

**PANAMERICAN**

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October 6, 2017

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, New York 12233-7020

Re: BCP Application –57 and 71 Tonawanda Street, Buffalo, Erie County, New York

Dear Chief, Site Control Section:

On behalf of the project applicant, FEDDER LOFTS, LLC, please accept the attached revised Brownfield Cleanup Program (BCP) application for 57 and 71 Tonawanda Street; Buffalo, Erie County, New York, 14207. The attached document includes the information as requested in the BCP application instructions and has been revised to include additional information requested by NYSDEC. With this submission we have provided a complete application package. The attached includes a paper copy of the revised pages and an electronic copy on CD of the entire revised application and exhibits, with separate electronic files of the environmental reports. One electronic copy has also been sent to the NYSDEC Region 9 Office.

Please feel free to contact us if you have any questions. We look forward to the approval of this application and appreciate the NYSDEC's interest in this project and the re-development of Brownfield sites.

Sincerely,  
Peter J. Gorton  
President  
Panamerican Environmental, Inc.

CC: Region 9 NYSDEC  
Mr. Eran Epstein – FEDDER LOFTS, LLC

Attachment: BCP Application Form and Required information

**APPLICATION  
NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
BROWNFIELD CLEANUP PROGRAM**



**57-71 TONAWANADA STREET**

**SUBMITTED BY:**

**FEDDER LOFTS, LLC**  
950 Delaware Avenue  
Buffalo, New York 14209

**August 2017**

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## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION FORM

DEC requires an application to request major changes to the description of the property set forth in a Brownfield Cleanup Agreement, or "BCA" (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). Such application must be submitted and processed in the same manner as the original application, including the required public comment period. **Is this an application to amend an existing BCA?**

Yes

No

If yes, provide existing site number: \_\_\_\_\_

### PART A (note: application is separated into Parts A and B for DEC review purposes) *BCP App Rev 9*

#### Section I. Requestor Information - See Instructions for Further Guidance

DEC USE ONLY  
BCP SITE #: \_\_\_\_\_

**See Also Exhibit A**

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)? Yes No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the [NYS Department of State's Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to the New York State Department of Environmental Conservation (DEC) with the application, to document that the requestor is authorized to do business in NYS. **Refer to Figure 1**

Do all individuals that will be certifying documents meet the requirements detailed below? Yes No

- Individuals that will be certifying BCP documents, as well as their employers, meet the requirements of Section 1.5 of [DER-10: Technical Guidance for Site Investigation and Remediation](#) and Article 145 of New York State Education Law. **Documents that are not properly certified will be not approved under the BCP.** **Refer to Figure 1**

#### Section II. Project Description

**See Also Exhibit B**

1. What stage is the project starting at? Investigation Remediation

2. If the project is starting at the remediation stage, a Remedial Investigation Report (RIR), Alternatives Analysis, and Remedial Work Plan must be attached (see [DER-10 / Technical Guidance for Site Investigation and Remediation](#) for further guidance).

3. If a final RIR is included, please verify it meets the requirements of Environmental Conservation Law (ECL) Article 27-1415(2): Yes No

4. Please attach a short description of the overall development project, including:

- the date that the remedial program is to start; and
- the date the Certificate of Completion is anticipated.

**Refer to Exhibit B**



**Section III. Property's Environmental History****Refer to Exhibit C and Exhibit I - Attached Electronic Report Copies**

All applications **must include** an Investigation Report (per ECL 27-1407(1)). The report must be sufficient to establish contamination of environmental media on the site above applicable Standards, Criteria and Guidance (SCGs) based on the reasonably anticipated use of the property.

To the extent that existing information/studies/reports are available to the requestor, please attach the following (**please submit the information requested in this section in electronic format only**):

1. **Reports:** an example of an Investigation Report is a Phase II Environmental Site Assessment report prepared in accordance with the latest American Society for Testing and Materials standard (ASTM E1903). **Refer Exhibit I - Attached Electronic Report Copies**

**2. SAMPLING DATA: INDICATE KNOWN CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN TO HAVE BEEN AFFECTED. LABORATORY REPORTS SHOULD BE REFERENCED AND COPIES INCLUDED.**

Contaminant Category	Soil	Groundwater	Soil Gas
Petroleum			
Chlorinated Solvents			
Other VOCs			
SVOCs			
Metals			
Pesticides			
PCBs			
Other*			

\*Please describe: \_\_\_\_\_

**3. FOR EACH IMPACTED MEDIUM INDICATED ABOVE, INCLUDE A SITE DRAWING INDICATING:**

- **SAMPLE LOCATION**
- **DATE OF SAMPLING EVENT**
- **KEY CONTAMINANTS AND CONCENTRATION DETECTED**
- **FOR SOIL, HIGHLIGHT IF ABOVE REASONABLY ANTICIPATED USE**
- **FOR GROUNDWATER, HIGHLIGHT EXCEEDANCES OF 6NYCRR PART 703.5**
- **FOR SOIL GAS/ SOIL VAPOR/ INDOOR AIR, HIGHLIGHT IF ABOVE MITIGATE LEVELS ON THE NEW YORK STATE DEPARTMENT OF HEALTH MATRIX**

**Refer to Exhibit C, Exhibit I, and Figure 6 - Figure & Table showing sampling and contaminant exceedance information**

THESE DRAWINGS ARE TO BE REPRESENTATIVE OF ALL DATA BEING RELIED UPON TO MAKE THE CASE THAT THE SITE IS IN NEED OF REMEDIATION UNDER THE BCP. DRAWINGS SHOULD NOT BE BIGGER THAN 11" X 17". THESE DRAWINGS SHOULD BE PREPARED IN ACCORDANCE WITH ANY GUIDANCE PROVIDED.

**ARE THE REQUIRED MAPS INCLUDED WITH THE APPLICATION?\***

(\*answering No will result in an incomplete application)

**Yes****No**

**4. INDICATE PAST LAND USES (CHECK ALL THAT APPLY):**

Coal Gas Manufacturing	Manufacturing	Agricultural Co-op	Dry Cleaner
Salvage Yard	Bulk Plant	Pipeline	Service Station
Landfill	Tannery	Electroplating	Unknown

Other: \_\_\_\_\_

Section IV. Property Information - See Instructions for Further Guidance				
PROPOSED SITE NAME				
ADDRESS/LOCATION				
CITY/TOWN		ZIP CODE		
MUNICIPALITY(IF MORE THAN ONE, LIST ALL):				
COUNTY		SITE SIZE (ACRES)		
LATITUDE (degrees/minutes/seconds) ° ' "		LONGITUDE (degrees/minutes/seconds) ° ' "		
COMPLETE TAX MAP INFORMATION FOR ALL TAX PARCELS INCLUDED WITHIN THE PROPERTY BOUNDARIES. ATTACH REQUIRED MAPS PER THE APPLICATION INSTRUCTIONS.				
Parcel Address		Section No.	Block No.	Lot No.
				Acreage
1. Do the proposed site boundaries correspond to tax map metes and bounds? <span style="float: right;">Yes    No</span> If no, please attach a metes and bounds description of the property. <span style="float: right; border: 1px solid red; padding: 2px;">Refer to Figure 3, and 4</span>				
2. Is the required property map attached to the application? <span style="float: right;">Yes    No</span> (application will not be processed without map) <span style="float: right; border: 1px solid red; padding: 2px;">Refer to Figure 3</span>				
3. Is the property within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)? <span style="float: right;">Yes    No</span> (See <a href="#">DEC's website</a> for more information) <span style="float: right; border: 1px solid red; padding: 2px;">Refer to Figure 3</span> If yes, identify census tract : _____ Percentage of property in En-zone (check one):      0-49%      50-99%      100%				
4. Is this application one of multiple applications for a large development project, where the development project spans more than 25 acres (see additional criteria in BCP application instructions)? <span style="float: right;">Yes    No</span> If yes, identify name of properties (and site numbers if available) in related BCP applications: _____				
5. Is the contamination from groundwater or soil vapor solely emanating from property other than the site subject to the present application? <span style="float: right;">Yes    No</span>				
6. Has the property previously been remediated pursuant to Titles 9, 13, or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law? <span style="float: right;">Yes    No</span> If yes, attach relevant supporting documentation.				
7. Are there any lands under water? <span style="float: right;">Yes    No</span> If yes, these lands should be clearly delineated on the site map.				

**Section IV. Property Information (continued)**

8. Are there any easements or existing rights of way that would preclude remediation in these areas?  
If yes, identify here and attach appropriate information. ☐ Yes ☒ No

Easement/Right-of-way Holder

Description

9. List of Permits issued by the DEC or USEPA Relating to the Proposed Site (type here or attach information)

<u>Type</u>	<u>Issuing Agency</u>	<u>Description</u>
Registry of Inactive Hazardous Waste Disposal Sites	NYSDEC	NYSDEC #915024

10. Property Description and Environmental Assessment – **please refer to application instructions for the proper format of each narrative requested.**

Are the Property Description and Environmental Assessment narratives included in the **prescribed format**? Refer to Exhibit D

☒ Yes ☐ No

11. For sites located within the five counties comprising New York City, is the requestor seeking a determination that the site is eligible for tangible property tax credits? Not Applicable  
If yes, requestor must answer questions on the supplement at the end of this form.

☐ Yes ☐ No

12. Is the Requestor now, or will the Requestor in the future, seek a determination that the property is Upside Down? Not Applicable

☐ Yes ☐ No

13. If you have answered Yes to Question 12, above, is an independent appraisal of the value of the property, as of the date of application, prepared under the hypothetical condition that the property is not contaminated, included with the application?

☐ Yes ☐ No

**NOTE:** If a tangible property tax credit determination is not being requested in the application to participate in the BCP, the applicant may seek this determination at any time before issuance of a certificate of completion by using the BCP Amendment Application, except for sites seeking eligibility under the underutilized category.

If any changes to Section IV are required prior to application approval, a new page, initialed by each requestor, must be submitted.

Initials of each Requestor:  \_\_\_\_\_

**BCP application - PART B (note: application is separated into Parts A and B for DEC review purposes)**

<b>Section V. Additional Requestor Information</b> <b>See Instructions for Further Guidance</b>		<small>DEC USE ONLY</small> BCP SITE NAME: _____ BCP SITE #: _____	
NAME OF REQUESTOR'S AUTHORIZED REPRESENTATIVE			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
NAME OF REQUESTOR'S CONSULTANT			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
NAME OF REQUESTOR'S ATTORNEY			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
<b>Section VI. Current Property Owner/Operator Information – if not a Requestor</b>			
CURRENT OWNER'S NAME		OWNERSHIP START DATE:	
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
CURRENT OPERATOR'S NAME			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
<b>IF REQUESTOR IS NOT THE CURRENT OWNER, DESCRIBE REQUESTOR'S RELATIONSHIP TO THE CURRENT OWNER, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND THE CURRENT OWNER. <span style="border: 1px solid red; padding: 2px;">Refer to Exhibit E - Prior Owners/Operators</span></b> <b>PROVIDE A LIST OF PREVIOUS PROPERTY OWNERS AND OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS AS AN ATTACHMENT. DESCRIBE REQUESTOR'S RELATIONSHIP, TO EACH PREVIOUS OWNER AND OPERATOR, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND PREVIOUS OWNER AND OPERATOR. IF NO RELATIONSHIP, PUT "NONE".</b>			
<b>Section VII. Requestor Eligibility Information (Please refer to ECL § 27-1407)</b>			
If answering "yes" to any of the following questions, please provide an explanation as an attachment.			
1. Are any enforcement actions pending against the requestor regarding this site? Yes No			
2. Is the requestor subject to an existing order for the investigation, removal or remediation of contamination at the site? Yes No			
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator. Yes No			

## Section VII. Requestor Eligibility Information (continued)

4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the ECL Article 27; ii) any order or determination; iii) any regulation implementing Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. Yes No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, DEC assigned site number, the reason for denial, and other relevant information. Yes No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? Yes No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? Yes No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of DEC, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to DEC? Yes No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9 (f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? Yes No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? Yes No
11. Are there any unregistered bulk storage tanks on-site which require registration? Yes No

THE REQUESTOR MUST CERTIFY THAT HE/SHE IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

### PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

### VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

**Refer to Exhibit F -  
Statement re: consideration as volunteer**

**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.**



## Section VII. Requestor Eligibility Information (continued)

Requestor Relationship to Property (check one):

Previous Owner      Current Owner      Potential /Future Purchaser      Other\_\_\_\_\_

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached?

**Refer to Figure 10**

**Note: a purchase contract does not suffice as proof of access.**

Section VIII. Property Eligibility Information - See Instructions for Further Guidance [Refer to Exhibit F](#)

**Refer to Exhibit F**

1. Is / was the property, or any portion of the property, listed on the National Priorities List?  
If yes, please provide relevant information as an attachment.

Yes    No
2. Is / was the property, or any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites pursuant to ECL 27-1305? Refer to Exhibit F  
If yes, please provide:      Site # \_\_\_\_\_      Class # \_\_\_\_\_

Yes    No
3. Is / was the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility?  
If yes, please provide:   Permit type: \_\_\_\_\_      EPA ID Number: \_\_\_\_\_  
                                        Date permit issued: \_\_\_\_\_      Permit expiration date: \_\_\_\_\_

Yes    No
4. If the answer to question 2 or 3 above is yes, is the site owned by a volunteer as defined under ECL 27-1405(1)(b), or under contract to be transferred to a volunteer? Attach any information available to the requestor related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filing and corporate dissolution documentation.

Yes    No
5. Is the property subject to a cleanup order under Navigation Law Article 12 or ECL Article 17 Title 10?  
If yes, please provide:      Order # \_\_\_\_\_

Yes    No
6. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum?  
If yes, please provide explanation as an attachment.

Yes    No

## Section IX. Contact List Information Refer to Exhibit G

**Refer to Exhibit G**

To be considered complete, the application must include the Brownfield Site Contact List in accordance with [DER-23 / Citizen Participation Handbook for Remedial Programs](#). Please attach, at a minimum, the names and addresses of the following:

1. The chief executive officer and planning board chairperson of each county, city, town and village in which the property is located.
2. Residents, owners, and occupants of the property and properties adjacent to the property.
3. Local news media from which the community typically obtains information.
4. The public water supplier which services the area in which the property is located.
5. Any person who has requested to be placed on the contact list.
6. The administrator of any school or day care facility located on or near the property.
7. The location of a document repository for the project (e.g., local library). In addition, attach a copy of an acknowledgement from the repository indicating that it agrees to act as the document repository for the property.
8. Any community board located in a city with a population of one million or more, if the proposed site is located within such community board's boundaries.



Section X. Land Use Factors <span style="border: 1px solid red; padding: 2px;">Refer to Exhibit H</span>	
1. What is the current zoning for the site? What uses are allowed by the current zoning? <div style="display: flex; justify-content: space-around; margin-bottom: 5px;"> <span>Residential</span> <span>Commercial</span> <span>Industrial</span> <span style="border: 1px solid red; padding: 2px;">Refer to Figure 7 - Zoning</span> </div> If zoning change is imminent, please provide documentation from the appropriate zoning authority.	
2. Current Use: <span>Residential</span> <span>Commercial</span> <span>Industrial</span> <span>Vacant</span> <span>Recreational</span> (check all that apply) <span style="border: 1px solid red; padding: 2px;">Refer to Exhibits C, D and E</span> <b>Attach a summary of current business operations or uses, with an emphasis on identifying possible contaminant source areas. If operations or uses have ceased, provide the date.</b>	
3. Reasonably anticipated use Post Remediation: <span>Residential</span> <span>Commercial</span> <span>Industrial</span> (check all that apply) <b>Attach a statement detailing the specific proposed use.</b> <span style="border: 1px solid red; padding: 2px;">Refer to Exhibit B</span>  If residential, does it qualify as single family housing? <span style="float: right;">Yes    No</span>	
4. Do current historical and/or recent development patterns support the proposed use?	Yes    No
5. Is the proposed use consistent with applicable zoning laws/maps? Briefly explain below, or attach additional information and documentation if necessary.	Yes    No
6. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, or other adopted land use plans? Briefly explain below, or attach additional information and documentation if necessary.	Yes    No

## XI. Statement of Certification and Signatures

(By requestor who is an individual)

If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

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

Print Name: \_\_\_\_\_

(By a requestor other than an individual)

I hereby affirm that I am Member/Owner (title) of FEDDER LOFTS, LLC (entity); that I am authorized by that entity to make this application and execute the Brownfield Cleanup Agreement (BCA) and all subsequent amendments; that this application was prepared by me or under my supervision and direction. If this application is approved, I acknowledge and agree: (1) to execute a BCA within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the *DER-32, Brownfield Cleanup Program Applications and Agreements*; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 9/5/18 Signature:  \_\_\_\_\_

Print Name: Eran Epstein \_\_\_\_\_

### SUBMITTAL INFORMATION:

- **Two (2)** copies, one paper copy with original signatures and one electronic copy in Portable Document Format (PDF), must be sent to:
  - Chief, Site Control Section
  - New York State Department of Environmental Conservation
  - Division of Environmental Remediation
  - 625 Broadway
  - Albany, NY 12233-7020

**FOR DEC USE ONLY**  
**BCP SITE T&A CODE:** \_\_\_\_\_

**LEAD OFFICE:** \_\_\_\_\_

**Supplemental Questions for Sites Seeking Tangible Property Credits in New York City ONLY.** Sufficient information to demonstrate that the site meets one or more of the criteria identified in ECL 27 1407(1-a) must be submitted if requestor is seeking this determination.

**BCP App Rev 9**

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	Yes	No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	Yes	No
<b>Please answer questions below and provide documentation necessary to support answers.</b>		
1. Is at least 50% of the site area located within an environmental zone pursuant to NYS Tax Law 21(b)(6)? Please see <a href="#">DEC's website</a> for more information.	Yes	No
2. Is the property upside down or underutilized as defined below?	Upside Down?	Yes No
	Underutilized?	Yes No
<p><b>From ECL 27-1405(31):</b></p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p> <p><b>From 6 NYCRR 375-3.2(I) as of August 12, 2016:</b> (Please note: Eligibility determination for the underutilized category can only be made at the time of application)</p> <p>375-3.2:</p> <p>(I) "Underutilized" means, as of the date of application, real property on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; and</p> <p>(1) the proposed use is at least 75 percent for industrial uses; or</p> <p>(2) at which:</p> <p>(i) the proposed use is at least 75 percent for commercial or commercial and industrial uses;</p> <p>(ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and</p> <p>(iii) one or more of the following conditions exists, as certified by the applicant:</p> <p>(a) property tax payments have been in arrears for at least five years immediately prior to the application;</p> <p>(b) a building is presently condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer, which present a public health or safety hazard; or</p> <p>(c) there are no structures.</p> <p>"Substantial government assistance" shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity.</p>		

### Supplemental Questions for Sites Seeking Tangible Property Credits in New York City (continued)

3. If you are seeking a formal determination as to whether your project is eligible for Tangible Property Tax Credits based in whole or in part on its status as an affordable housing project (defined below), you must attach the regulatory agreement with the appropriate housing agency (typically, these would be with the *New York City Department of Housing, Preservation and Development*; the *New York State Housing Trust Fund Corporation*; the *New York State Department of Housing and Community Renewal*; or the *New York State Housing Finance Agency*, though other entities may be acceptable pending Department review). **Check appropriate box, below:**

Project is an Affordable Housing Project - Regulatory Agreement Attached;

Project is Planned as Affordable Housing, But Agreement is Not Yet Available\*  
(\*Checking this box will result in a “pending” status. The Regulatory Agreement will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.);

This is Not an Affordable Housing Project.

#### From 6 NYCRR 375- 3.2(a) as of August 12, 2016:

(a) “Affordable housing project” means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.

(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency’s affordable housing program, or a local government’s regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants’ households annual gross income.

(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency’s affordable housing program, or a local government’s regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.

(3) “Area median income” means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.

**BCP Application Summary (for DEC use only)****Site Name:****City:****Site Address:****County:****Zip:****Tax Block & Lot****Section (if applicable):****Block:****Lot:****Requestor Name:****City:****Requestor Address:****Zip:****Email:****Requestor's Representative (for billing purposes)****Name:****Address:****City:****Zip:****Email:****Requestor's Attorney****Name:****Address:****City:****Zip:****Email:****Requestor's Consultant****Name:****Address:****City:****Zip:****Email:****Percentage claimed within an En-Zone:****0%****<50%****50-99%****100%****DER Determination:****Agree****Disagree****Requestor's Requested Status:****Volunteer****Participant****DER/OGC Determination:****Agree****Disagree****Notes:****For NYC Sites, is the Requestor Seeking Tangible Property Credits:****Yes****No****Does Requestor Claim Property is Upside Down:****Yes****No****DER/OGC Determination:****Agree****Disagree****Undetermined****Notes:****Does Requestor Claim Property is Underutilized:****Yes****No****DER/OGC Determination:****Agree****Disagree****Undetermined****Notes:****Does Requestor Claim Affordable Housing Status:****Yes****No****Planned, No Contract****DER/OGC Determination:****Agree****Disagree****Undetermined****Notes:**

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
BROWNFIELD CLEANUP PROGRAM (BCP)  
INSTRUCTIONS FOR COMPLETING A BCP APPLICATION**

The New York State Department of Environmental Conservation (DEC) strongly encourages all applicants to schedule a pre-application meeting with DEC staff to review the benefits, requirements, and procedures for completing a project in the BCP. Contact your [Regional office](#) to schedule a meeting. To add a party to an existing BCP Agreement and/or Application, use the [BCP Agreement Amendment Application](#). **See guidance at the end of these instructions regarding the determination of a complete application.**

**SECTION I REQUESTOR INFORMATION**

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear exactly as given in the [NYS Department of State's Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to DEC with the application, to document that the requestor is authorized to do business in NYS.

Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Document Certification

All documents, which are prepared in final form for submission to DEC for approval, are to be prepared and certified in accordance with Section 1.5 of [DER-10](#). Persons preparing and certifying the various work plans and reports identified in Section 1.5 include:

- New York State licensed professional engineers (PEs), as defined at 6 NYCRR 375-1.2(aj) and paragraph 1.3(b)47. Engineering documents must be certified by a PE with current license and registration for work that was done by them or those under their direct supervision. The firm by which the PE is employed must also be authorized to practice engineering in New York State;
- qualified environmental professionals as defined at 6 NYCRR 375-1.2(ak) and DER-10 paragraph 1.3(b)49;
- remedial parties, as defined at 6 NYCRR 375-1.2(ao) and DER-10 paragraph 1.3(b)60; or
- site owners, which are the owners of the property comprising the site at the time of the certification.

**SECTION II PROJECT DESCRIPTION**

As a separate attachment, provide complete and detailed information about the project, including the purpose of the project, the date the remedial program is to start, and the date the Certificate of Completion is anticipated..



**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**SECTION III**

**PROPERTY'S ENVIRONMENTAL HISTORY**

Please follow instructions on application form.

**SECTION IV**

**PROPERTY INFORMATION**

Proposed Site Name

Provide a name for the proposed site. The name could be an owner's name, current or historical operations (i.e. ABC Furniture) or the general location of the property. Consider whether the property is known by DEC by a particular name, and if so, use that name.

Site Address

Provide a street address, city/town, zip code, and each municipality and county in which the site is located. .

Site Size

Provide the approximate acreage of the site.

GIS Information

Provide the latitude and longitude for the approximate center of the property. Show the latitude and longitude in degrees, minutes and seconds.

Tax Parcel Information

Provide the tax parcel address/section/block/lot information and map. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears and clearly indicate the proposed site's location.

1. Tax Map Boundaries

State whether the boundaries of the site correspond to the tax map boundaries. If no, a metes and bounds description of the property must be attached. The site boundary can occupy less than a tax lot or encompass portions of one or more tax lots and may be larger or smaller than the overall redevelopment/reuse project area. A site survey with metes and bounds will be required to establish the site boundaries before the Certificate of Completion can be issued.

2. Map

Provide a property base map(s) of sufficient detail, clarity and accuracy to show the following: i) map scale, north arrow orientation, date, and location of the property with respect to adjacent streets and roadways; and ii) proposed brownfield property boundary lines, with adjacent property owners clearly identified.

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**SECTION IV (continued)**

3. En-zone

Is any part of the property in an En-zone? If so, what percentage? For information on En-zones, please see [DEC's website](#).

4. Multiple applications

Generally, only one application can be submitted, and one BCA executed, for a development project. In limited circumstances, the DEC may consider multiple applications/BCAs for a development project where 1) the development project spans more than 25 acres; 2) the approach does not negatively impact the remedial program, including timing, ability to appropriately address areas of concern, and management of off-site concerns; and 3) the approach is not advanced to increase the value of future tax credits (i.e., circumvent the tax credit caps provided under New York State Tax Law Section 21).

10. Property Description Narrative

Provide a property description in the format provided below. Each section should be no more than one paragraph long.

Location

Example: "The XYZ Site is located in an {urban, suburban, rural} area." {Add reference points if address is unspecific; e.g., "The site is approximately 3.5 miles east of the intersection of County Route 55 and Industrial Road."}

Site Features:

Example: "The main site features include several large abandoned buildings surrounded by former parking areas and roadways. About one quarter of the site area is wooded. Little Creek passes through the northwest corner."

Current Zoning and Land Use: (Ensure the current zoning is identified.)

Example: "The site is currently inactive, and is zoned for commercial use. The surrounding parcels are currently used for a combination of commercial, light industrial, and utility right-of-ways. The nearest residential area is 0.3 miles east on Route 55."

Past Use of the Site: include source(s) of contamination and remedial measures (site characterizations, investigations, Interim Remedial Measures, etc.) completed outside of the current remedial program (e.g., work under a petroleum spill incident).

Example: "Until 1992 the site was used for manufacturing wire and wire products (e.g., conduit, insulators) and warehousing. Prior uses that appear to have led to site contamination include metal plating, machining, disposal in a one-acre landfill north of Building 7, and releases of wastewater into a series of dry wells."

When describing the investigations/actions performed outside of the remedial program, include the major chronological remedial events that lead to the site entering a remedial program. The history should include the first involvement by government to address hazardous waste/petroleum disposal. Do not cite reports. Only include remedial activities which were implemented PRIOR to the BCA. Do not describe sampling information.

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**SECTION IV (continued)**

Property Description Narrative (continued)

Site Geology and Hydrogeology:

As appropriate, provide a very brief summary of the main hydrogeological features of the site including depth to water, groundwater flow direction, etc.

Environmental Assessment

The goal of this section is to describe the nature and extent of contamination at the site. When describing the nature of contamination, identify just the primary contaminants of concern (i.e., those that will likely drive remedial decisions/actions). If there are many contaminants present within a group of contaminants (i.e., volatile organic compounds, semivolatile organic compounds, metals), identify the group(s) and one or two representative contaminants within the group. When addressing the extent of contamination, identify the areas of concern at the site, contaminated media (i.e., soil, groundwater, etc.), relative concentration levels, and a broad-brush description of contaminated areas/depths.

The reader should be able to know if contamination is widespread or limited and if concentrations are marginally or greatly above Standards, Criteria and Guidance (SGCs) for the primary contaminants. If the extent is described qualitatively (e.g., low, medium, high), representative concentrations should be given and compared with appropriate SCGs. For soil contamination, the concentrations should be compared with the soil cleanup objectives (SCOs) for the intended use of the site.

**A typical Environmental Assessment would look like the following:**

Based upon investigations conducted to date, the primary contaminants of concern for the site include cadmium and trichloroethene (TCE).

*Soil* - Cadmium is found in shallow soil, mostly near a dry well at the northeast end of the property. TCE is found in deeper soil, predominantly at the north end of the site. Concentrations of cadmium found on site (approximately 5 ppm) slightly exceed the soil cleanup objective (SCO) for unrestricted use (2.5 ppm). Concentrations of TCE found on site (5 ppm to 300 ppm) significantly exceed the soil cleanup objectives for the protection of groundwater (0.47 ppm).

*Groundwater* - TCE and its associated degradation products are also found in groundwater at the north end of the site, moderately exceeding groundwater standards (typically 5 ppb), with a maximum concentration of 1500 ppb. A moderate amount of TCE from the site has migrated 300 feet down-gradient off-site. The primary contaminant of concern for the off-site area is TCE, which is present at a maximum concentration of 500 ppb, at 10 feet below the groundwater table near Avenue A.

*Soil Vapor & Indoor Air* - TCE was detected in soil vapor at elevated concentrations and was also detected in indoor air at concentrations up to 1,000 micrograms per cubic meter.

**If any changes to Section IV are required prior to application approval, a new page, initialed by each requestor, must be submitted.**

**SECTION V**

**ADDITIONAL REQUESTOR INFORMATION**

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc. will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative of Applications determined to be Participants unless another contact name and address is provided with the application.

Consultant and Attorney Name, Address, etc.

Provide requested information.

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**SECTION VI                      CURRENT PROPERTY OWNER/OPERATOR INFORMATION  
(IF NOT A REQUESTOR)**

Owner Name, Address, etc.

Provide requested information of the current owner of the property. List all parties holding an interest in the Property and, if the Requestor is not the current owner, describe the Requestor's relationship to the current owner.

Operator Name, Address, etc.

Provide requested information of the current operator (if different from the requestor or owner).

Provide a list of previous property owners and operators with names, last known addresses, telephone numbers and the Requestor's relationship to each owner and operator as a separate attachment

**SECTION VII                      REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

**SECTION VIII                      PROPERTY ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to the following eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that that information be summarized.

**1. CERCLA / NPL Listing**

Has any portion of the property ever been listed on the National Priorities List (NPL) established under CERCLA? If so, provide relevant information.

**2. Registry Listing**

Has any portion of the property ever been listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites established under ECL 27-1305? If so, please provide the site number and classification. See the Division of Environmental Remediation (DER) [website](#) for a database of sites with classifications.

**3. RCRA Listing**

Does the property have a Resource Conservation and Recovery Act (RCRA) TSDF Permit in accordance with the ECL 27-0900 *et seq*? If so, please provide the EPA Identification Number, the date the permit was issued, and its expiration date. Note: for purposes of this application, interim status facilities are not deemed to be subject to a RCRA permit.

**4. Registry / RCRA sites owned by volunteers**

If the answer to question 2 or 3 above is yes, is the site owned by a volunteer as defined under ECL 27-1405(1)(b), or under contract to be transferred to a volunteer? Attach any information available to the requestor related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filing and corporate dissolution documentation.

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**SECTION VIII (continued)**

**5. Existing Order**

Is the property subject to an order for cleanup under Article 12 of the Navigation Law or Article 17 Title 10 of the ECL? If so, please provide information on an attachment. Note: if the property is subject to a stipulation agreement, relevant information should be provided; however, property will not be deemed ineligible solely on the basis of the stipulation agreement.

**6. Enforcement Action Pending**

Is the property subject to an enforcement action under Article 27, Titles 7 or 9 of the ECL or subject to any other ongoing state or federal enforcement action related to the contamination which is at or emanating from the property? If so, please provide information on an attachment.

**SECTION IX                      CONTACT LIST INFORMATION**

Provide the names and addresses of the parties on the Site Contact List (SCL) and a letter from the repository acknowledging agreement to act as the document repository for the proposed BCP project.

**SECTION X                      LAND USE FACTORS**

In addition to eligibility information, site history, and environmental data/reports, the application requires information regarding the current, intended and reasonably anticipated future land use.

1. This information consists of responses to the "land use" factors to be considered relative to the "Land Use" section of the BCP application. The information will be used to determine the appropriate land use in conjunction with the investigation data provided, in order to establish eligibility for the site based on the definition of a "brownfield site" pursuant to ECL 27-1405(2).
2. This land use information will be used by DEC, in addition to all other relevant information provided, to determine whether the proposed use is consistent with the currently identified, intended and reasonably anticipated future land use of the site at this stage. Further, this land use finding is subject to information regarding contamination at the site or other information which could result in the need for a change in this determination being borne out during the remedial investigation.

**SECTION XI                      SIGNATURE PAGE**

The Requestor must sign the application, or designate a representative who can sign. The requestor's consultant or attorney cannot sign the application. If there are multiple parties applying, then each must sign a signature page.

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**DETERMINATION OF A COMPLETE APPLICATION**

1. The first step in the application review and approval process is an evaluation to determine if the application is complete. To help ensure that the application is determined complete, requestors should review the list of [common application deficiencies](#) and carefully read these instructions.
2. DEC will send a notification to the requestor within 30 calendar days of receiving the application, indicating whether such application is complete or incomplete.
3. An application must include the following information relative to the site identified by the application, necessary for making an eligibility determination, or it will be deemed incomplete. **(Please note: the application as a whole requires more than the information outlined below to be determined complete).** The application must include:
  - a. for all sites, an investigation report sufficient to demonstrate the site requires remediation in order to meet the requirements of the program, and that the site is a brownfield site at which contaminants are present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by DEC that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations. Required data includes site drawings requested in Section III, #3 of the BCP application form.
  - b. for those sites described below, documentation relative to the volunteer status of all requestors, as well as information on previous owners or operators that may be considered responsible parties **and** their ability to fund remediation of the site. This documentation is required for:
    - i. real property listed in the registry of inactive hazardous waste disposal sites as a class 2 site, which may be eligible provided that DEC has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property prior to the site being accepted into the BCP; or
    - ii. real property that was a hazardous waste treatment, storage or disposal facility having interim status pursuant to the Resource Conservation and Recovery Act (RCRA) program, which may be eligible provided that DEC has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property prior to the site being accepted into the BCP.
  - c. for sites located within the five counties comprising New York City, in addition to (a) and if applicable (b) above, if the application is seeking a determination that the site is eligible for tangible property tax credits, sufficient information to demonstrate that the site meets one or more of the criteria identified in ECL 27 1407(1-a). **If this determination is not being requested in the application to participate in the BCP, the applicant may seek this determination at any time before issuance of a certificate of completion, using the BCP Amendment Application, except for sites seeking eligibility under the underutilized category.**
  - d. for sites previously remediated pursuant to Titles 9, 13, or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law, relevant documentation of this remediation.



**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**DETERMINATION OF A COMPLETE APPLICATION (continued)**

4. If the application is found to be incomplete:
  - a. the requestor will be notified via email or phone call regarding minor deficiencies. The requestor must submit information correcting the deficiency to DEC within the 30-day review time frame; or
  - b. the requestor will receive a formal Letter of Incomplete Application (LOI) if an application is substantially deficient, if the information needed to make an eligibility determination identified in #4 above is missing or found to be incomplete, or if a response to a minor deficiency is not received within the 30-day period. The LOI will detail all of the missing information and request submission of the information. If the information is not submitted within 30 days from the date of the LOI, the application will be deemed withdrawn. In this case, the requestor may resubmit the application without prejudice.
5. If the application is determined to be complete, DEC will send a Letter of Complete Application (LOC) that includes the dates of the public comment period. The LOC will:
  - a. include an approved public notice to be sent to all parties on the Contact List included with the application;
  - b. provide instructions for publishing the public notice in the newspaper on the date specified in the letter, and instructions for mailing the notice to the Contact List;
  - c. identify the need for a certification of mailing form to be returned to DEC along with proof of publication documentation; and
  - d. specify the deadline for publication of the newspaper notice, which must coincide with, or occur before, the date of publication in the Environmental Notice Bulletin (ENB).
    - i. DEC will send a notice of the application to the ENB. As the ENB is only published on Wednesdays, DEC must submit the notice by the Wednesday before it is to appear in the ENB.
    - ii. The mailing to parties on the Contact List must be completed no later than the Tuesday prior to ENB publication. If the mailings, newspaper notice and ENB notice are not completed within the time-frames established by the LOC, the public comment period on the application will be extended to insure that there will be the required comment period.
    - iii. Marketing literature or brochures are prohibited from being included in mailings to the Contact List.

# EXHIBITS

## **EXHIBIT A**

### **Section I. Requester Information**

## Exhibit A

### Section I. Requester members/owners

#### Requester:

##### **FEDDER LOFTS, LLC**

950 Delaware Avenue  
Buffalo, New York 14209

#### **Members/Owners of FEDDER LOFTS, LLC:**

Epstein Enterprises, LLC  
950 Delaware Avenue  
Buffalo, New York 14209  
Phone: 716-200-1700 x703  
Fax: 716-568-8271  
Email: [eran@e2mcorp.com](mailto:eran@e2mcorp.com)

Jacobs Enterprises, LTD  
3132 5th ST  
Boulder CO 80304  
Phone: 720-289-5947  
Email: [chris@elementproperties.com](mailto:chris@elementproperties.com)

The requester is authorized to conduct business in New York State (NYS). A printout of entity information from the NYS Department of State's Corporation & Business Entity Database is enclosed as Figure 1.

All individuals that will be preparing and certifying BCP documents in final form meet the requirements of Section 1.5 of DER-10. The work will be completed by engineers and scientists working at:

Panamerican Environmental, Inc. (PEI)/Brydges – environment, engineering, energy (BE3)

1270 Niagara Street

Buffalo, New York 14213

Documents will be certified by NYS licensed professional engineers with current licenses and registrations Refer to Figure 1

## **EXHIBIT B**

### **Section I. Project Description**

## **Exhibit B**

### **Section II Project Description**

#### **Date Remedial Action to Start**

Remedial Action and renovation is anticipated to start in winter-spring 2018-2019.

#### **Date of Anticipated Certificate of Completion**

The anticipated date of the certificate of completion is fall of 2019.

#### **Purpose of the Project**

The purpose is to complete a remediation of the former industrial property into mixed income housing (residential) reuse. The proposed remedy is intended to reduce the potential exposure to volatile organics associated with vapor migration into the proposed buildings and exposure to PAHs and metals; to enhance public and environmental health and reduce potential impacts to groundwater.

Current and past use of the Site and adjacent properties has been industrial/commercial which has impacted environmental media. The housing re-use will require remediation of these impacts. The BCP program will help support the significant remediation costs necessary to re-develop the property for the intended re-use.

#### **Anticipated Use After Remediation**

The re-development project will result in family housing with ancillary commercial and retail uses. Square footage in each use category is approximately 125,000 square feet of residential and approximately 12,000 square feet commercial/non-residential space.

Estimate of Job created is around 100 during construction and 10-15 permanent employees once constructed.

#### **Anticipated Remedial Costs**

Project will exceed \$500,000 for investigation and remediation costs. Specifics are unknown and will be detailed after the Remedial Investigation.

#### **Anticipated Cost of Future Development**

The capital costs and estimated value of the completed project is approximately \$15-20 million.



## **EXHIBIT C**

### **Section III. Property's Environmental History**

## Exhibit C

### Section III. Property's Environmental History

**As requested, the information requested in Section III is contained in the attached electronic copies of property specific investigation reports and the attached Figure 6 which identifies sample locations, date of sampling, and key contaminants detected with regard to use. As identified, the BCP application is for two adjacent parcels; 57-71 Tonawanda Street which were part of the same manufacturing business.**

### Previous Environmental Reports

A review of the investigation reports for the property and adjacent properties indicated that potential environmental impacts exist at the property from past activities on the property and from the adjacent/nearby properties. The past investigations on the property include:

- 1978 site inspection report. This report suggested that in 1936-1942 a building housing furnace kilns was demolished and used as fill for the parking lot. Additionally, reportedly waste oils – hydraulic fluids and lube oils possibly containing PCBs – and possibly solvent still bottoms were spread over the parking area for dust suppression. In 1981 the lot was covered with gravel.
- “Engineering Investigations at Inactive Hazardous Waste Sites, Phase II Investigations; Pratt and Letchworth, Site No. 915045, City of Buffalo, Erie County; Volume 1 and 2 ”. Prepared for NYSDEC. Prepared Engineering-Science, Inc., PC. June 1989
- “Engineering Investigation at Inactive Hazardous Waste Sites in the State of New York, Phase II Investigations; Fedders Automotive Components, Site No. 915024, City of Buffalo”. Prepared for NYSDEC – Division of Hazardous Waste. Prepared by Ecology and Environment Engineering, PC. February 1992
- *Phase I Environmental Site Assessment 57 Tonawanda Street; City of Buffalo, Erie County, New York” Completed by PEI for Buffalo Niagara RIVERKEEPER and The Buffalo Niagara River Land Trust in May 2011)*
- *Phase I Environmental Site Assessment 71 Tonawanda Street; City of Buffalo, Erie County, New York” Completed by PEI for Buffalo Niagara RIVERKEEPER and The Buffalo Niagara River Land Trust in May 2011)*
- “Draft Fedders Automotive Components Site - Site Management Plan.” NYSDEC Site Number: 915024. Prepared for Mr. Edward Hogle, Black Rock Trade Center, Inc. Prepared by Panamerican Environmental, Inc. November 2013

The 1992 Phase II investigation was completed by E&E suggested that Fedders manufactured automotive components including radiators, heaters, and transmission oil coolers. The report further suggested that processes at the property include metal stamping, soldering, brazing, welding, and painting, acid washing and degreasing. Industrial wastes were reported to include solder dross, degreasing still bottoms including trichloroethylene (TCE) and tetrachloroethene, petroleum-based lubricating fluids and other products and wastes. The 1992 investigation concluded that volatile and semi-volatile organic compounds and metal compounds were found

across the site in surface and subsurface soil, sediments and groundwater including chlorinated solvents and lead.

There are numerous environmental assessments and records associated with the adjacent and nearby properties. Numerous properties within this area including the subject property and adjacent properties appear in various government environmental related databases. The subject property was identified as Fedders Auto – FEDCO – 57 Tonawanda Street in the following databases: UST and HIST UST, NY Spills and HIST Spills; CER-NFRAP; RCRA-CESQG; FINDS; SHWS; CBS AST; Manifest; CBS. These database records are assumed to apply to both parcels. A 1992 petroleum bulk storage record (PBS # 448249) indicated that a 15,000-gallon #6 Fuel Oil UST was removed in 1992 from the rear of property and that 7 aboveground chemical storage tanks (zinc) were closed in 1991 (CBS # 9-000207). Building records indicate that a brick addition was added in 1943 for a boiler house at Fedders and additional building records listed for 57 Tonawanda Street include two 550-gallon gasoline tanks installed in 1946; a 3,000-gallon gasoline tank installed in 1947 and a 15,000-gallon oil tank was installed in 1961.

### **Property Background/Historical Summary**

The area and property have a long historic use. Commercial use of the general area occurred in the early 1800's situated around Black Rock. Fedders began as a metalworking shop started by Theodore C. Fedders in 1896 in Buffalo, New York. At first it made milk cans and kerosene tanks for Standard Oil Co. and bread pans for National Biscuit Co. Shortly after the turn of the century Buffalo became the home of such automobile makers as Pierce-Arrow and the Thomas Five. Fedders converted his plant to making radiators for these models and, in time, other automobile makers as well. During World War I the company also made radiators for airplanes, and, in addition, it manufactured appliances for heating and electrical refrigeration.

Located on the northeast corner of West and Tonawanda Streets, the 57 Tonawanda Street property contains a 2-story building fronting along West Street at Tonawanda which is approximately 10,230 square feet and the adjacent and adjoining 71 Tonawanda Street property contains a 2-4-story irregularly-shaped building that is approximately 115,000 square feet former manufacturing. The 57 Tonawanda Street building functioned as the offices for the complex and was more recently renovated to accommodate planned student workspaces/housing that never occurred. The 71 Tonawanda Street property is vacant and fairly deteriorated. The roof is caved in at the southern end and the northern end has significant fire damage and is caved in.

A large parking lot area extends from the eastern end of both buildings to the east and is bounded by Creek/bike path and the Scajaquada Expressway (State Highway 198). The buildings and property abut Tonawanda Street to the west and West Street to the south. Historical information and maps suggest that the buildings functioned as part of the Fedders Automotive Corporation factory complex that span across West Street and included the southern adjacent 31 Tonawanda Street property to the south. A fence separates the property from the adjacent former Pratt & Lambert paint and lacquer manufacturer property to the north. The building is connected to the adjacent southern portion of the former Fedders factory building across West Street (31 Tonawanda Street) by a walkway which connects the third floor of both buildings. A court yard area is located in the northeastern side of the property.

The existing entire building complex was initially constructed in the early 1900's as Fedder Manufacturing Company (building permits indicate that brick factories were constructed from 1907-1916). Based on the historical records, it appears that the 57 Tonawanda Street building was added to the Fedders complex sometime after 1916. Prior to that there were individual residential and small store front properties at the location. The eastern part of the property, now a large asphalt parking lot, was the former location of Hall & Son Fire Brick factory complex that operated from about 1866 to about the early 1940's. The manufacture of fire-brick occurred on the eastern part of the property extending to the adjacent northern property. This brickyard was started by Edward J. Hall, in 1866, as a branch of the business of A. Hall & Son, at Perth Amboy, New Jersey. Hall & Sons was listed in Street directory in 1877. This plant operated large storage sheds for bricks and a flue house and numerous kilns. These are most likely associated with the demolition of on-site buildings and fill noted above.

Historical use and findings from the past investigations indicate that potential environmental impacts exist at the property from past activities on the property and from the adjacent/nearby properties. Reports suggested that Fedders manufactured automotive components including radiators, heaters, and transmission oil coolers and manufacturing processes at the property included metal stamping, soldering, brazing, welding, painting, acid washing and degreasing. Industrial wastes were reported to include solder dross, degreasing still bottoms including trichloroethylene (TCE) and tetrachloroethene, petroleum-based lubricating fluids and other products and wastes. Phase 2 ESA's conducted for NYSDEC in the late 1980's and early 1990s confirm the above impacts.

**A more detailed summary of property description, history, and use and contamination impacts is provided in the attached electronic copies of investigation reports.**

## **EXHIBIT D**

### **Section IV. Property Information**

## Exhibit D

### Section IV. Property Information

As requested in the application instructions, each section response is limited to one paragraph and the site geology and hydrogeology is presented as a very brief summary.

#### Property Description Narrative

##### Location

Located at the northeast corner of West and Tonawanda Streets, the subject property contains a 2-4-story irregularly-shaped building fronting along Tonawanda Street. The property is located in the Black Rock area of the City of Buffalo and is located within the City of Buffalo Tonawanda Street Corridor Brownfield Opportunity Area (BOA). The Tonawanda Street Corridor BOA is comprised of 514 acres of primarily under-utilized industrial brownfields in northwest Buffalo stretching from Scajaquada Creek (Creek) to just south of the Tonawanda municipal boundary, and along Chandler Street. The site is strategically located with access to major highways, a bi-national railway, Black Rock Channel, the Niagara River, Scajaquada Creek, and the Jesse Kregal trail system which provides a creekside east-west connection between the Niagara River and Delaware Park. The property is in an **En-zone**.

**Please refer to attached maps including Figures 2a and 2b, 3, 4, 5, 6 and 7, which show the property.**

##### Site Features

The subject property contains a two building complex which together make up a connected 2-4-story irregularly-shaped building complex fronting along Tonawanda Street. The property includes an approximately 10,230 square foot former office building and an approximately 115,000 square foot former manufacturing building. Both buildings are vacant and the larger structure is fairly deteriorated. The roof is caved in at the southern end and the northern end has significant fire damage and is caved in. A court yard area is located in the northeastern side of the property. A large parking lot area extends from the eastern end of the building to the east and is bounded by the Creek/bike path and the Scajaquada Expressway (State Highway 198). The building and property abut Tonawanda Street to the west and West Street to the south. A fence separates the property from the adjacent former Pratt & Lambert property to the north. Historical information suggest that the building was the original Fedders Automotive Corporation factory complex building constructed around 1910 with later additions.

##### Current Zoning and Land Use

The property is currently vacant and unused. The property was previously zoned for M-2 – General Industrial District (Refer to Figure 7 – zoning map) and in the new Green Code – N-1S Secondary Employment Area. The surrounding parcels are mostly zoned similarly. Historically, the majority of the immediate area and the subject parcel were used for industry and rail transportation as far back as the mid-1800s. Some residential exists less than a quarter of a mile from the property. The Expressway and off ramp and 190 are immediately south. Further south are former commercial properties along Forest and Niagara Streets.

## **Past Use of the Site**

The area and property have a long historic use and is located in what was formerly a highly industrial area. Commercial use of the general area occurred in the early 1800's situated around Black Rock. The industrial history of the properties and adjacent properties has had a significant effect on the environmental impacts affecting both the area and the subject property. Sometime after 1900 the Fedders Manufacturing occupied the 31-71 Tonawanda Street parcels until it sold the complex to Black Rock Trade Center, Inc., in 2005. Fedders began as a metalworking shop started by Theodore C. Fedders. The Fedders complex was initially located on the adjacent southern 31 Tonawanda Street parcel and eventually expanded across West Avenue to also occupy the subject Tonawanda Street property (57 and 71 Tonawanda Street). Initially Fedders made milk cans and kerosene tanks for Standard Oil Co. and bread pans for National Biscuit Co. Later Fedders converted the plant to making radiators for automobiles. During World War I the company also made radiators for airplanes and manufactured appliances for heating and electrical refrigeration. During World War II Fedders received contracts to make links and clips for machine-gun belts and garand-rifle bullets. In the late 1940's through the 1960s Fedders made room air conditioners and electric water coolers, heaters, radiators, radiator cores and home radiators, convectors, hot-water boilers and women's handbag frames, as well as heat-transfer equipment, including convectors, condensers, evaporators, and dehumidifiers. By 1990 the company was sold to FEDCO who manufactured automobile heating equipment. The Fedders complex did have a history of using various chemicals, oils, solvents and other materials in their manufacturing process. Processes at the property included metal stamping, soldering, brazing, welding, painting, acid washing and degreasing. Industrial wastes were reported to include solder dross, degreasing still bottoms including trichloroethylene (TCE) and tetrachloroethene, petroleum-based lubricating fluids and other products and wastes.

## **Site Geology and Hydrogeology**

In general, the more than a century of intense industrialization has altered the natural setting throughout the area and can best be described as highly disturbed. Based on borings on adjacent parcels and field observations indicated that urban fill material (fill) most likely exists at the property to a depth that varies from about two (2) to six feet (6) below ground surface (bgs). Reddish-Brown clay or silty clay was observed below the fill level. Bedrock beneath the project area is Onondaga limestone, consisting of Middle Devonian age limestone and chert. It lies deeply buried beneath glacial deposits and no rock outcroppings are visible on the ground surface. Soils within the project area are classified as Urban Land (Ud) - highly developed for commercial, industrial or residential use, and much of the ground surface is covered by impervious features (e.g., buildings, streets, and paved parking lots). Previous investigations at the property suggest that demolition debris from the former brick factory including kilns may be buried on the property.

## **Environmental Assessment**

A 1978 site inspection report suggested that in 1936-1942 a building housing furnace kilns was demolished and used as fill for the parking lot. Additionally, reportedly waste oils – hydraulic fluids and



lube oils possibly containing PCBs – and possibly solvent still bottoms were spread over the parking area for dust suppression. In 1981 the lot was covered with gravel. The NYSDEC included the site on the Registry of inactive Hazardous Waste disposal sites based on results of the inspection as a Class 3 site which documented disposal of hazardous waste (F001 – mixture of waste oil and solvent still bottoms). Environmental investigations conducted between 1985 and 1990 found elevated concentrations of VOCs in groundwater and PCBs in soil. Soil samples collected in 1990-1991 resulted in the following findings: PCB - 4.4-34.2 ppm, Ethylbenzene - 0.47ppm, Toluene - 0.29-0.47 ppm, Styrene - 5.6 ppm, Methylene Chloride - 0.6 ppm, xylene - 1.34 ppm, Cadmium 2.2-7.0 mg/kg, Lead 380-456 mg/kg, and cyanide 1.2-89.5. The environmental impacts will be further investigated during the RI portion of the BCP. Refer to Figure 6 and Exhibit I (Phase I and Phase II results). Contaminates potentially include polycyclic aromatic hydrocarbons (PAHs), metals and volatiles including petroleum and solvents. Various media including surface and subsurface soil, groundwater and air (vapor intrusion) would be potentially affected. Areas of the building may be impacted with petroleum and solvents. The 1992 investigation concluded that volatile and semi-volatile organic compounds and metal compounds were found across the site in surface and subsurface soil, sediments and groundwater including chlorinated solvents and lead. At the pre-application meeting it was suggested that enough information existed on this site and no additional data was required for the application process.

## **EXHIBIT E**

### **Section VI. Current Property Owners/Operator Information**

**Exhibit E****Section VI. Current Property Owner/Operator Information****The Current Owner**

Black Rock Trade Center, Inc.  
 Mr. Edward Hogle  
 495 Niagara Street  
 Tonawanda, New York 14150  
 716-876-0900

And

Mr. Brian Hogel  
 33 East Girard Street  
 Kenmore, NY 14150

Relationship of requestor to current and previous owners and operators – NONE. The requestor has no relationship to the current or previous owners or current or past operators of the property.

**Previous Owners and Operators**57 Tonawanda Street

<u>Liber</u>	<u>Page</u>	<u>Sale Date</u>	<u>From</u>	<u>To</u>
10798	342	11-22-1993	Fedders (see chain below)	Moodene Inc.
10876	4769	9-1-1994	Moodene Inc.	Fedco Automotive
11091	9754	3-9-2005	Fedco Automotive	Black Rock Trade Center

71 Tonawanda Street

<u>Liber</u>	<u>Page</u>	<u>Sale Date</u>	<u>From</u>	<u>To</u>
3265	349	6-30-1942	Fedders	Fedders Manufacturing Company, Inc.
10036	578	6-20-1989	Fedders Manufacturing Company, Inc.	Fedco Auto Comp Co Inc
10120	627	12-22-1989	Buffalo Holding Company (Formerly Fedco Automotive Components Company)	Black Rock Trade Center

## **Historic Ownership/Operators**

Last known addresses and phone numbers for the previous owners/operators

### **\*Chronology of Fedders-Fedders Quigan-FEDCO**

**1896-1945** - Fedders - began as a metalworking shop started by Theodore C. Fedders in 1896 in Buffalo

**1917** – Fedders obtained ownership of portion subject property which later expanded to the entire property

**1947-58** - Fedders-Quigan – merger

**1958** - Fedders - Fedders-Quigan shortened its name to Fedders in 1958

**1987** - Fedders spun off the compressor and automotive-components divisions into a company named NYCOR, Inc. This company remained under Fedders management

**1988** - Salvatore Giordano, Jr. succeeded his father as chief executive officer of both Fedders and NYCOR

**1989** - NYCOR sold its compressor subsidiary, Rotorex Corp., back to Fedders. It sold the automotive-components business (FEDCO) in 1990 and became for a time a shell company.

**1989** – FEDCO acquired the subject property from Rotorex Corp. (Fedders)

**1992** – Fedders sold Rotorex back to NYCOR

**1996** – Fedders reintegrate itself with NYCOR

## **Last Known Address and Telephone numbers of the previous Owners/Operators**

### **Black Rock Trade Center, Inc. Operating as Atlas Steel and Steel Crazy Art.**

Mr. Edward Hogle (prior owner and operator)

495 Niagara Street

Tonawanda, New York 14150

716-876-0900

And

Mr. Brian Hogel (prior owner and operator)

33 East Girard Street

Kenmore, NY 14150

### **BUFFALO HOLDING COMPANY (Formerly FEDCO) - (prior owner/operator) current address**

1551 Wewatta St

Denver, CO 80202-6173

303-744-5042

### **FEDDERS MANUFACTURING COMPANY (prior owner and operator) current address**

505 Martinsville Road

P.O. Box 813

Liberty Corner, New Jersey 07938

Telephone: 908-604-8686

Fax: 908-604-9715

**Rotorex Company** (prior owner/operator as part of Fedders)

8301-B Retreat Road  
Walkersville, MD 21793  
301-898-4480  
Fax 301-898-3476

**NYCOR, Inc** (prior owner/operator as part of Fedders)

287 Childs Road  
Basking Ridge, NJ 07920  
United States  
908-953-8200

**Property Historical Use Summary**

1984-Present – 120 Tonawanda Street, Inc. – Atlas Steel and Steel Crazy Iron Art  
–1907-2003

The existing entire building complex was initially constructed in the early 1900's as Fedder Manufacturing Company (building permits indicate that brick factories were constructed from 1907-1916). Based on the historical records, it appears that the 57 Tonawanda Street building was added to the Fedders complex sometime after 1916. Prior to that there were individual residential and small store front properties at the location. The eastern part of the property, now a large asphalt parking lot, was the former location of Hall & Son Fire Brick factory complex that operated from about 1866 to about the early 1940's.

## **EXHIBIT F**

### **Section VII. Requester Eligibility Information**

## **Exhibit F**

### **Section VII. Requestor Eligibility Information**

The requestor has answered no to all the eligibility questions.

The requestor is certifying that they are volunteers – their liability arises solely as a result of future ownership and development of the Site subsequent to the disposal of hazardous waste or discharge of petroleum.

The requestors have not yet purchased the property and certify that they have exercised appropriate care with respect to the chemical impacts found at the property by:

- Obtaining and reviewed a recently completed Phase I Environmental Site Assessment (ESA) completed on the property by others which identified potential recognized environmental conditions;
- Completed a detailed review of past investigations which identified chemical release concerns; and
- Identified the BCP program as a means to further investigate and remediate the concerns.

The requestor has not initiated any operations or property use that would contribute to environmental impacts to the property. As a result the requestor is a volunteer; was not the owner of the site at the time of the release of chemical impacts and is not the person responsible for the contamination.

The Requestor has no legal relationship beyond the real estate contract to purchase the property Black Rock Trade Center, Inc., LLC will have absolutely no involvement with the development activities of the Requestor going forward. Because acceptance into the BCP is a condition precedent of the real estate contract, Black Rock Trade Center, Inc., LLC remains in title at this time and the Requestor is the contract-vendee.



## **EXHIBIT G**

### **Section IX. Contact List Information**

## **Exhibit G**

### **Section IX: Contact List Information**

#### **1. The chief executive officer and planning board/dept. chair of each county, city, town and village in which the property is located.**

##### **Erie County**

**County Executive** Mark C. Poloncarz  
Edward A. Rath County Office Building  
95 Franklin Street, 16th Floor  
Buffalo, New York 14202

**Phone:** (716) 858-8500

**Fax:** (716) 858-6679

##### **Commissioner of Environment & Planning – Mr. Thomas R. Hersey, Jr.**

Edward A. Rath County Office Building  
95 Franklin Street, 10th Floor  
Buffalo, New York 14202

**Phone:** (716) 858-8390

**Fax:** (716) 858-6679

##### **City of Buffalo**

**Mayor** – Byron W. Brown  
201 City Hall,  
Buffalo, NY 14202  
Mayor's Office Telephone: 716-851-4841

##### **Planning Board Chairman**

James K. Morrell  
901 City of Hall  
Buffalo NY 14202  
716-851-5082

#### **2. Residents, owners, and occupants of the property and properties adjacent to the property. Refer To Figure 8.**

**31 Tonawanda Street LLC (31 Tonawanda Street – 88.58-1-1)**  
**Black Rock Rail, LLC (105 Tonawanda Street – 88.50-1-11)**  
148 Middlesex Road  
Buffalo, New York 14216

**City of Buffalo (1490 and 1485 West Street – 88.50-1-7)**

323 City Hall  
Buffalo, New York 14202

**Black Rock Trade Center, Inc. and 120 Tonawanda Street Incorporated – (68 Tonawanda Street SBL: 88.50-2-1.2 and 57 & 71 Tonawanda – 88.50-1-8.21 and 88.50-1-8.11)**

Mr. Edward Hogle  
Black Rock Trade Center  
495 Niagara Street  
Tonawanda, New York 14150  
&  
Mr. Brian Hogel  
Black Rock Trade Center  
33 East Girard Street  
Kenmore, NY 14150

**Niagara Mohawk Power Corporation (Niagara Mohawk Property - 1626 Niagara – 88.58-4-10)**

Real Estate Tax Dept  
300 Erie Blvd West  
Syracuse, NY 13202

**TLC Properties (2 Tonawanda St. – 88.58-4-7)**

TLC Properties, Inc.  
289 Exchange St.  
Buffalo, NY 14204

**Golf and Recreation Facilities, Inc. (69 Dearborn Street – 88.49-2-1.2 and 189 Tonawanda Street – 88.42-1-2.13)**

P.O. Box 869  
Warren MI 48090

**105 Tonawanda Street (105 Tonawanda Street – 88.50-1-11)**

**Black Rock Rail, LLC**

148 Middlesex Road  
Buffalo, New York 14216

**Note this property is vacant land.**

**Pratt & Lambert, Inc. (73 Tonawanda Street – 88.50-1-10 and 1409 West Street – 88.58-2-2)**

C/O Tax Department  
P.O. Box 6027  
Cleveland, OH 44115

**William David Lyons (117 Tonawanda Street – 88.50-1-1.1)**

111 Tonawanda Street  
Buffalo, New York 14207

**CSX Trans. Inc (100 & 174 Tonawanda – 88.50-2-1.11 & 88.42-2-4.1)**

Unit C-910  
500 Water Street  
Jacksonville, FL 19103

**Canadian National Railway Co Trans/International Bridge Trans (119 Tonawanda Street – 88.42-2-3)**

**PO Box 8100**

**Montreal, Quebec H3C 3N4, Canada**

**Ed Hogel (32 Tonawanda Street – 88.58-4-4)**

120 Tonawanda Street

Buffalo, New York 14207

**Lewmar Properties, LLC (1701 Niagara and 69 Wayne – 88.49-2-5.1 and 88.49-2-14)**

1721 Niagara Street

Buffalo, New York 14207

**Fred C Rumsey (1679 Niagara – 88.49-2.6)**

1679 Niagara Street

Buffalo, New York 14207

88.49-2-6

**Romelo M Inc (18 & 22 Tonawanda Street - 88.58-4-6 and 88.58-4-5)**

15 Skillen Street Buffalo New York 14207

700 Military Road Buffalo, New York 14207

**Buffalo State Ventures, LLC (80 Forest Street – 88.58-2-8)**

6225 Carmel Road

Charlotte, NC 28277

**Dival Safety (1701 Niagara Street – 88.49-2-5.1)**

1701 Niagara Street

Buffalo New York 14207

### **3. Local news media from which the community typically obtains information.**

#### **1) News Papers**

##### **The Buffalo News**

One News Plaza

PO Box 100

Buffalo, NY 14240

Phone: 716-849-4051

#### **2) TV**

The following is a directory of television stations in the Buffalo, NY area.

WGRZ-TV 2NBC 259 Delaware Ave, Buffalo, NY 14202. 716-849-2222.

WIVB-TV 4, WNLO-TV. 2077 Elmwood Avenue, Buffalo, NY 14207. 716-874-4410

WKBW-TV 7 Broadcast Plaza, Buffalo, NY 14202. 716-845-6100. Fax: 716-842-1855.

WNED-TV 17 PBS. 140 Lower Terrace Street, Buffalo, NY 14202. 716-845-7000

YNN Buffalo , 355 Chicago St., Buffalo, NY 14204 716) 558-8999 Option 2

**4. The public water supplier which services the area in which the property is located.**

Public Water Supplier:

**Buffalo Water Department**

120 Delaware Ave,  
Buffalo, New York 14202

**Erie County Water Department**

295 Main St Rm 350  
Buffalo, New York, 14202

**5. Any person who has requested to be placed on the contact list.**

None

**6. The administrator of any school or day care facility located on or near the property.**

**There are no day care facilities on the property**

**Nearby Day care**

**Grow With US Day Care**

1800 Niagara St,  
Buffalo, NY 14207  
(716) 332-2838

**Administrators Name – Debra Sutton**

**7. The location of a document repository for the project (e.g., local library).**

Ms. Patti Foley  
Library Manager  
Riverside Branch Library  
820 Tonawanda St  
Buffalo, NY 14207

**Refer to Figure 9.**

**8. Community Board – Not Applicable**

## **EXHIBIT H**

### **Section X. Land Use Factors**

## Exhibit H

### Section X: Land Use Factors

A “Brownfield Site” is defined under New York Environmental Conservation Law Section 27-1405(2) as “any real property where a contaminant is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by the department that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations”. The 57-71 Tonawanda Street properties meet the definition of a brownfield site under ECL Section 27-1405(2) because it is real property where a contaminant is present at levels exceeding the soil cleanup objectives adopted by the New York State Department of Environmental Conservation.

Further, past industrial operations at the property and nearby properties have impacted the site’s environmental media. The on-site confirmed contamination is both impacting and complicating the development and re-use of the property. The chlorinated solvents found during the limited investigations to date have the potential to impact the property in two ways; (i) as a potential vapor hazard to workers and users of the existing structure, and (ii) as an impact to the adjacent creek. The recent Scajaquada Creek Initiative by local stakeholders involves a Restoration Strategy for the Creek and surrounding communities which includes a prioritized action to restore water quality for Scajaquada Creek.

As shown by the limited investigation to date, the contaminants are present at levels that exceed recommended soil clean-up levels. Additionally, the limited investigations suggest that the property area along the creek contains historic fill containing foundry sand material which may have originated from the nearby former metal works which exceeds background levels. The presence of contaminants exceeding soil cleanup objectives has prevented the Requestor from obtaining commercial bank financing that is necessary in order to fund site re-development and re-use, thus complicating the use of the site.

The confirmed contamination is both impacting and complicating the development and re-use of the property. The metals and PAHs as well as the solvent contamination found during the limited investigations to date and the history of industrial also includes the potential for past chlorinated solvent and petroleum releases have the potential to impact the property in two ways; one as a potential vapor hazard and two as an exposure hazard to metals and PAHs to workers and users of the structures.

As shown by the limited investigation to date, the contaminants found are present at levels that exceed recommended clean-up levels. Additionally, the limited investigations suggest that the property area contains historic fill which exceeds background levels. The estimated costs of the remedial actions are impacting the ability to arrange for the financing for site re-development and re-use.

#### 1) Current Zoning

The 57-71 Tonawanda Street Site is currently a vacant industrial/manufacturing facility. The City of Buffalo has recently adopted a revised Unified Development Ordinance that designates the area containing both parcels as N-1S (Secondary Employment Area). **The past zoning for the property was M2 – General Industrial district (refer to Figure 7).** Surrounding properties are similarly zoned. Historically, the majority of the immediate area and the subject parcel were used for industry and rail transportation as far back as the mid-1800s. **These properties are located in a Brownfield Opportunity Area (BOA) – the City of Buffalo Tonawanda Street Corridor BOA – which has completed the nomination stage of the BOA process. The anticipated planned use**



of the property is residential. The planned re-development/re-use plan for the property fits within the land use plan described in the BOA nomination document. The BOA document anticipates this area as “flex commercial”.

## **2. Current use**

Currently the 57-71 Tonawanda Street building is a vacant former manufacturing facility. Currently there are no significant possible contaminant source areas associated with the current use. The potential contaminant source areas are all associated with previous use. The historic use and dates are summarized in Attachment D and detailed in the attached electronic copies of the Phase I and II Environmental Site Assessment reports which also include dates and documentation when the previous operations ceased. To date, specific potential contaminant sources have not been isolated as the original manufacturing equipment and processes have been removed. However, as described in Attachment D the facility used various chemicals, oils, solvents and other materials in their manufacturing process.

## **3. Reasonably anticipated use Post Remediation**

The 57-71 Tonawanda Street property will be used for family housing with ancillary commercial and retail uses. Square footage in each use category is approximately 125,000 square feet of residential and approximately 12,000 square feet commercial/non-residential space.

## **4. Do Current Historic and/or recent development patterns support the proposed use?**

The proposed use is consistent with land use plans. The close proximity to Buffalo State University yields the possibility to be accessible to this expanding campus. In addition, being located near the Peace Bridge and major highways makes these properties particularly attractive. The project area and scope fits well within The New York State Brownfield Opportunity Area (BOA) Program. The project is located in Lower Tonawanda Street Redevelopment Area portion of the BOA. The project represents a significant opportunity to put in place a land use that fits with the BOA plan and will be the lead project that kick starts the needed re-development in this area of the City and possible expansion of Buffalo State College. This project will help the area capitalize on its strategic assets; an opportunity to start a process aimed at repairing neighborhood edges that have been disproportionately impacted by industrial uses over time and creating new opportunities for working and living within the BOA.

## **5. Proposed Use Consistent With Applicable Zoning Laws/Maps**

The proposed use is consistent with the N-1S District. The property, when redeveloped, will comply with the City requirements. Refer to Figure 7 – zoning map.

## **6. Proposed Use Consistent with Local/Community Plans**

The project area and scope fits well within The Buffalo Green Codes' Land Use Plan as it meets the expanding area need to support residential and student needs and for cross border traffic. The

Land Use Plan serves as a bridge between the city's comprehensive plan and zoning code by recommending the appropriate type, intensity, and character of development. It envisions a future for Buffalo built around the restoration of walkable, mixed-use, transit-served neighborhoods and economic centers.

The plan focuses on three core strategies: fuel economic generators, restore neighborhoods, and repair environmental assets.

This Project will help the area capitalize on its strategic assets; an opportunity to start a process aimed at repairing neighborhood edges that have been disproportionately impacted by industrial uses over time and creating new opportunities for working and living within the area. The population and growth in Western NY and in the Black Rock section of Buffalo has been declining and or remaining static in recent years. The planned re-development should enhance the potential growth as it will offer residential living with water views and access to water recreational areas in a designated BOA area.

**EXHIBIT I**

**ELECTRONIC COPIES OF**

**REPORTS & INFORMATION**

- **57 Tonawanda Street Phase I ESA**
- **71 Tonawanda Street Phase I ESA**
- **SMP For Inactive Hazardous Waste Site – Draft**
- **Phase II report (partial) and other Information**

# FIGURES

**Figure 1**

**New York State Printout of Entity**

# ARTICLES OF ORGANIZATION OF Fedder Lofts, LLC

Under Section 203 of the Limited Liability Company Law

**FIRST:** The name of the limited liability company is:

**Fedder Lofts, LLC**

**SECOND:** To engage in any lawful act or activity within the purposes for which limited liability companies may be organized pursuant to Limited Liability Company Law provided that the limited liability company is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency, or other body without such consent or approval first being obtained.

**THIRD:** The county, within this state, in which the office of the limited liability company is to be located is ERIE.

**FOURTH:** The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

Fedder Lofts, LLC  
950 Delaware Avenue  
Buffalo, NY 14209

**FIFTH:** The existence of the limited liability company shall begin upon filing of these Articles of Organization with the Department of State.

**SIXTH:** The limited liability company shall have a perpetual existence.

**SEVENTH:** The limited liability company shall defend, indemnify and hold harmless all members, managers, and former members and managers of the limited liability company against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) incurred in connection with any claims, causes of action, demands, damages, liabilities of the limited liability company, and any pending or threatened action, suit, or proceeding. Such indemnification shall be made to the fullest extent permitted by the laws of the State of New York, provided that such acts or omissions which gives rise to the cause of action or proceedings occurred while the Member or Manager was in performance of his or her duties for the limited liability company and was not as a result of his or her fraud, gross negligence, willful misconduct or a wrongful taking. The indemnification provided herein shall inure to the benefit of successors, assigns, heirs, executors, and the administrators of any such person.

I certify that I have read the above statements, I am authorized to sign these Articles of Organization, that the above statements are true and correct to the best of my knowledge and belief and that my signature typed below constitutes my signature.

Eran Epstein, Co-Managing Member (signature)

---

Eran Epstein , ORGANIZER  
950 Delaware Avenue  
Buffalo, NY 14209

**Filed by:**  
Eran Epstein  
950 Delaware Avenue  
Buffalo, NY 14209

ONLINE FILING RECEIPT

=====

ENTITY NAME: FEDDER LOFTS, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM. LLC)

COUNTY: ERIE

=====

FILED:08/08/2017 DURATION:\*\*\*\*\* CASH#:170808010235 FILE#:170808010235  
DOS ID:5182952

FILER:

EXIST DATE

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ERAN EPSTEIN  
950 DELAWARE AVENUE  
BUFFALO, NY 14209

08/08/2017

ADDRESS FOR PROCESS:

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FEDDER LOFTS, LLC  
950 DELAWARE AVENUE  
BUFFALO, NY 14209

REGISTERED AGENT:

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The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the Biennial Statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

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SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*  
SERVICE CODE: 00

FEE:	200.00	PAYMENTS	200.00
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FILING:	200.00	CHARGE	200.00
TAX:	0.00	DRAWDOWN	0.00
PLAIN COPY:	0.00		
CERT COPY:	0.00		
CERT OF EXIST:	0.00		

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Authentication Number: 1708080243 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>



*The University of the State of New York*  
*Education Department*  
*Office of the Professions*

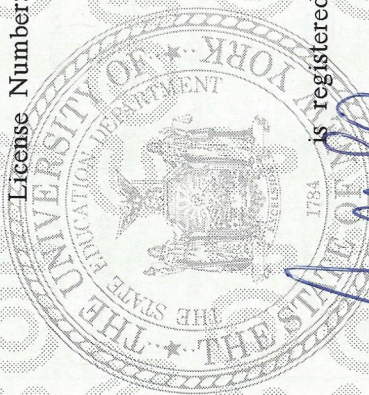
**REGISTRATION CERTIFICATE**

*Do not accept a copy of this certificate*

License Number: 079402-1

Certificate Number: 9118082

BRYDGES JASON MARK  
33 WASHINGTON HIGHWAY  
AMHERST NY 14226-0000



is registered to practice in New York State through 01/31/2019 as a(n)  
**PROFESSIONAL ENGINEER**

*[Signature]*  
LICENSEE/REGISTRANT

*[Signature]*  
EXECUTIVE SECRETARY

*[Signature]*  
COMMISSIONER OF EDUCATION

*[Signature]*  
DEPUTY COMMISSIONER  
FOR THE PROFESSIONS

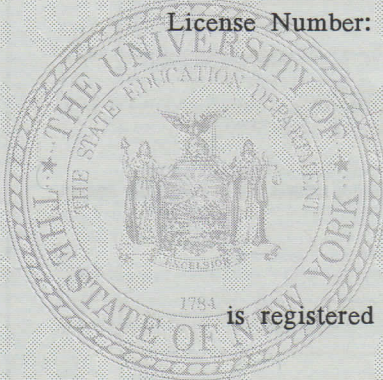
*This document is valid only if it has not expired, name and address are correct, it has not been tampered with and is an original - not a copy. To verify that this registration certificate is valid or for more information please visit*  
[www.op.nysed.gov](http://www.op.nysed.gov)



*The University of the State of New York*  
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*Office of the Professions*  
**REGISTRATION CERTIFICATE**  
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BERRY JOHN B  
1225 PONDORAY CIRCLE  
SALT LAKE CITY UT 84117-0000

is registered to practice in New York State through 11/30/2017 as a(n)  
**PROFESSIONAL ENGINEER**

LICENSEE/REGISTRANT

*Jane S. Blum*  
EXECUTIVE SECRETARY

*Jul W. S. G.*  
COMMISSIONER OF EDUCATION

*D. E. Kell*  
DEPUTY COMMISSIONER  
FOR THE PROFESSIONS

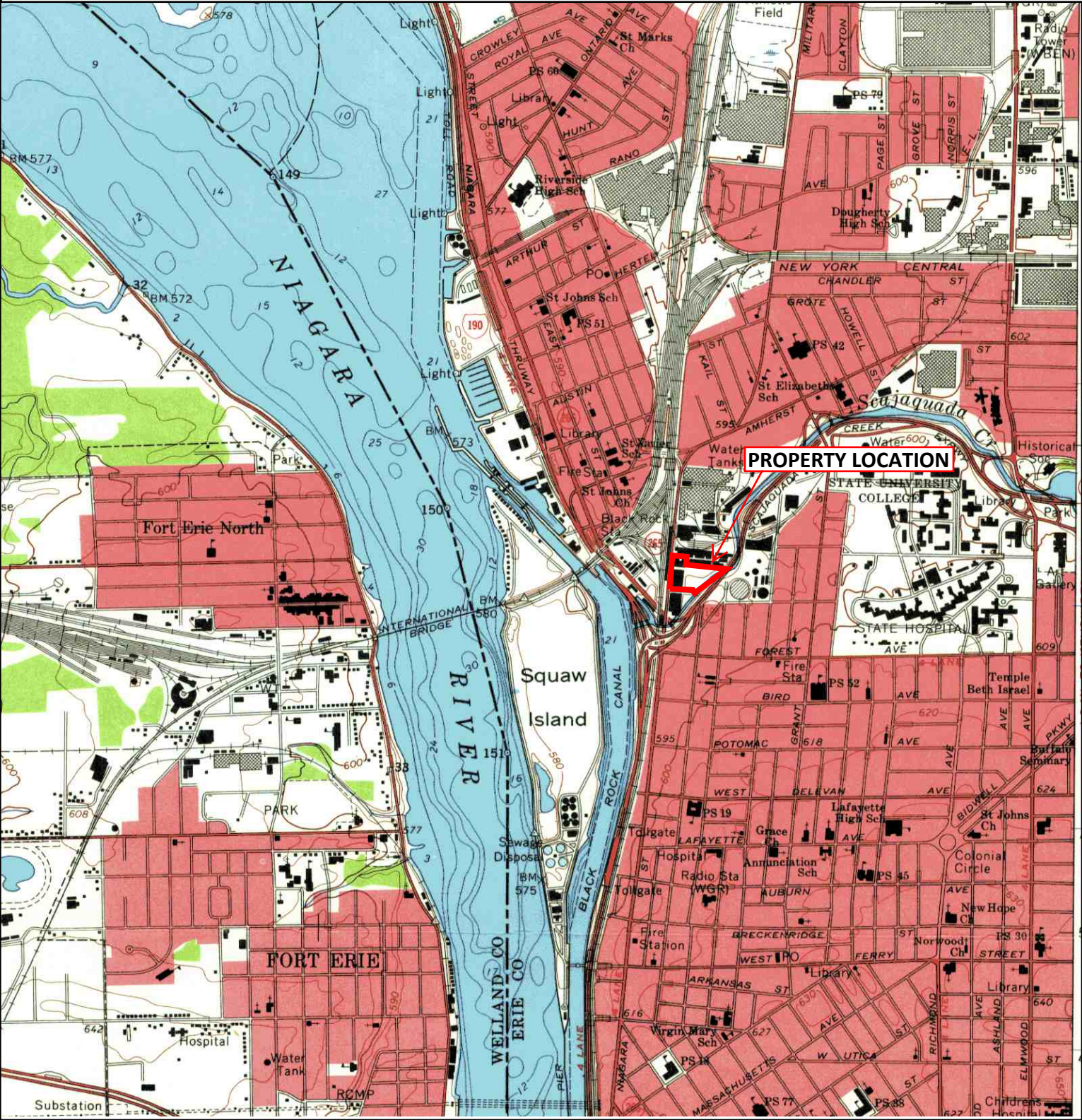
*This document is valid only if it has not expired, name and address are correct, it has not been tampered with and is an original - not a copy. To verify that this registration certificate is valid or for more information please visit [www.op.nysed.gov](http://www.op.nysed.gov).*

## **Figures 2a and 2b**

**Property Location on USGA Quad Map & Aerial  
Photo**



Figure 2a: Property Location - Topo Map



<div>N</div> <div>↑</div>	TARGET QUAD	SITE NAME:	Scajaquada Creek Corridor Parcels	CLIENT:	Panamerican Environmental, Inc
	NAME: BUFFALO NW	ADDRESS:	Scajaquada Creek Corridor Parcels	CONTACT:	Peter
	MAP YEAR: 1965			INQUIRY#:	2894932.4
	SERIES: 7.5		Buffalo, NY 14207	RESEARCH DATE:	10/15/2010
	SCALE: 1:24000	LAT/LONG:	42.9312 / -78.8965		





Figure 2b: Property Location

## **Figures 3a and 3b**

## **Tax Map & Enzone**

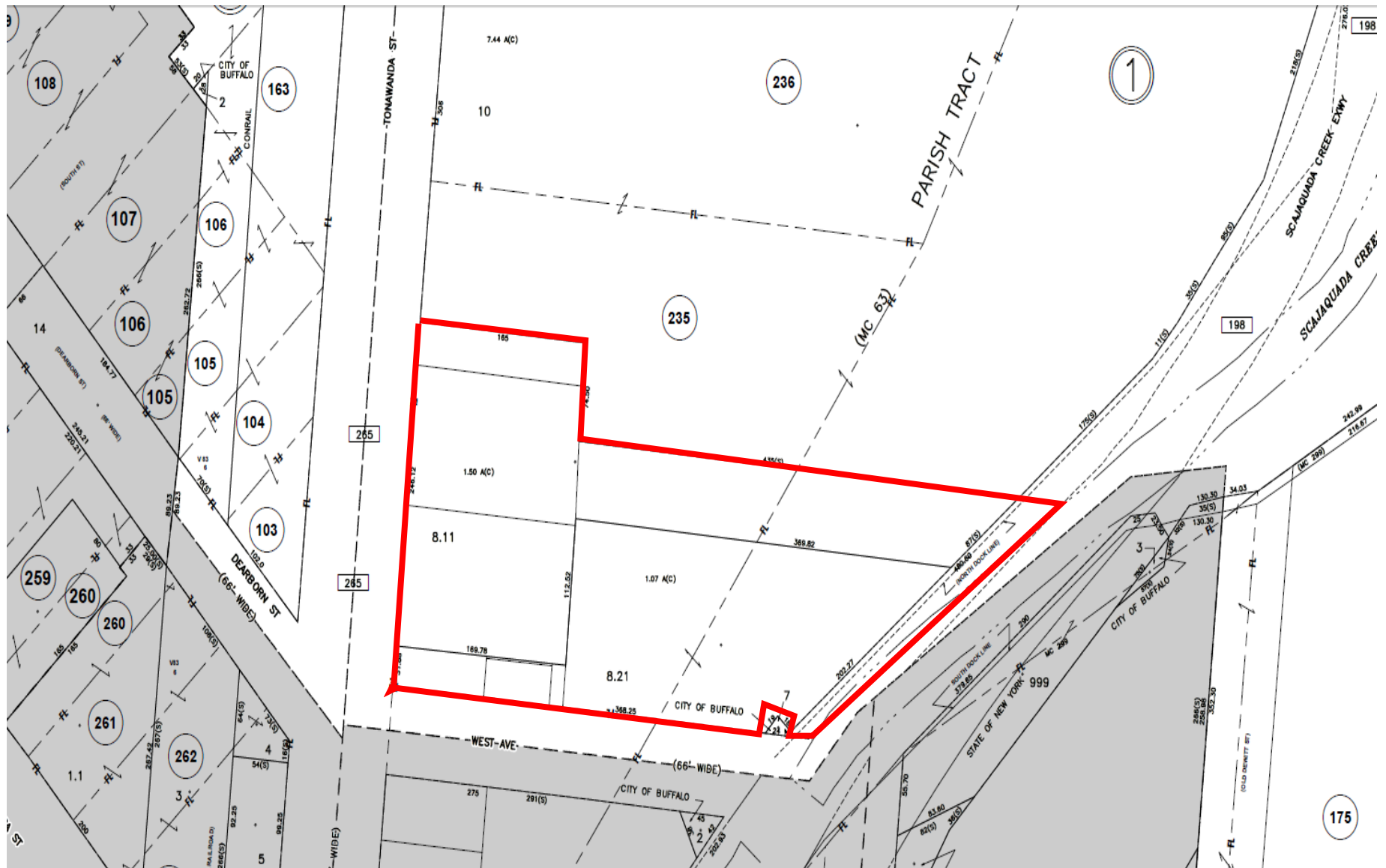


Figure 3a - Tax Map



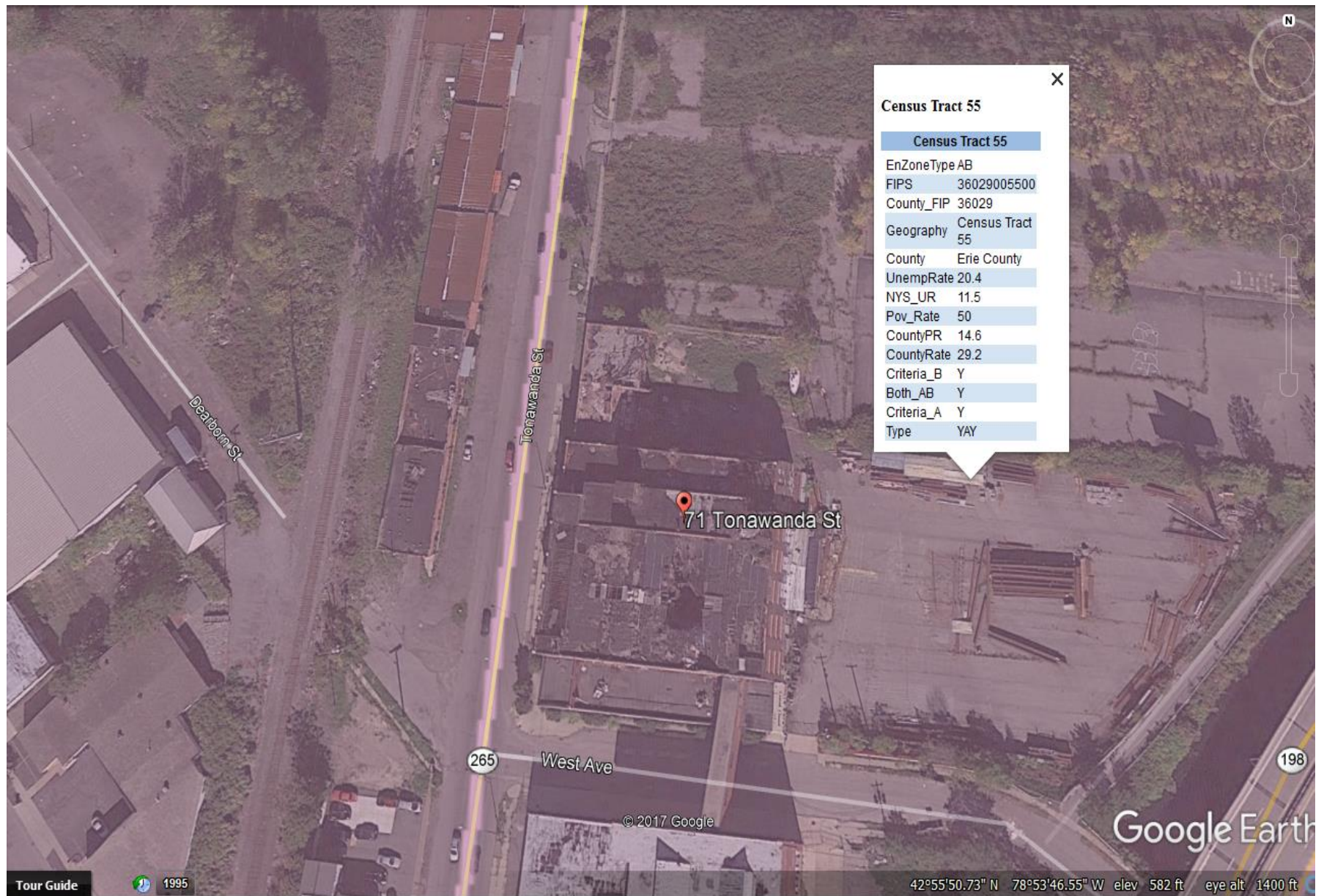


Figure 3b: Enzone Census Tract 55 - 57-71 Tonawanda Street



**Figure 4**

**Site Boundary Survey Map**

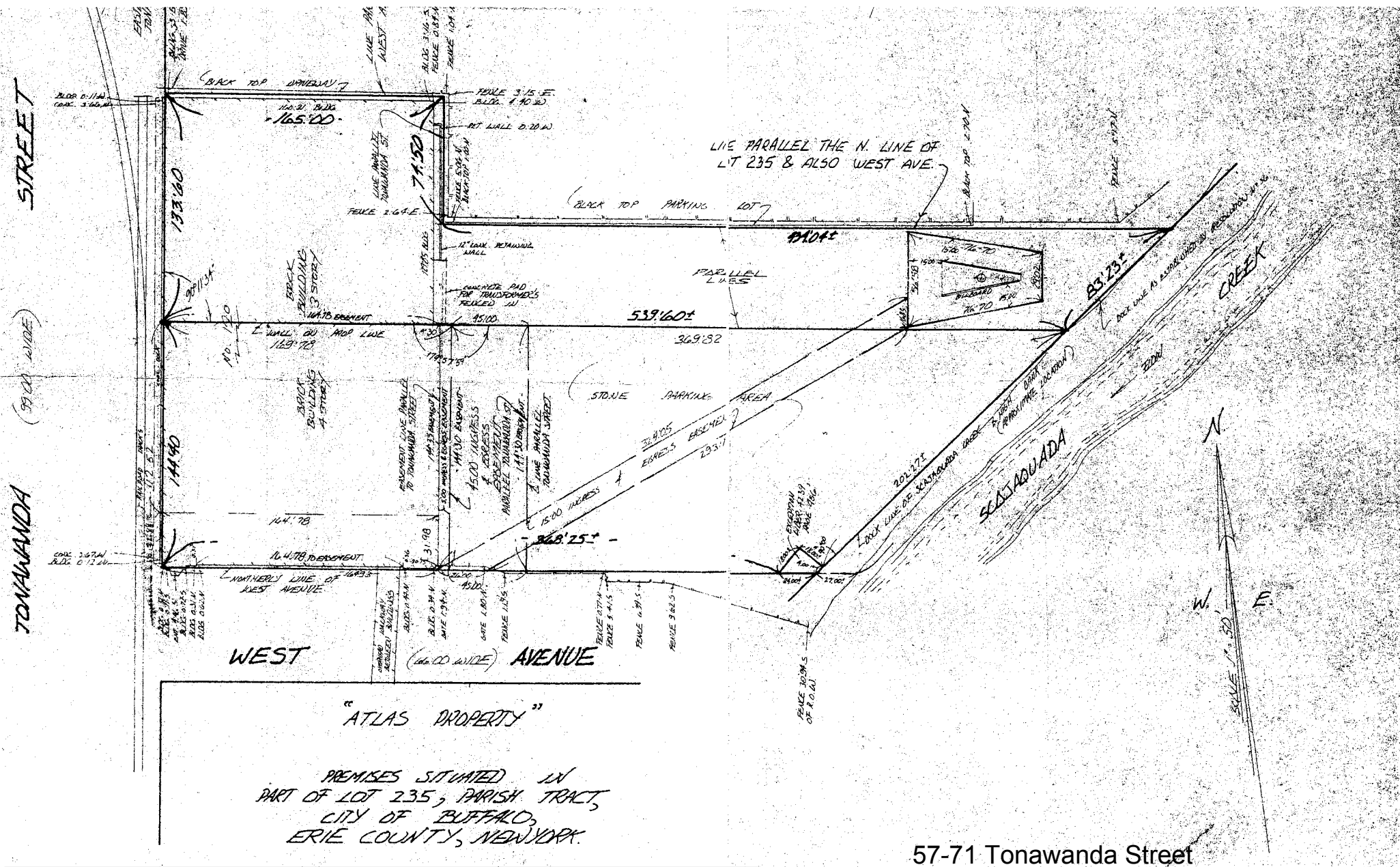


Figure 4: Property Survey

RE-SURVEY	RE-SURVEY	RE-SURVEY
SEPTEMBER 14, 1992 REVISED	JULY 12, 1993	SEPTEMBER 17, 1994
AMENDED 12/15/1989.		
Point	Index	
0.00	1	
0.17	2	
0.33	3	
0.49	4	
0.65	5	
0.81	6	
0.97	7	
1.13	8	
1.29	9	
1.45	10	
1.61	11	
1.77	12	
1.93	13	
2.09	14	
2.25	15	
2.41	16	
2.57	17	
2.73	18	
2.89	19	
3.05	20	
3.21	21	
3.37	22	
3.53	23	
3.69	24	
3.85	25	
4.01	26	
4.17	27	
4.33	28	
4.49	29	
4.65	30	
4.81	31	
4.97	32	
5.13	33	
5.29	34	
5.45	35	
5.61	36	
5.77	37	
5.93	38	
6.09	39	
6.25	40	
6.41	41	
6.57	42	
6.73	43	
6.89	44	
7.05	45	
7.21	46	
7.37	47	
7.53	48	
7.69	49	
7.85	50	
8.01	51	
8.17	52	
8.33	53	
8.49	54	
8.65	55	
8.81	56	
8.97	57	
9.13	58	
9.29	59	
9.45	60	
9.61	61	
9.77	62	
9.93	63	
10.09	64	
10.25	65	
10.41	66	
10.57	67	
10.73	68	
10.89	69	
11.05	70	
11.21	71	
11.37	72	
11.53	73	
11.69	74	
11.85	75	
12.01	76	
12.17	77	
12.33	78	
12.49	79	
12.65	80	
12.81	81	
12.97	82	
13.13	83	
13.29	84	
13.45	85	
13.61	86	
13.77	87	
13.93	88	
14.09	89	
14.25	90	
14.41	91	
14.57	92	
14.73	93	
14.89	94	
15.05	95	
15.21	96	
15.37	97	
15.53	98	
15.69	99	
15.85	100	

HAROLD L. GANTZER  
KRAUSE & GANTZER  
CIVIL ENGINEERS & LAND SURVEYORS  
1346 NORTH PARK BLVD.  
100 MAIN STREET  
BUFFALO, N.Y. 14202

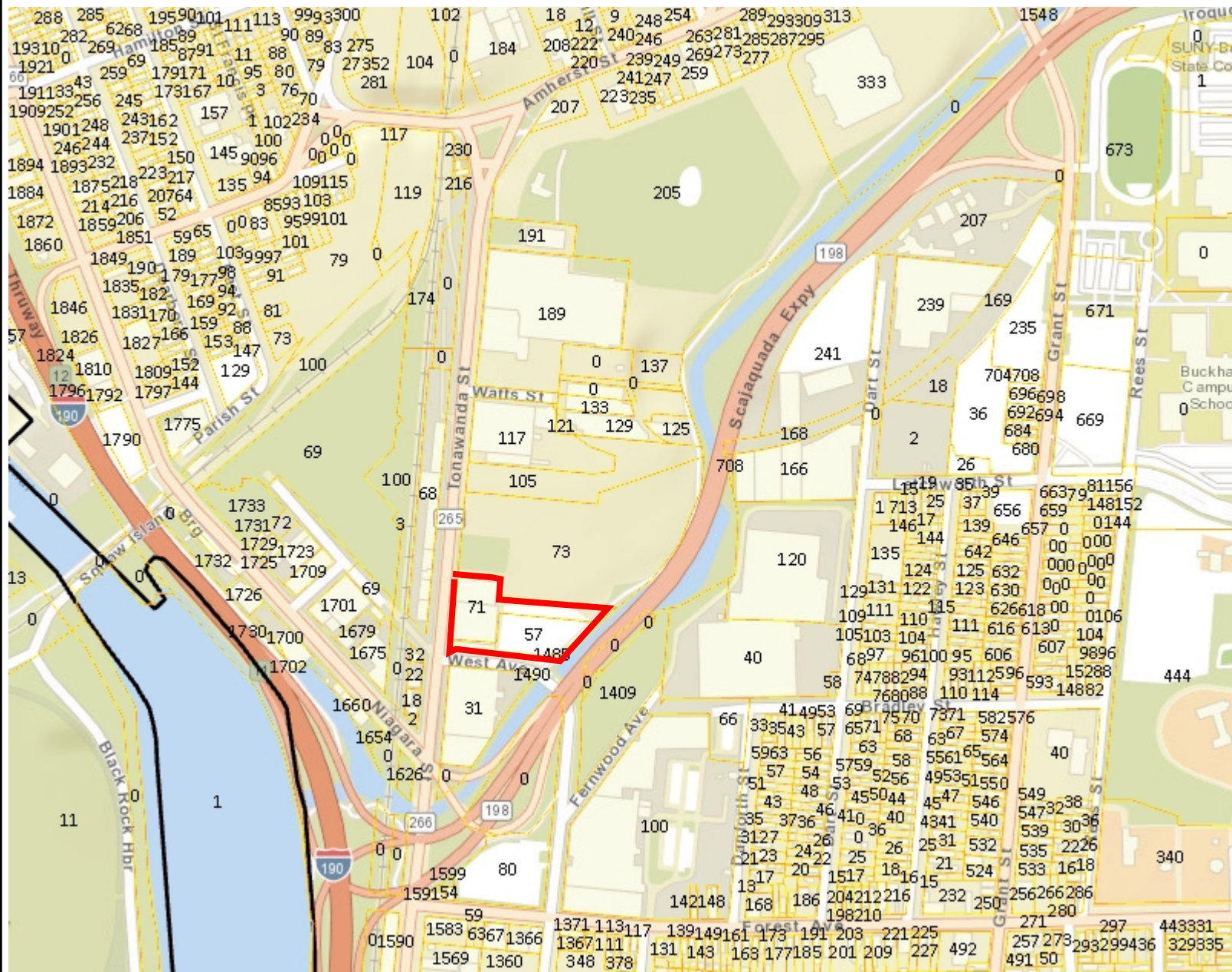
## **Figures 5a and 5b**

**Site Map Topo and Site Map Aerial Showing  
Adjacent Features and Parcels**

Figure 5a: Site Map Showing Adjacent Streets, Roadways, Area Features and Parcels - Topo



## Erie County On-Line Mapping Application



### Legend

- Parcels
- Municipal Boundaries

0 752.33 1,504.7 Feet

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
THIS MAP IS NOT TO BE USED FOR NAVIGATION

ERIE COUNTY  
DEPARTMENT OF ENVIRONMENT & PLANNING  
OFFICE OF GIS

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: 9,028

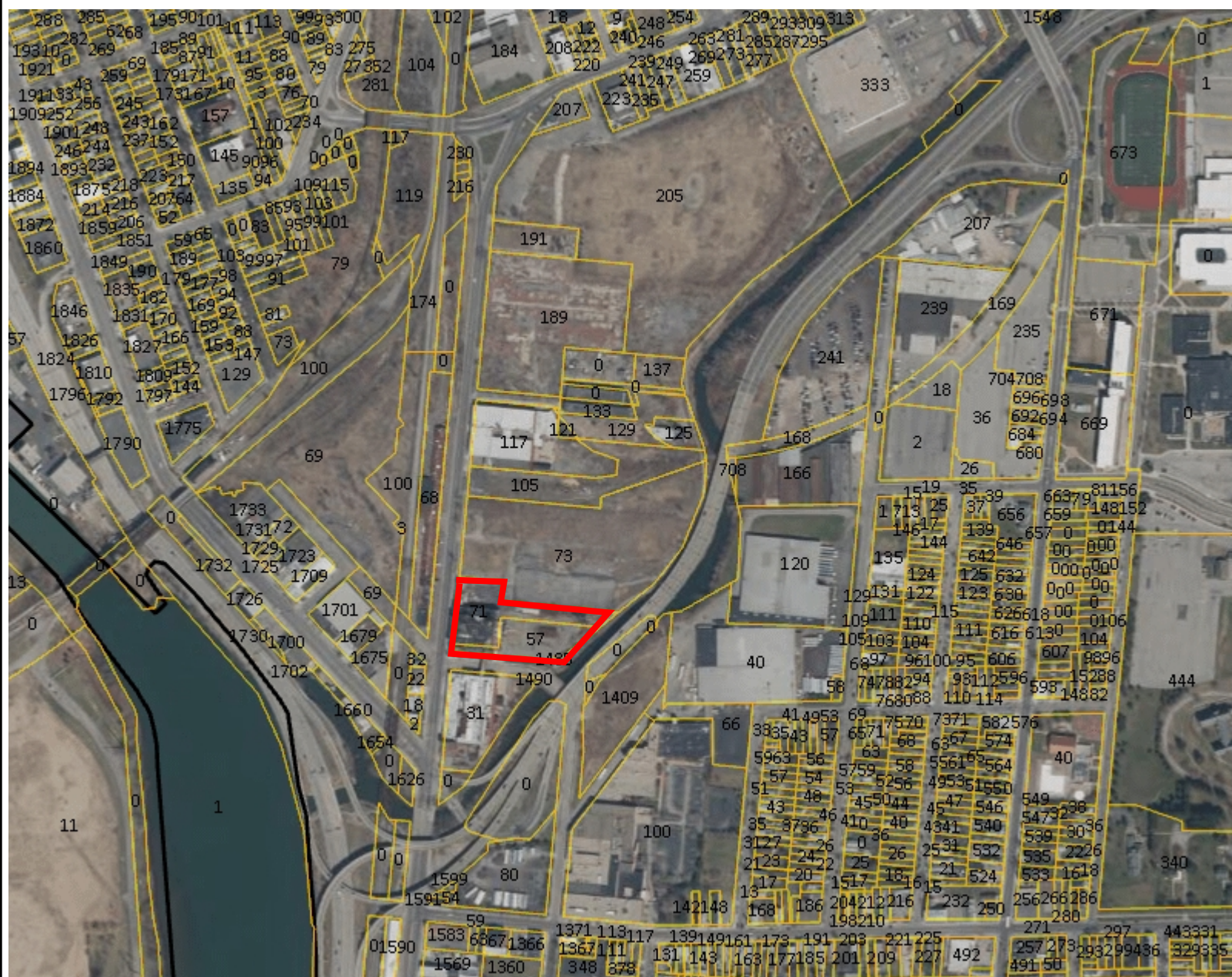




Figure 5b: Site Map Showing Adjacent Streets, Roadways, Area Features and Parcels - Aerial



## Erie County On-Line Mapping Application



### Legend

- Parcels
- Municipal Boundaries

0 752.33 1,504.7 feet

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
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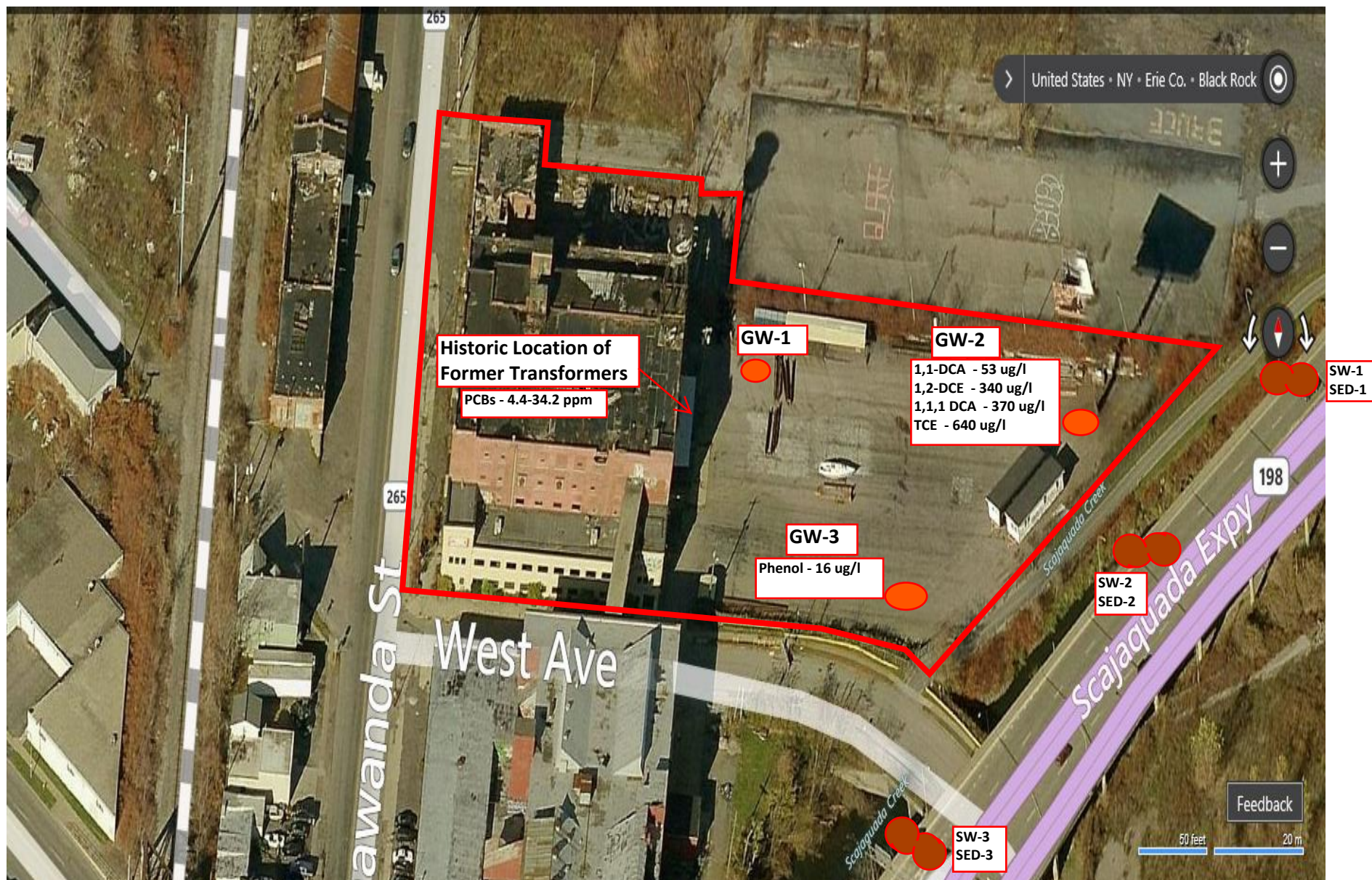
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## **Figure 6a and 6b**

**Site Map Showing Impacts/Soil- Groundwater  
Results and Lab Data Summary Table  
And  
Historic 1959 Aerial Photo of Property**





**Figure 6a: Historic Sample Results**

1989 Soil results - elevated ethylbenzene, TCE, Toluene, Styrene, Methylene Chloride, Xylene

1992 GW results - Vinyl Chloride, Ethylbenzene, 1,2 DCE, 1,1 DCE, 1,2 DCE, 1,1,1 TCA, TCE, Benzene

1992 Soil PAHs range from 3.9 to 34.0 ppm and various metals including cadmium, lead and manganese

Table 4-11

ORGANIC ANALYSES SUMMARY

Compound	Sample Number	Concentration ( $\mu\text{g/L}$ or $\mu\text{g/kg}$ )
<b>Volatiles</b>		
Trichloroethene	GW-2	640
	SED-3	17
	SB-1A	14*
	SB-1B	19*
	SB-2A	8
	SB-2B	530
	SB-3A	11*
	SB-3B	6
	SB-4A	80
	SB-4B	81
	SB-4C	220
	SB-4D	460
Total-1,2-dichloroethene	GW-2	340
	SED-3	13
	SB-2B	150
	SB-4B	10
	SB-4C	40
	SB-4D	120
1,1-Dichloroethane	GW-2	53
	SB-2A	160
	SB-2B	630
	SB-2C	1,100**
1,1,1-Trichloroethane	GW-2	370
	SB-2A	500
	SB-2B	800
Tetrachloroethene	SED-3	85
Chloroethane	SB-2B	54
1,1-Dichloroethene	SB-2A	9
	SB-2B	16
1,2-Dichloroethane	SB-2A	7
Toluene	SB-3A	15
Ethylbenzene	SB-2A	36
	SB-2B	38
	SB-2C	40
Total xylenes	SB-2A	720
	SB-2B	250
	SB-2C	220
<b>Semivolatiles</b>		
Phenol	GW-3	16
Total PAHs	SED-1	360,000
	SED-3	6,600
	SB-1A	34,000
	SB-1B	30,000

02[UZ]XP6080:D3264/4917/35

Key at end of table.



Table 4-11 (Cont.)

Compound	Sample Number	Concentration ( $\mu\text{g/L}$ or $\mu\text{g/kg}$ )
	SB-2A	15,000
	SB-2B	21,000
	SB-2C	23,000
	SB-3A	3,900
	SB-3B	29,000
	SB-4A	9,500

Pesticides/PCBs

Delta BHC	GW-2	0.073
-----------	------	-------

02[UZ]YP6080:D3264/4917/35

\*Value considered estimated due to poor surrogate recoveries and/or internal standard areas. Matrix effect was indicated.

\*\*Value considered estimated since it is above the calibration range. Dilution analysis was not run.

Source: Ecology and Environment Engineering, P.C. 1991.

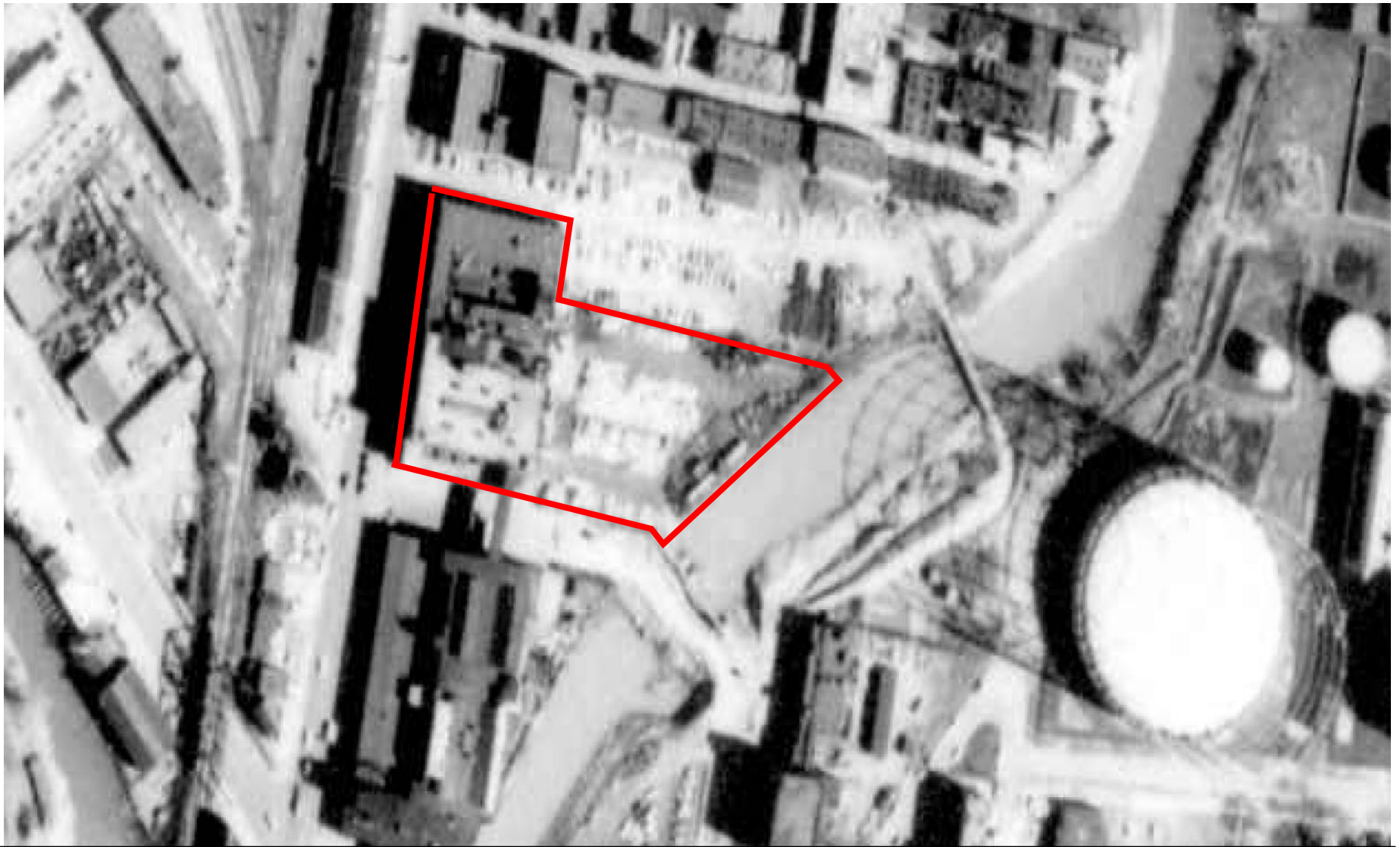


Figure 6b - Close-up of Property in 1959  
Source: EDR 1959 Aerial Photo

## Figure 7

## Zoning Map



Figure 7: Zoning Map



**Legend**

Council Districts

Erie County Municipal Boundary

Parcels

**Zoning**

AD-Allen Street District

C1-Neighborhood Business District

C2-Community Business District

C3-Central Business District

CM-General Commercial District

DO-Downtown Opportunity

EB-Elmwood Business

II-Institutional/Light Industrial

KB-Kensington/Bailey

M1-Light Industrial District

M2-General Industrial District

M3-Heavy Industrial District

PB-Porter Business District

R1-One Family District

R2-Dwelling District

R3-Dwelling District

R4-Apartment District

R5-Apartment Hotel District

SS-Seneca Street

TS-Transit Station

**Green Code Zoning 2017**

N-1D (Downtown Hub)

N-1C (Mixed-Use Core)

N-1S (Secondary Employment Cen

N-2C (Mixed-Use Center)

N-2E (Mixed-Use Edge)

N-2R (Residential)

N-3C (Mixed-Use Center)

Notes

1: 9,027

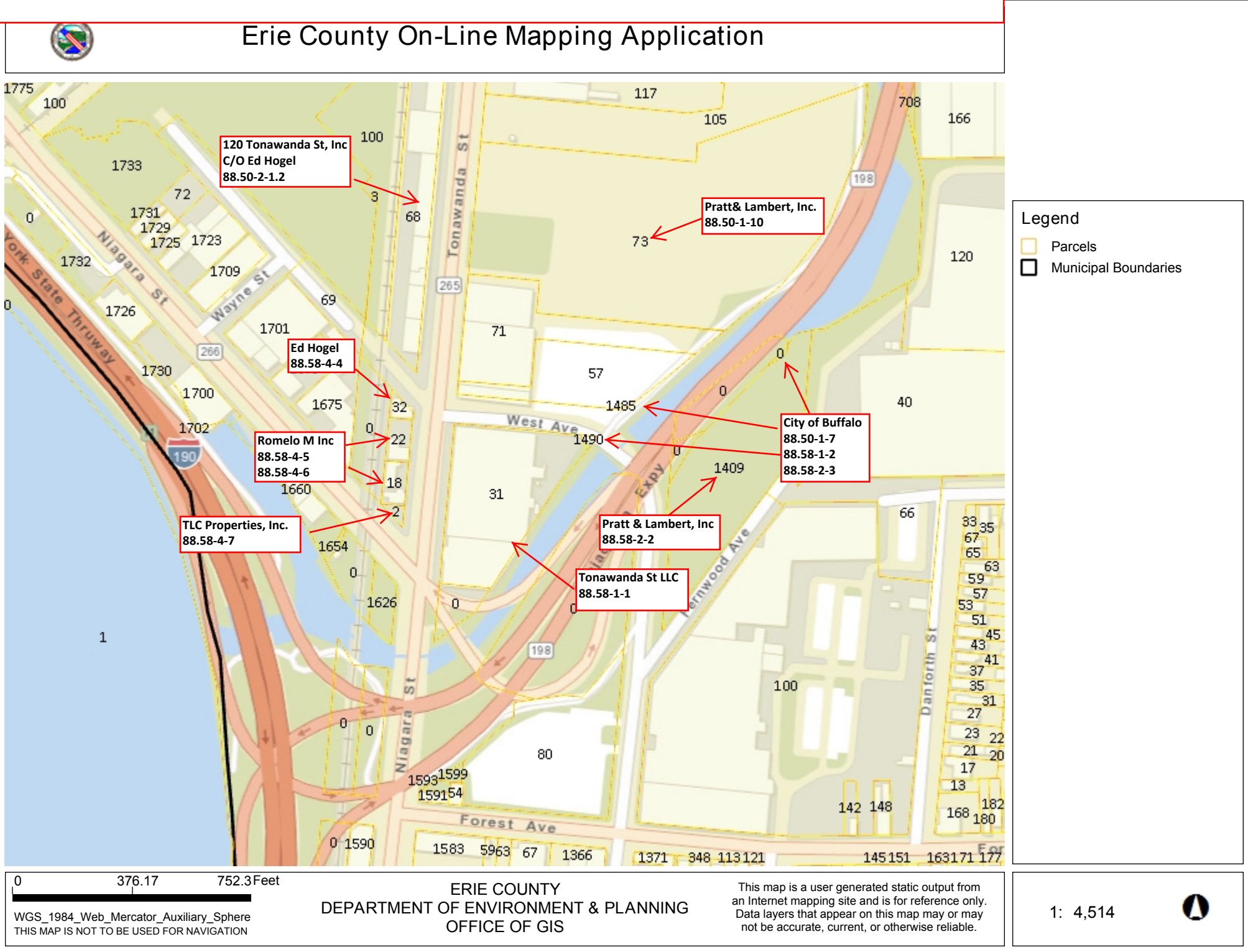


**Figure 8**

**Property Boundary & Adjacent Property Owners**

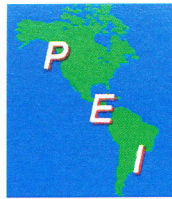


Figure 8: 57-71 Tonawanda Street Proposed Brownfield Property Boundary Lines & Adjacent Property Owners



**Figure 9**

**Library Letter**



Brydges – environment engineering and  
energy, Panamerican Environmental Inc.  
1270 Niagara Street  
Buffalo, New York 14213  
(716) 249 - 6880  
[www.BrydgesE3.com](http://www.BrydgesE3.com)  
A Full Service Environmental Small Business

August 18, 2017

Ms. Patti Foley  
Library Manager  
Riverside Branch Library  
820 Tonawanda St  
Buffalo, NY 14207

Subject: BCP Application – 57-71 Tonawanda Street – Buffalo, New York

Dear Ms. Foley,

FEDDER LOFTS, LLC., is in the process of applying to the New York State Department of Environmental Conservation (NYSDEC) Brownfield Cleanup Program (BCP) for a project at two adjacent parcels - 57 and 71 Tonawanda Street, Buffalo, New York. On behalf of the project applicant, FEDDER LOFTS, LLC, I am requesting that the Riverside Branch Library function as the document repository for the public documents associated with this project. The project documentation may include the application, work plans, investigation reports and management plans etc. associated with the project. Currently the project is anticipating initiating activities this year with the application and ending in 2019.

The process requires that we receive formal acknowledgement that your library agrees to function as a document repository for this project. Your acceptance of the use of the Riverside Branch Library as a document repository for the project may be indicated by signing in the space provided below or by providing a letter indicating acceptance.

Thank you for agreeing to function in this capacity. If you have any question, please call me at 716-308-8220.

Sincerely,  
Peter J. Gorton  
President  
Panamerican Environmental, Inc.

Riverside Branch Library accepts the role of Public Repository  
Accepted by:

Pattie S. Foley  
Name

Riverside Branch  
Library Name

Manager  
Title

8/21/2017  
Date



**Figure 10**

**Proof of Access**

### CERTIFICATION

Date: October 1, 2017

Property Address: 57 & 71 Tonawanda Street, Buffalo NY 14207

Property Owner: Black Rock Trade Center, inc.

Property Owner Address: 120 Tonawanda Street, Buffalo NY

BCP Applicant: Fedder Lofts, LLC

BCP Project Number:

---

The undersigned hereby certifies as follows:

- 1) I am duly authorized to furnish this certification on behalf of Black Rock Trade Center, Inc. ("Owner")
- 2) As of the date hereof, the Owner is the fee simple owner of the property located at 57 & 71 Tonawanda Street, Buffalo NY 14207 ("Property").
- 3) The Owner is aware that (a) Fedder Lofts, LLC ("Applicant") is filing a Brownfield Cleanup Program Application ("BCPA") related to the Property.
- 4) The Owner has no objection to the Applicant filing the BCPA with the New York State Department of Environmental Conservation.
- 5) This will confirm that the Applicant has been granted legal access to the Property for the purpose of the BCPA and will be granted all necessary legal access, including an easement, if required, to complete the remediation of the Property.

IN WITNESS WHERE OF, this Certification has been duly executed and delivered as of the date set forth above.

Black Rock Trade Center, Inc.

By: E. Hogle

Name: E. HOGLE

Title: PRESIDENT