

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Division of Environmental Remediation, Office of the Director

625 Broadway, 12th Floor, Albany, New York 12233-7011

P: (518) 402-9706 | F: (518) 402-9020

[www.dec.ny.gov](http://www.dec.ny.gov)

DEC 27 2019

320 Roberts Road Freezer LLC

Attn: Peter L. Krog

4 Centre Drive

Orchard Park, NY 14127

[plkrog@krogGrp.com](mailto:plkrog@krogGrp.com)

The Krog Group, LLC

Attn: Paul Neureuter

4 Centre Drive

Orchard Park, NY 14127

[pneureuter@Kroggrp.com](mailto:pneureuter@Kroggrp.com)

Re: Certificate of Completion  
Former Edgewood Warehouse Site  
City of Dunkirk, Chautauqua County  
Site #C907032

Gentlemen:

Congratulations on having satisfactorily completed the remedial program at the Former Edgewood Warehouse Site. Enclosed please find an original, signed Certificate of Completion (COC). The New York State Department of Environmental Conservation (Department) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the COC to be issued for the above-referenced site.

Please note that you are required to perform the following tasks:

- If you are the site owner, you must record a notice of the COC in the recording office for the county (or counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record a notice of the COC within 30 days of the date that you acquire the site. A copy of the recorded notice should be provided to the Department's project manager. If you are a non-owner, you must work with the owner to assure the notice of COC is recorded within the time frame specified. A standard notice form is attached to this letter. Please return the proof of recording to:

Chief, Site Control Section



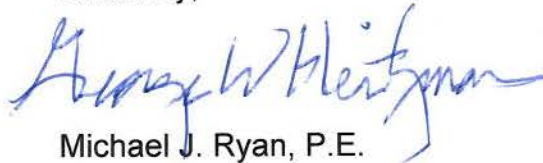
Department of  
Environmental  
Conservation

New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

- Provide the notice of the COC to the Document Repositories within 10 days of issuance of the COC. The Department will develop a fact sheet announcing the issuance of the COC and describing the institutional and engineering controls (IC/ECs), if any, that are required at the site and distribute it to the County Listserv within 10 days;
- Implement the Department-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program; and you must report the results of these activities to the Department in a Periodic Review Report (PRR) which also includes any required IC/EC Certifications. The site IC/ECs are identified on the attached Site Management Form. The first PRR including the certification of the IC/ECs is due to the Department in April 2021.

If you have any questions regarding any of these items, please contact David Locey at (716) 851-7220 or [david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov).

Sincerely,



Michael J. Ryan, P.E.  
Director  
Division of Environmental Remediation

ec w/ enclosure:

Christine Vooris, [Christine.Vooris@health.ny.gov](mailto:Christine.Vooris@health.ny.gov)  
Kristin Kulow, [kristin.kulow@health.ny.gov](mailto:kristin.kulow@health.ny.gov)  
Charlotte Bethoney, [charlotte.bethoney@health.ny.gov](mailto:charlotte.bethoney@health.ny.gov)  
Matt Gokey, [matthew.gokey@tax.ny.gov](mailto:matthew.gokey@tax.ny.gov)  
Paul Takac, [paul.takac@tax.ny.gov](mailto:paul.takac@tax.ny.gov)

ec w/o enc.:

David Locey, [david.locey@dec.ny.gov](mailto:david.locey@dec.ny.gov)  
Chad Staniszewski, [chad.staniszewski@dec.ny.gov](mailto:chad.staniszewski@dec.ny.gov)  
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Patrick J. Sheedy, [psheedy@kroggrp.com](mailto:psheedy@kroggrp.com)

Marc Romanowski, [romanowski@ruppbaase.com](mailto:romanowski@ruppbaase.com)

Rob Napieralski, [RNapieralski@LaBellaPC.com](mailto:RNapieralski@LaBellaPC.com)



NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)  
*CERTIFICATE OF COMPLETION*

**CERTIFICATE HOLDER(S):**

**Name**

320 Roberts Road Freezer LLC  
The Krog Group, LLC

**Address**

4 Centre Drive, Orchard Park, NY 14127  
4 Centre Drive, Orchard Park, NY 14127

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 12/18/17

**Agreement Execution:** 1/9/18

**Agreement Index No.:** C907032-11-17

**Application Approval Amendment:** 6/26/19

**Agreement Execution Amendment:** 6/26/19

**Application Approval Amendment:** 12/20/19

**Agreement Execution Amendment:** 12/20/19

**SITE INFORMATION:**

**Site No.:** C907032

**Site Name:** Former Edgewood Warehouse Site

**Site Owner:** 320 Roberts Road Freezer LLC

**Street Address:** 320 South Roberts Road

**Municipality:** Dunkirk

**County:** Chautauqua

**DEC Region:** 9

**Site Size:** 7.940 Acres

**Tax Map Identification Number(s):** 79.12-4-32, 79.16-2-2, 79.16-2-77

**Percentage of site located in an EnZone:** 0 - 49 %

A description of the property subject to this Certificate is attached as Exhibit A and a site survey is attached as Exhibit B.

**CERTIFICATE ISSUANCE**

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the ECL have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

**Allowable Uses under the BCP:** Commercial and Industrial

**Cleanup Track:** Track 4: Restricted use with site-specific soil cleanup objectives

**Tax Credit Provisions:**

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 25 %.

Tangible Property Credit is 10%. Comprised of 10% Base.

Dependent upon the project being developed in a manner consistent with the approved Brownfield Cleanup Program application, additional rate increases may be available if the site is developed as affordable housing (5%), if the Certificate Holder receives a separate Determination of Conformance with the BOA from the Secretary of State (5%), or if the site is used primarily for manufacturing activities (5%) not to exceed a maximum 24 %.



The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls which are contained in the approved Site Management Plan and an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Chautauqua County as Instrument Number: 2019008025.

### **LIABILITY LIMITATION**

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

### **CERTIFICATE TRANSFERABILITY**

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

### **CERTIFICATE MODIFICATION/REVOCATION**

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

- (1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;
- (2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;
- (3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;
- (4) there is good cause for such modification or revocation;
- (5) either the Applicant or the Applicant's successors or assigns failed to manage the controls or monitoring in full compliance with the terms of the remedial program;
- (6) the terms and conditions of the environmental easement have been intentionally violated or found to be not protective or enforceable.

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing is not received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Basil Seggos  
Commissioner  
New York State Department of Environmental Conservation

By:  Date: 12/27/19  
Michael J. Ryan, P.E., Director  
Division of Environmental Remediation

**NOTICE OF CERTIFICATE OF COMPLETION**  
**Brownfield Cleanup Program**  
**6 NYCRR Part 375-1.9(d)**

Former Edgewood Warehouse Site, Site ID No. C907032  
320 South Roberts Road, Dunkirk, NY 14048  
Dunkirk, Chautauqua County, Tax Map Identification Numbers 79.12-4-32, 79.16-2-2 and 79.16-2-77

**PLEASE TAKE NOTICE**, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to The Krog Group, LLC and 320 Roberts Road Freezer LLC for a parcel approximately 7.94 acres in size, located at 320 South Roberts Road in the City of Dunkirk and Chautauqua County.

**PLEASE TAKE NOTICE**, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

**PLEASE TAKE NOTICE**, the remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

- ☐ Unrestricted Use, as set forth in 6 NYCRR 375-1.8(g)(1)i
- ☐ Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
- ☐ Restricted Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)ii.
- ☒ Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
- ☒ Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

**PLEASE TAKE NOTICE**, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Chautauqua County as Instrument Number: 2019008025.

**PLEASE TAKE NOTICE**, the Environmental Easement requires that the approved site management plan (SMP) for this property be adhered to. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDEC, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, New York 12233.

**PLEASE TAKE NOTICE**, provided that the Environmental Easement, SMP and Certificate are complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

***Former Edgewood Warehouse Site, Site #C907032, 320 South Roberts Road, Dunkirk, NY***

**PLEASE TAKE NOTICE**, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

**PLEASE TAKE NOTICE**, the Certificate may be revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

**PLEASE TAKE NOTICE**, the Certificate may entitle the Certificate holder(s) to tax credits in accordance with Tax Law Sections 21, 22 and 23.

**PLEASE TAKE NOTICE**, the Certificate may only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer **WILL** bar the successors and assigns from the benefits of the Certificate.

**PLEASE TAKE NOTICE**, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

**PLEASE TAKE NOTICE**, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 office located at 270 Michigan Avenue, Buffalo, NY, by contacting the Regional Environmental Remediation Engineer.

**WHEREFORE**, the undersigned has signed this Notice of Certificate

320 Roberts Road Freezer LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**Please record and return to:**  
320 Roberts Road Freezer LLC  
Attn: Peter L. Krog  
4 Centre Drive  
Orchard Park, NY 14127

**Exhibit A**  
**Site Description**



**SCHEDULE "A" PROPERTY DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Dunkirk, County of Chautauqua and State of New York. Being part of Lot No. 12, Township 6, Range 12 of the Holland Land Company's Survey and being more particularly bounded and described as Follows;

Commencing at a point on the centerline of South Roberts Road, said point being at the westerly corner of lands conveyed by Edgewood Investments, Inc. to Alumax Extrusions, Inc. as described in a warranty deed dated March 2, 1989 and recorded in the Chautauqua County Clerk's office in Liber 2186 of Deeds at page 513, said point also being N 54° 17' 36" W and 601.13 feet from the NW line of the Norfolk and Western Railroad as measured along centerline of said South Roberts Road;

Thence N 37° 54' 24" E a distance of 33.02 to the true point or place of beginning;

Thence continuing N 37° 54' 24" E and along the westerly line of Cliffstar LLC by Liber 2013 of Deeds at Page 6243 a distance of 362.98 feet to an existing iron pipe;

Thence N 78° 57' 24" E a distance of 95.96 feet to the northeast corner of said Cliffstar;

Thence N 11° 12' 36" W and along the westerly line of lands of the County of Chautauqua by Liber 2494 of Deeds at Page 59 a distance of 19.82 feet to a set rebar;

Thence along a curve to the right with a chord bearing of N 76° 24' 48" E and a radius of 281.44 feet and continuing along the line of the County of Chautauqua by Liber 2494 of Deeds at Page 59 an arc distance of 9.20 feet to an existing rebar;

Thence N 10° 58' 36" W and continuing along the line of the County of Chautauqua by Liber 2494 of Deeds at Page 59 a distance of 62.82 feet to an existing railroad spike;

Thence along a curve to the right with a chord bearing of N 40° 55' 31" E and a radius of 757.76 feet and to the corner of lands of the County of Chautauqua by Liber 2494 of Deeds at Page 59 and the County of Chautauqua by Liber 2494 of Deeds at Page 49 an arc distance of 98.22 feet;

Thence continuing along the northerly line of the County of Chautauqua by Liber 2494 of Deeds at Page 49 along a curve to the right with a chord bearing of N 53° 38' 38" E and a radius of 1364.49 feet an arc distance of 419.76 feet to an existing rebar;

Thence continuing along the northerly line of the County of Chautauqua by Liber 2494 of Deeds at Page 49 along a curve to the right with a chord bearing of N 70° 41' 38" E and a radius of 260.49 feet an arc distance of 76.07 feet to a set rebar;

Thence N 78° 56' 24" E and continuing along the northerly line of the County of Chautauqua by Liber 2494 of Deeds at Page 49 a distance of 77.46 feet to a set rebar;

Thence N 11° 03' 36" W a distance of 10.97 feet to an existing rebar in the southerly line of the now or formally Erie Lackawanna Railroad Company;

Thence the following four courses and distances along the southerly line of the now or formally Erie Lackawanna Railroad Company;

1. S 78° 56' 24" W a distance of 154.00 feet to an existing rebar
2. S 68° 19' 38" W a distance of 117.89 feet to an existing iron pipe
3. S 79° 00' 11" W a distance of 714.56 feet to an existing iron pipe
4. S 76° 48' 24" W a distance of 497.94 feet to an existing iron pipe;

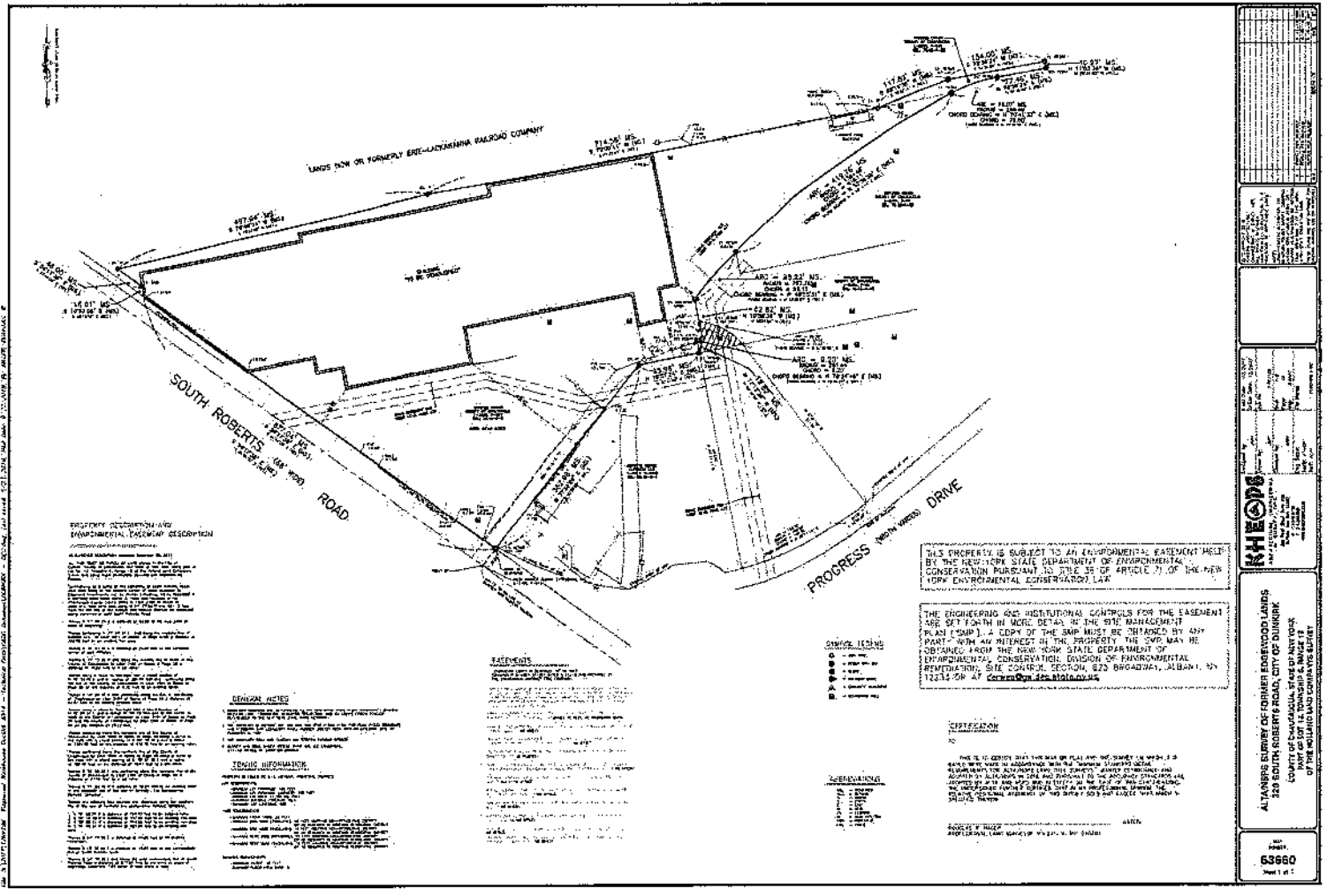
Thence S 54° 17' 36" E a distance of 46.00 feet to an existing monument;

Thence S 10° 53' 06" E a distance of 16.01 feet to the northeasterly line of South Roberts road;

Thence S 54° 17' 36" E and along the said northeasterly line of South Roberts Road a distance of 677.04 feet to the point or place of beginning, containing 7.94 acres of land more or less.

## **Exhibit B**

### **Site Survey**



**PROPERTY DESCRIPTION AND ENVIRONMENTAL ASSESSMENT DESCRIPTION**

**PROPERTY DESCRIPTION**  
The property is located in the City of Dunbar, West Virginia, and is bounded by South Roberts Road to the west and Progress Drive to the south. The property is approximately 100 feet wide and 200 feet deep. The property is currently vacant and is surrounded by other vacant land.

**ENVIRONMENTAL ASSESSMENT DESCRIPTION**  
The environmental assessment was conducted in accordance with the requirements of the New York State Department of Environmental Conservation (DEC) under Article 17 of the New York Environmental Conservation Law (ECL). The assessment was conducted by a qualified professional and includes a site inspection, a review of historical records, and a review of the surrounding area. The assessment identified several potential environmental concerns, including the presence of old railroad tracks, the presence of old buildings, and the presence of old storage tanks. The assessment also identified several potential sources of contamination, including the old railroad tracks, the old buildings, and the old storage tanks. The assessment concluded that the property is not suitable for residential development and that the property should be left vacant.

**DESIGN NOTES**

1. The property is located in the City of Dunbar, West Virginia, and is bounded by South Roberts Road to the west and Progress Drive to the south. The property is approximately 100 feet wide and 200 feet deep. The property is currently vacant and is surrounded by other vacant land.

2. The environmental assessment was conducted in accordance with the requirements of the New York State Department of Environmental Conservation (DEC) under Article 17 of the New York Environmental Conservation Law (ECL). The assessment was conducted by a qualified professional and includes a site inspection, a review of historical records, and a review of the surrounding area. The assessment identified several potential environmental concerns, including the presence of old railroad tracks, the presence of old buildings, and the presence of old storage tanks. The assessment also identified several potential sources of contamination, including the old railroad tracks, the old buildings, and the old storage tanks. The assessment concluded that the property is not suitable for residential development and that the property should be left vacant.

**EASEMENTS**

The property is subject to an easement held by the New York State Department of Environmental Conservation (DEC) pursuant to Article 17 of the New York Environmental Conservation Law (ECL). The easement is for the purpose of conducting environmental assessments and for the purpose of monitoring the property. The easement is for a term of years and is subject to the terms and conditions of the easement agreement.

**STATUS LEGEND**

- 1. Vacant
- 2. Old railroad tracks
- 3. Old buildings
- 4. Old storage tanks

THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL EASEMENT HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO ARTICLE 17 OF THE NEW YORK ENVIRONMENTAL CONSERVATION LAW.

THE ENGINEERING AND ARCHITECTURAL CONTROLS FOR THE EASEMENT ARE SET FORTH IN MORE DETAIL 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 MAY BE OBTAINED FROM THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 612 BROADWAY, ALBANY, NY 12242 OR AT [DEC@DEC.NY.GOV](mailto:DEC@DEC.NY.GOV).

**CERTIFICATION**

I, the undersigned, being a duly qualified professional engineer or architect, do hereby certify that the above is a true and correct copy of the original as shown to me by the owner of the property. I am a duly qualified professional engineer or architect and am duly licensed by the State of New York.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

<b>RECORDS</b>	
FILE NO.	63860
DATE	10/1/00
ALBANY SLURBY OF FORMER RAILROAD LANDS 100 SOUTH ROBERTS ROAD, CITY OF DUNBAR COUNTY OF CHATHAM, STATE OF NEW YORK PART OF LOT 14, TOWNSHIP 6, RANGE 18 OF THE HOLLAND LAND COMPANY SURVEY	





NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Site Management Form  
12/13/2019



SITE DESCRIPTION

SITE NO. C907032

SITE NAME Former Edgewood Warehouse Site

SITE ADDRESS: 320 South Roberts Road ZIP CODE: 14048

CITY/TOWN: Dunkirk

COUNTY: Chautauqua

ALLOWABLE USE: Commercial and Industrial

SITE MANAGEMENT DESCRIPTION

SITE MANAGEMENT PLAN INCLUDES: YES NO

IC/EC Certification Plan ☒ ☐

Monitoring Plan ☒ ☐

Operation and Maintenance (O&M) Plan ☐ ☒

Periodic Review Frequency: once a year

Periodic Review Report Submitted Date: 04/30/2021

Description of Institutional Control

320 Roberts Road Freezer LLC

4 Centre Drive

320 South Roberts Road

Environmental Easement

Block: 2

Lot: 2

Sublot:

Section:

Subsection: 16

S\_B\_L Image: 79.16-2-2

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

Site Management Plan

Soil Management Plan

Lot: 77

Sublot:

Section: 79  
Subsection: 16  
S\_B\_L Image: 79.16-2-77  
Ground Water Use Restriction  
IC/EC Plan  
Landuse Restriction  
Monitoring Plan  
Site Management Plan  
Soil Management Plan

Block: 4  
Lot: 32  
Sublot:  
Section: 79  
Subsection: 12  
S\_B\_L Image: 79.12-4-32  
Ground Water Use Restriction  
IC/EC Plan  
Landuse Restriction  
Monitoring Plan  
Site Management Plan  
Soil Management Plan

#### Description of Engineering Control

##### **320 Roberts Road Freezer LLC**

4 Centre Drive

##### **320 South Roberts Road**

Environmental Easement

Block: 2

Lot: 2

Sublot:

Section:

Subsection: 16

S\_B\_L Image: 79.16-2-2

Cover System

Lot: 77

Sublot:

Section: 79

Subsection: 16

S\_B\_L Image: 79.16-2-77

Cover System

Block: 4

Lot: 32

Sublot:

Section: 79

Subsection: 12

S\_B\_L Image: 79.12-4-32

Cover System