"W a distance of 135.93 feet to a point;

Thence N20°42' 42"E a distance of 31.86 feet to a point on the northerly line of Carolina Avenue (not opened);

Thence S88°58'03"E along said northerly line of Carolina Avenue a distance of 874.39 feet to a point on the westerly line of Fifteenth Street (not opened);

Thence N00°54'11 "E along the westerly line of Fifteenth Street a distance of 277.38 feet a point;

Thence N88°58'03"W a distance of 774.56 feet to the center line of a former 16.5 foot wide alley;

Thence S20°42'42"W along the center line of the former alley a distance of 124.29 feet to a point;

Thence N88°58'03"W a distance of 135.93 feet to a point on the easterly line of Highland Avenue;

Thence S20°42'42"W along the easterly line of Highland Avenue a distance of 202.16 feet to the Point or Place of Beginning, containing 5.844 acres of land more or less.

Doc Id. 2775298



**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL REMEDIATION
Site Briefing Report**



Site Code	C932157	Site Name	Tract I Highland Avenue	
Classification	C	Address	3123 Highland Avenue	
Region	9	City	Niagara Falls	Zip 14305
Latitude	43.1164	Town	Niagara Falls (c)	
Longitude	-79.0458	County	Niagara	Project Manager Timothy Dieffenbach
Site Type	Structure			Estimated Size 5.8440

Site Description

Location:

The Tract I Site is located in a mixed light industrial, commercial and residential area at 3123 Highland Avenue in the City of Niagara Falls, Niagara County. It is approximately 5.9 acres in area and is bounded by Highland Avenue to the west; the Tulip Corporation, a plastics recycling company to the north; a 60 foot wide National Grid/Niagara Mohawk Power Corp. utility right-of-way to the east; and the Tract II Highland Avenue State Superfund Site (DEC Site Number 932136) to the south and east. Several commercial establishments and the Niagara Falls Alternative School are located to the west of the site. Residential areas are located approximately 400 feet south and 700 feet east of the site.

Site Features:

The site was mostly covered (approximately 3.3 acres) by the former Power City Warehouse Building, a three-story masonry building which has been demolished. Extensive excavations have been completed and the site is currently covered and rough graded with clean backfill material.

Current Zoning/Use:

The property is zoned for industrial use but the regional master plan requires commercial/light industrial applications.

Past Use of the Site:

The Power City Warehouse was formerly part of a larger battery manufacturing facility which encompassed the adjacent Tulip Corporation property north of the site. Sometime around 1910, U.S. Light and Heat Co., and later Autolite Co., began automobile, truck, and tractor battery manufacturing. Prestolite Co. acquired the facility in the 1960s and retooled operations for manufacturing of hard rubber battery cases, filling of batteries with sulfuric acid, and battery charging. Operations at the facility ceased in the mid-1970s and relocated to 3001 Highland Avenue. After battery manufacturing ended in the mid-1970s, the site was used as an automotive body shop and a warehouse. The site has been vacant since the late 1980s. In 1990, the city of Niagara Falls retained ownership of the site due to tax foreclosure. Due to historical operations at the site, there were environmental concerns about potential residual impacts associated with the battery manufacturing processes.

To address the historical contamination on the site the owner entered and was accepted into the NYS Brownfield Clean-up Program in March 2012. Based upon environmental studies of the site a remedial action was initiated in 2013 and was completed in 2014 resulting in all contamination being removed from the site so that it would be suitable for commercial redevelopment. A Certificate of Completion was issued for the project on 12/23/2014 documenting this use.

Site Geology and Hydrogeology:

Borings on the Tract I site indicates that approximately half the site is covered with a fill layer ranging from 1.5 - 9 feet in thickness overlying 2 - 6 feet of silt overlying 2 - 8 feet of clay. Overburden extends from 15 to 23 feet below ground surface (bgs) and consists of glacio-lacustrine clay and silt overlying a thin layer of till composed of clay and sand with varying amounts of silt, gravel, cobbles and fragments of the underlying bedrock. The underlying bedrock is the Lockport Dolostone.

There is no significant groundwater aquifer within the overburden soils or fill materials. The first occurrence of groundwater is an apparently perched layer approximately 6.5 to 8 feet below ground surface within the fill and native soil overburden above the Lockport Dolostone bedrock formation. Groundwater flows generally northeast to southwest, towards the Niagara River within the overburden above the bedrock. However utility lines and other subsurface structures could influence site groundwater flow.

Materials Disposed at Site**Quantity Disposed**

arsenic	UNKNOWN
barium	UNKNOWN
benzo(a)pyrene	UNKNOWN
benzo(b)fluoranthene	UNKNOWN
copper	UNKNOWN
dibenz[a,h]anthracene	UNKNOWN
indeno(1,2,3-CD)pyrene	UNKNOWN
lead	UNKNOWN
polychlorinated biphenyls (PCB)	UNKNOWN

Analytical Data Available for : Groundwater, Soil

Applicable Standards Exceeded for: Soil

Assessment of Environmental Problems

Prior to IRMs: The Site was the subject of four investigations and a USEPA Removal Action within the Power City Warehouse. The primary contaminant of concern identified was lead. Additionally, other metals (arsenic, barium, cadmium, copper, mercury, zinc), semi-volatile organic compounds (SVOCs), pesticides and polychlorinated biphenyls (PCBs) were identified in excess of commercial soil cleanup objectives (SCOs) in surface soil from beneath the floors and in sediment from inside drains or sumps inside the building. Lead levels ranged from 2,350 mg/kg to 178,000 mg/kg inside the building and from 1,210 to 16,900 mg/kg outside the building. During the summer of 2010, the USEPA began a Removal Action within the Power City Warehouse removing asbestos, SVOC and lead contaminated sediment and debris within the building and any containers of hazardous material on the property.

Groundwater concentrations of a few metal and pesticide compounds as well as trichloroethene (TCE) at 8.7 ug/l in one well were found to exceed NYSDEC standards however groundwater use is prohibited by local ordinance thereby limiting any future human exposure. During subslab sampling activities two areas of TENORM were identified above the TENORM Slag cleanup criterion value of 13,400 counts per minute (on a 2 inch x 2 inch NaI detector) established on the adjacent Tract II Site.

Post IRMs: At the completion of the IRMs, post excavation soil sampling was conducted to confirm that remedial actions have successfully achieved soil cleanup objectives for commercial use.

Assessment of Health Problems

Some contaminated soils remain at the northern property line beneath concrete or pavement. However, contact with this contaminated soil is unlikely unless people dig below the surface materials. A local ordinance prohibits use of groundwater for any purpose, and the site is served by a public water supply that obtains water from a different source not affected by this contamination.

Remedy Description and Cost

Remedy Description for Operable Unit 00**Total Cost****Capital Cost****OM&M Cost****Issues / Recommendations**

Remedy Description for Operable Unit 01

Based on the results of the investigations at the site, the IRM that has been performed, and the evaluation presented here, the Department has selected No Further Action with institutional controls as the remedy for the site. The Department considers this remedy to be protective of human health and the environment and satisfies the remediation objectives described in Section 6.5.

The elements of the IRM already completed are set forth in section 6.2 and the institutional controls required are set forth below:

1. Environmental Easement

Imposition of an institutional control in the form of an environmental easement for the controlled property that:

- requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3);
- allows the use and development of the controlled property for commercial and industrial uses as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH;
- requires compliance with the Department approved Site Management Plan.

2. Site Management Plan

A Site Management Plan is required, which includes the following:

- a. an Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the

following institutional and/or engineering controls remain in place and effective:

Institutional Controls: The Environmental Easement discussed above.

Engineering Controls: There are no engineering controls associated with this remedy.

This plan includes, but may not be limited to:

- o an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- o descriptions of the provisions of the environmental easement including any land use and/or groundwater use restrictions;
- o maintaining site access controls and Department notification; and
- o the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

Total Cost

Capital Cost

OM&M Cost

Issues / Recommendations

Remedy Description for Operable Unit 01A

The following IRMs were completed from May through December 2013 in accordance with approved IRM work plans:

1. Hazardous substance and debris removal and asbestos abatement inside building
2. Building demolition of the former Power City Warehouse including removal of concrete floors and foundations and the filling in of the basement area with clean backfill.
3. Excavation and off-Site disposal of 50 cubic yards of Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM) slag
4. Excavation and off-Site disposal of 11,000 cubic yards soil containing constituents (primarily lead) that exceeded the Commercial SCOs.
5. Removal and off-Site disposal of four underground storage tanks (USTs).

Total Cost

Capital Cost

OM&M Cost

Issues / Recommendations