Site Management Plan

4 New Seventh Street Site
4 New Seventh Street
Buffalo, New York

Brownfield Cleanup Program No. C915203

December 2006

Prepared For:

257 W. Genesee, LLC
Buffalo, New York

Prepared By:

LCS INC.

in association with

BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC

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This Site Management Plan has been prepared by Lender Consulting Services, Inc. (LCS), in association with Benchmark Environmental Engineering & Science, PLLC (Benchmark).

Thomas H. Forbes, P.E.
New York State Professional Engineer
License No. 70950-1

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Part 2 – Soil/Fill Management Plan

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PART 1 – GROUNDWATER MONITORING PLAN

4 NEW SEVENTH STREET SITE

4 NEW SEVENTH STREET
BUFFALO, NEW YORK

BROWNFIELD CLEANUP PROGRAM NO. C915203

Contents

Acronym List

BSA	Buffalo Sewer Authority
BTEX	benzene, toluene, ethylbenzene, and xylenes
°C	Celsius
COIs	constituents of interest
EPA	U.S. Environmental Protection Agency
HASP	health and safety plan
IRM	Interim Remedial Measures
MGP	manufactured gas plant
MS/MSD	matrix spike/matrix spike duplicate
NAPL	non-aqueous phase liquid
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
PAHs	polycyclic aromatic hydrocarbons
PPE	personal Protective equipment
QA/QC	quality assurance/quality control
SOPs	Standard Operating Procedures
SSALs	Site-Specific Action Levels

1.0 Introduction

This Groundwater Monitoring Plan was prepared to satisfy the requirements set forth by the New York State Department of Environmental Conservation (NYSDEC), and New York State Department of Health (NYSDOH) for the 4 New 7th Street site (Brownfield Cleanup Program) located at the northwest corner of Seventh Street and Court Street Extension in Buffalo, New York (Figure 1). The Remedial Work Plan/Remedial Action Work Plan required excavation and off-site disposal of certain soil and fill material that exceeded the Site-Specific Action Levels (SSALs). As required by the developer, Duke realty, soil and fill material were excavated to satisfy TAGM 4046 guidelines or until excavation reached the property boundary or excavation would have jeopardized major underground utilities (i.e., fiber optic and sanitary sewer trunk). Only TAGM-compliant backfill was used for site restoration purposes.

As reported within the Remedial Investigation/Remedial Alternatives Report, dated December 2006, impacted groundwater was identified on-site during previous investigations by RETEC and LCS. Refer to the Remedial Investigation/Remedial Alternatives Report for details of the prior investigations and test results. A summary of the results is provided within Section 2.2.

The Buffalo Urban Renewal Agency, and the City of Buffalo owned portions of the Brownfield Cleanup site. In connection with the Brownfield Program, Duke Realty has purchased the properties. Duke Realty is currently constructing a parking garage and parking lot that will be utilized by future workers occupying an office complex adjoining the Site. Planned use of the parking garage and parking lot is scheduled for 2007. Based on this future development, the Brownfield Cleanup Site will continue to be industrial/commercial in nature.

The Environmental Easement requires monitoring groundwater at the Site following completion of the remedy. It is anticipated that groundwater monitoring for the site will be conducted for a minimum of two years on a quarterly basis using a well network consisting of five wells. The groundwater samples will be analyzed for Spill Technology and Remediation Series Memo #1 gasoline-related volatile organic compounds (VOCs). A letter report for each monitoring period will be submitted to the NYSDEC. Based on the findings from the first two years of monitoring, Lender Consulting Services, Inc. (LCS) and NYSDEC will evaluate the effectiveness of the remedial action and the need for additional monitoring.

It is believed that no additional groundwater monitoring will be required after the first two years because the Brownfield Cleanup remedial action removed a significant portion of the source of contaminant loading to groundwater from the site.

2.0 Site Background

2.1 Site description

The Buffalo Urban Renewal Agency and the City of Buffalo owned the Brownfield Cleanup site located at the northwest corner of Seventh Street and Court Street Extension in Buffalo, New York. The subject property was formerly developed with a coal shed and coal yard (at least 1889 to at least 1899), a gasoline service station (at least 1927 to at least 1966), Century Manufacturing company (at least 1925), Erie Elec. Co. (at least 1951) and several residential structures. The west adjacent parcel is identified as the former Buffalo Service Center site, a former manufactured gas plant site. The former Buffalo Service Center site and the western portion of the subject parcel, were the subject of a remedial effort under a BCA to remediate contaminants in soil and groundwater associated with the former manufactured gas plant (MGP) operations. Previous investigations at the Site identified petroleum contamination in the area of a former gasoline station on-site.

In connection with the Brownfield Program, Duke realty has purchased the property. As described in section 1.0, Duke Realty is currently constructing a parking garage and a parking lot that will be utilized by workers at the future adjoining office complex located on the former Buffalo Service Center site and will be leased to HealthNow (Figure 2). Planned use is scheduled for 2007. The Site is currently secured with a chain link fence but will be open to public access after construction is completed. At the time the site is opened to the public, the majority of the Site will be covered by the parking garage and parking lot; the remaining areas will consist of green space.

2.2 Background Information

The conditions at the Site that existed before the remedial actions had been investigated since 2004. The site was underlain by fill, soil, and bedrock. Groundwater was contained within the overburden materials at depths ranging from 7.5 to 11.5 feet below ground surface (ft. bgs). Groundwater is not used for potable or non-potable purposes at the Site or in the surrounding area of the Site.

In portions of the Site, concentrations of constituents of interest (COIs) potentially related to the former gasoline station exceeded TAGM criteria. Subsurface fill material covered the majority of the Site in thickness ranging from 4 to 12 feet. Underlying the fill was a low-permeability soils comprised predominantly of fine sand to clayey silt throughout the majority of the Site.

Constituents identified by LCS in Site groundwater consisted primarily of VOCs. The highest concentrations of VOCs were detected in monitoring wells located within the area of soil/fill impact proximate to the former gasoline station noted on-site. Benzene was detected at a maximum concentration of 2,500 ug/L, toluene at a maximum concentration of 1,800 ug/L, ethylbenzene at a maximum concentration of 720 ug/L, and total xylenes at a maximum concentration of 3,100 ug/L.

The SVOCs detected were qualified as estimated or were also present in the method blank. Metals detected above associated standards or guidance values. Heptachlor was detected at a concentration slightly above the corresponding groundwater criteria; it was the only pesticide without a data qualifier.

Constituents identified by others in Site Groundwater (within monitoring well MW31) (Figure 2) consisted primarily of benzene at a maximum concentration of 4,500 ug/L, toluene at a maximum concentration of 1,200 ug/L, ethylbenzene at a maximum concentration of 1,700 ug/L, xylenes at a maximum concentration of 3,000 ug/L, naphthalene at a maximum concentration of 6,400 ug/L, and cyanide at a maximum concentration of 1.2 mg/L.

LCS conducted remedial activities at the Site in accordance with the NYSDEC Brownfield Cleanup Program. The remedial activities specifically addressed the northern portion of BURA East occupied by the historic gasoline station.

Excavation was conducted until TAGM 4046 guidelines were satisfied or until predefined physical limits of excavation were reached (e.g. property boundaries, utilities). Excavated soil and fill material that met TAGM criteria was used as below grade fill.

3.0 Groundwater Monitoring Network

As a significant number of pre-existing monitoring wells were abandoned to accommodate the excavation project, two existing monitoring wells (BCP MW-02 and MW-09) and three proposed wells [BCP MW-04, BCP MW-05 and MW-03 (to be installed by ESC] will be included in the groundwater monitoring network (Figure 2).

Groundwater monitoring will be conducted quarterly for a minimum of two years using the three wells described above. The monitoring program will consist of water level measurements to determine hydraulic gradients and groundwater flow direction, collection and analysis of groundwater samples to track the contamination and inspection and maintenance of the monitoring wells. Table 1 provides a summary of the existing groundwater monitoring wells in the network. Boring logs for the existing wells installed by LCS are provided in Appendix A.

3.1 Evaluation of Hydraulic Gradients and Groundwater Flow Direction

Groundwater was previously found between 7.5 to 11.5 ft. bgs in the overburden materials. Water level measurements will be collected from all wells in the network (Figure 2) and, MW1, MW2, MW4 and MW02-28 (Figure 3) during the monitoring program to provide a better determination of the current groundwater flow regime, post-excavation and backfilling. The data will be used to develop contour maps of the groundwater surface.

3.2 Evaluation of Groundwater Chemistry

Groundwater samples will be collected quarterly from the site monitoring wells for laboratory analysis of Spill Technology and Remediation Series VOCs following U.S. Environmental Protection Agency (EPA) Method 8260. Groundwater monitoring wells BCP MW02, MW9 and the three proposed monitoring wells (MW3, BCP MW04, and BCP MW05) will be incorporated into the monitoring program. The existing and proposed locations are shown on Figure 2. The monitoring program will be evaluated after 2 years to determine if any further monitoring is necessary.

Natural biological degradation and attenuation processes will continue to occur in groundwater beneath the Site to reduce chemical impact to groundwater. The natural processes that are at work include a variety of physical, chemical, or biological processes that act to reduce the mass, toxicity, mobility, volume or concentration of COIs in groundwater. A naturally improving trend should become evident.

3.3 Groundwater Monitoring Well Installation

Additional groundwater monitoring wells will be installed in the locations shown on Figure 2. The wells will be installed using the hollow stem auger drilling method. Borings for the wells will be completed to the top of the bedrock. The wells will be constructed with 2-inch PVC casing and screen (10 feet length with 0.10-inch slot size). Sand will be placed in the annular space surrounding the screen from the bottom of the borehole to approximately 2 feet above the top of the screen. This will be followed by a 2 foot thick bentonite seal above the sand. A cement-bentonite grout mixture will fill the remaining annular space from above the bentonite seal to approximately one foot below the surface. The wells will be completed with a flush mount steel well cover and lockable well cap. A diagram showing construction details for a typical well is included in Figure 3. The wells will be installed so that they span the groundwater table (see Appendix A). The wells will be installed by an experienced driller, and oversight and instruction will be conducted by an LCS representative. Following installation, the wells will be developed to ensure proper construction. In addition, all three network wells will be surveyed by a New York State-licensed surveyor.

3.4 Well Inspection and Maintenance

Before the first sampling event, each well will be inspected for damaged locks, protective covers, and seals and repaired or replaced. In addition, the total depth of each well will be measured to determine if silting has taken place since installation. Finally, each well will be developed to ensure proper movement of groundwater through the well screen. Development will be conducted through bailing using disposable bailers or centrifugal pump.

All of the wells in the groundwater network will be inspected during each subsequent sampling event. Damaged locks, protective covers, or seals will be noted and replaced as soon as practicable. Well identification labels will be inspected for legibility and maintenance will be performed as necessary.

4.0 Field Procedures

LCS will complete all field activities, including note taking, water level measurements, and the collection, labeling, and shipping of groundwater samples in accordance with LCS' Standard Operating Procedures (SOPs).

4.1 Pre-Sampling Procedures

Work tasks to be completed before sample collection include procurement of sampling equipment and containers, and inspection and calibration of all field equipment.

4.1.1 Equipment Procurement, Inspection, and Calibration

Before mobilizing to the site, sampling personnel will procure the necessary equipment to conduct the sampling event, including a water quality meter, a water-level indicator, and bailers. The water quality meter will be capable of measuring groundwater temperature in degrees Celsius (°C), pH in standard units, and specific conductivity in micro-ohms per centimeter. Water quality measurements can be measured using a single device (e.g., a Horiba U-10 or U-22 water quality meter) or multiple meters.

Static water levels and total well depths will be measured with an electronic water-level indicator capable of measurement to the nearest 0.01-foot. The cables and reels will be inspected for kinks, twists, or damage that could influence measurements. Any irregularities will be noted in the field notebook.

The wells will be purged and sampled using a bailer. All disposable equipment will remain sealed in plastic until ready for use.

Field instruments not owned by LCS will be rented from an environmental equipment vendor. All equipment will be inspected to verify that it is in good working order before sampling activities begin. Instrument calibration will be conducted onsite using factory prepared solutions and in accordance with manufacturer specifications. Manufacturer-supplied manuals describing calibration, maintenance, and field operating procedures will accompany the instruments in the field.

4.1.2 Procurement and Preparation of Sample Bottles

All groundwater samples will be analyzed for Spill Technology and Remediation Series VOCs by USEPA Method 8260. LCS will coordinate delivery of appropriate sampling containers with STL Buffalo of Buffalo, New York. All sampling containers will be laboratory pre-cleaned and will contain the appropriate preservative (i.e., hydrochloric acid for VOCs). On receipt in the field, sampling personnel will inspect the sample containers for integrity and completeness. A trip blank will be supplied by the laboratory and will accompany the samples at all times.

4.1.3 Storage and Handling of Sampling Equipment

All non-dedicated down hole equipment will be decontaminated before being placed in each well by washing with non-phosphate soap and water followed by a deionized water rinse. Disposable equipment will remain sealed in plastic until ready for use.

4.1.4 Personal Protective Equipment

A site-specific health and safety plan (HASP) that details the known and expected hazards and the required personal protective equipment (PPE) will be available on-site during the sampling events. All groundwater sampling activities will be performed in accordance with the site-specific HASP. Field activities will be implemented in standard Level D PPE. Level D PPE includes steel toe boots, long or short sleeved shirts, and pants or coveralls. In addition, disposable nitrile gloves will be worn during pre-sampling and sampling activities. The nitrile gloves will be changed at each monitoring well location or more frequently if they become soiled or torn.

4.1.5 Field Records

All sampling activities will be recorded with indelible ink in a bound, waterproof, survey-type field logbook. The field logbook will include enough information to reconstruct the sampling events. This information will include, at a minimum, the following:

- field equipment used
- field measurements, including water levels and geochemical parameters
- measurements, purging, and sample collection times
- purge volumes
- visual observations (e.g., water color/odor)
- physical condition of wells
- purge/decontamination water handling
- sample identification numbers (including quality assurance/quality control [QA/QC] samples)
- samples parameters
- sample collection time
- names of sampling personnel
- weather conditions

4.1.6 Water-Level Measuring Techniques

Before beginning the well purging process, groundwater elevations will be measured using an electronic water-level meter. Groundwater levels will be allowed to equilibrate by removing the well covers and allowing the wells to stand uncapped at least 15 minutes before the water level is measured. Depth-to-water and total well depths will be measured from the surveyed reference mark at the top of the well casing to the nearest 0.01-foot. The wells will be gauged in the order of anticipated constituent concentrations to limit the possibility of cross contamination. The measurements and time of measurements will be recorded in the field logbook. The total depth and depth-to-water measurements will be used to calculate the volume of water to be purged from each well.

4.1.7 Well Purging Techniques

To obtain representative samples, each well will be purged by removing a minimum of three well volumes. A single well volume will be calculated from the groundwater elevation data using the following equation:

$$H\ (gal) = (TD\ [feet] - DTW\ [feet])(3.14)(CID\ [inches])^2(7.48\ [gal/ft^3])/(12[inches/ft]^2(4))$$

$$H\ (gal) = (TD\ [feet] - DTW\ [feet])(CID\ [inches])^2(0.041)$$

Where:

H = well volume

TD = total depth of well

DTW = depth to water

CID = casing inside diameter

The wells will be purged using a bailer. Water quality parameters (pH, specific conductance, turbidity, and temperature) will be measured before, during, and after purging. Purging will be considered complete when three volumes or more have been removed and field measurements for two consecutive volumes vary by less than 10 percent and turbidity is less than or equal to 50 NTUs. If seven well volumes have been removed and the water quality parameters are not in compliance with the specified ranges, the sample may be collected provided such is recorded in the field notes. Wells evacuated to dryness before the removal of three well volumes will be considered purged.

4.1.8 Laboratory Notification/Verification

A copy of the chain-of-custody form will be sent to LCS' project manager at completion of the sampling activities. The field team leader will notify the laboratory of the number of samples in transit and their expected arrival time. A field team member will also request verification of receipt of the samples by the laboratory.

4.2 Sampling Procedures

Sampling procedures include collection of field measurements, collection of groundwater samples, completion of the chain-of-custody form, and labeling, packaging, and shipping samples to the laboratory for analysis. All sampling will be done in accordance with LCS' SOPs.

4.2.1 Field Measurements and Sampling Equipment

Groundwater samples will be collected when three well volumes of more have been purged and field measurements for two consecutive volumes have stabilized to within 10 percent. The wells will be sampled using a dedicated bailer. All wells will be sampled within two hours of purging provided the well has sufficiently recharged.

4.2.2 Sample Parameters and Handling Techniques

All groundwater samples will be analyzed for Spill Technology and Remediation Series VOCs using USEPA Method 8260. Sample aliquots will be poured directly from the bailer into 40-ml sample bottles containing hydrochloric acid as a preservative for VOC analysis. The samples for VOC analysis will be collected so that no headspace exists in the containers above the liquid. The bottles will be labeled with the following information:

- sample identification number
- date and time of sample collection
- sample location (i.e., site name)
- preservative used
- analytical parameters requested
- type of sample (grab)

The filled sample bottles will be placed into shipping containers (e.g., coolers) and chilled to approximately 4°C with bagged ice. The sample containers will be subsequently packed before shipping with additional ice, bubble wrap, or other packaging material to prevent breakage during transit.

4.2.3 Field Quality Assurance/Quality Control

Field QA/QC will include the collection and analysis of duplicate groundwater samples, field equipment blanks, and trip blanks. One blind duplicate sample will be collected per sampling event to evaluate the reproducibility of the sample collection and analytical procedures. The duplicate groundwater sample will be collected by alternately filling the environmental sample and the duplicate sample containers. The sample container will be labeled with a false name and time so that the laboratory cannot distinguish which sample is the duplicate. The correct sampling date, location, and time will be recorded in the field log book..

One trip blank will accompany each cooler from the laboratory to the field and then to the laboratory to assess potential cross contamination during transit. The trip blank will be prepared by the laboratory and will remain in the coolers at all times.

An equipment blank will not be necessary because all bailers used for groundwater sampling will be dedicated to each respective well. All non-dedicated downhole equipment will be decontaminated before each use with a non-phosphate soap and water wash followed by a deionized water rinse.

The sample matrix (groundwater) will be examined to evaluate its affect on the analytical protocol. Examination will be performed by analysis of one matrix spike/matrix spike duplicate (MS/MSD) for every 20 groundwater samples of the sample matrix. If less than 20 samples of this matrix are collected, one MS/MSD will be collected.

4.2.4 Sample Parameters and Handling Techniques

Sample custody is controlled and maintained through a set of chain-of-custody procedures that track the possession and handling of the samples from the field to the laboratory. A sample is considered to be in an individual's custody if it is physically in their possession of stored in an appropriate shipping container that has been secured to prevent tampering.

LCS field personnel will be responsible for the custody of samples from the time they are collected until they are transferred to the laboratory. The cooler will remain in the sampler's view or locked in the sampling vehicle for temporary storage.

A chain-of-custody form will be completed during the sampling event to account for each sample. The chain-of-custody form will identify:

- the project name and number;
- the sampling location;
- the names an signatures of the sampling personnel;
- the date and time of the sample collection;
- the sample matrix;
- the unique sample identification number;
- the analyses and turn-around times requested;
- number of bottles submitted for analyses;
- the name and location of the laboratory;
- the shipper's air bill numbers; and,
- the chain of custody seal numbers.

A copy of the chain-of-custody form will accompany each sample shipment. The sampling team will sign, date, and note the time on the chain-of-custody form before shipping the samples. The completed original chain-of-custody form will be placed in a plastic bag, sealed, and taped to the inside lid of the shipping container. If multiple shipping containers are used, separate chain-of-custody forms will be placed in each container. Signed and dated custody seals will be placed on each sample cooler before shipping to verify that the container was not opened or tampered with in transit. LCS will retain the carbon copy of the completed chain-of-custody form as part of the project file.

The laboratory will assume custody of the samples upon receipt. A designated laboratory sample coordinator will record the condition of the custody seal, note the time and date of sample receipt, and sign the chain-of-custody form. The sample coordinator will immediately inspect the shipment fro damage and completeness and report any problems to LCS. The laboratory sample coordinator will then complete the appropriate laboratory tracking forms and logs.

The sample coordinator will review all incoming paperwork. Once the information has been verified, the LCS project manager will be contacted if there are any problems of discrepancies. The laboratory is responsible for the custody of the samples from the time of sample receipt to the time of disposal.

4.2.5 Disposal of Purge and Decontamination Water

All purge and decontamination water will be temporarily stored in drums prior to proper disposal off-site.

5.0 Field Procedures

LCS has selected STL Buffalo of Buffalo, New York, for analysis of all groundwater sampling associated with the Site. A summary or procedures that the laboratory must abide by is described in the following sections.

5.1 Laboratory Sample Handling and Analytical Methods

The laboratory is responsible for the integrity of the samples from receipt, through analysis, and until the samples are destroyed. The laboratory will verify that all appropriate holding times for VOC samples are met. STL Buffalo is certified for VOC analysis in the applicable categories under the New York State Department of Health Environmental Laboratory Approval Program. Analysis will be performed in accordance with the following guidance documents:

- NYSDEC Analytical Services Protocol Category B 2005
- EPA, 1986, "Test Methods for Evaluating Solid Wastes, Physical Chemical Methods, "SW-846, 3rd Edition, with relevant updates.
- EPQ, 1983, "Methods for Chemical Analysis of Water and Wastes," EPA 600/4-79-020

The laboratory will have documented QA programs that comply with the USEPA guidance. The Laboratory will be responsible for documenting in each data package that both initial and on-going instrument and analytical QC have been met. The laboratory will reanalyze any samples where method specific QC criteria are not met when sufficient sample volume is available and the holding time is not exceeded. The laboratory will report both sets of data when reanalyses are performed.

5.2 Data Reduction, Validation, and Reporting

STL Buffalo will generate, review, and report appropriate QC data to document the validity of the analytical results. Data reports will include at a minimum the following information.

- Analytical test methods and results for submitted samples, with appropriate data quality notations.
- A narrative of samples received and an explanation of qualifications regarding data quality and other significant items encountered during analysis. This narrative should discuss any QA/QC deficiencies or problems such as calibration or tuning criteria problems, if present. The minimum QC requirements to be provided on a routine basis will include:
    - surrogate recovery data;
    - laboratory control spike data (i.e., blank spike);
    - MS/MSD data;
    - laboratory blank data;
    - systems monitoring and internal standards data;
    - calibration curve and verification; and,
    - sample summary forms.

Data points beyond QC limits and data omissions will be identified and attempts will be made to correct such data deficiencies. The potential need for resampling will be evaluated based on the magnitude and the significance of the data deficiencies to overall monitoring program. Samples will not be recollected if QC criteria are not met due to sample matrix interference.

6.0 Reporting Requirements and Schedule

A letter report for each monitoring event will be submitted to the NYSDEC. The report will include a summary of the sampling procedures, details of the analytical results, and quality assurance review of the data. At the completion of 2 years, the monitoring program will be evaluated to determine if remedial activities were effective, and recommendations for future monitoring will be presented.

The monitoring program reports shall include a summary of the following:

- sampling events;
- analytical data;
- supporting QA/QC documentation for groundwater sampling results;
- groundwater elevation measurements;
- groundwater flow direction(s);
- qualitative risk analysis (quality, direction, and potential exposures)
- concentration trend analysis; and,
- evaluation of well integrity and recommendation for maintenance, as necessary

The first quarterly groundwater sampling event will occur in the spring of 2007, following approval of his groundwater monitoring plan by the NYSDEC. This will allow for final placement of the proposed groundwater monitoring wells following substantial construction of the parking garage and parking lot.

FIGURES

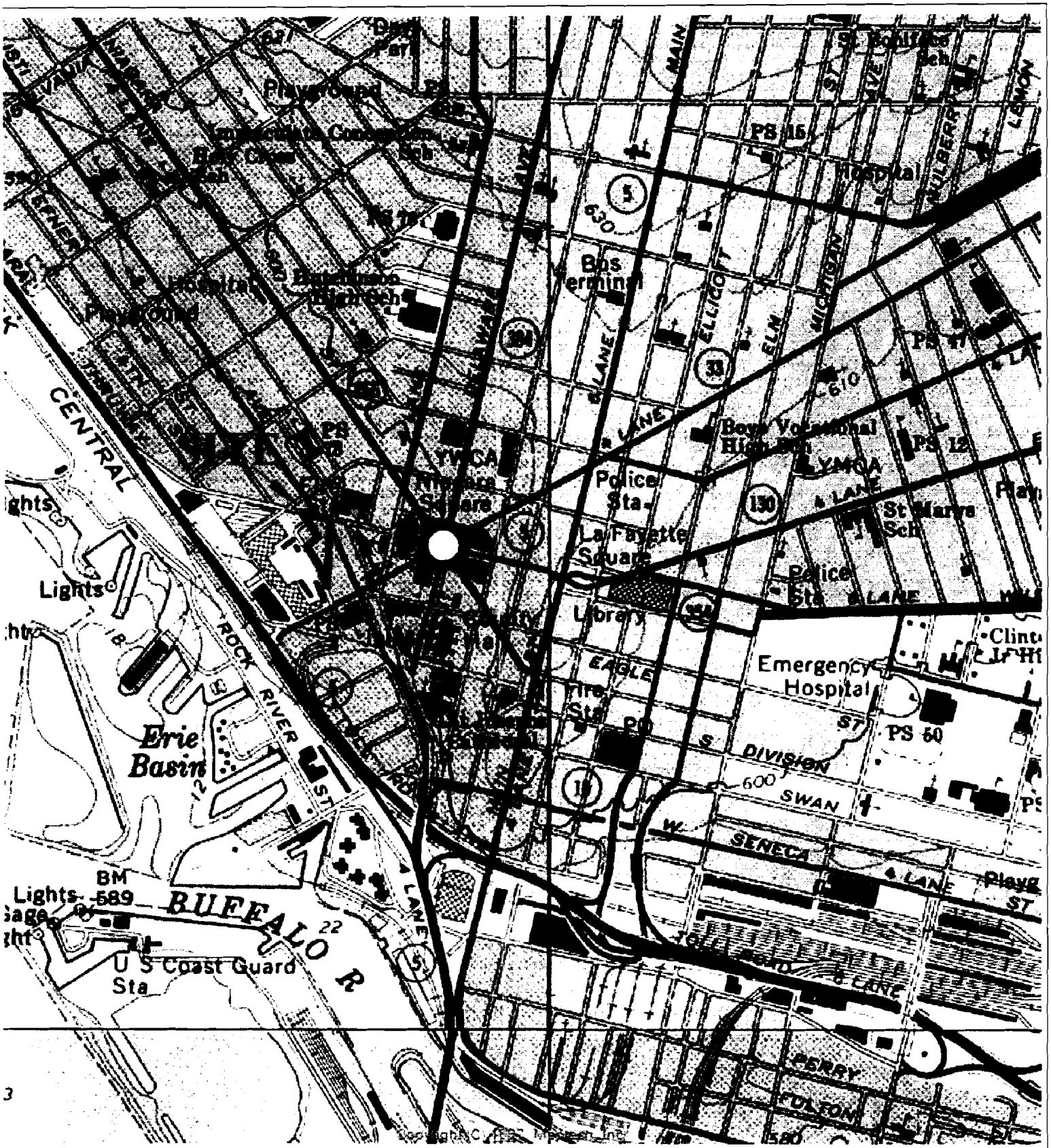
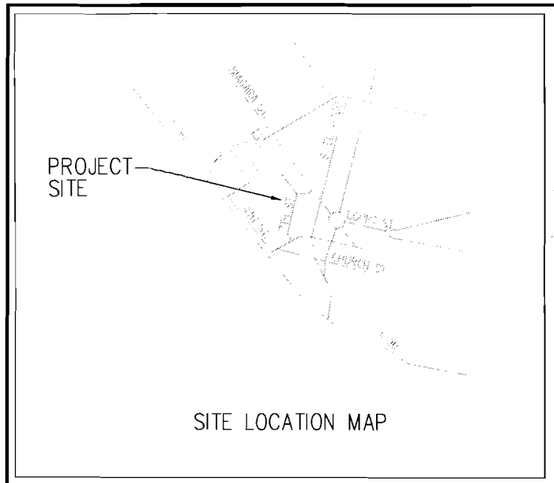


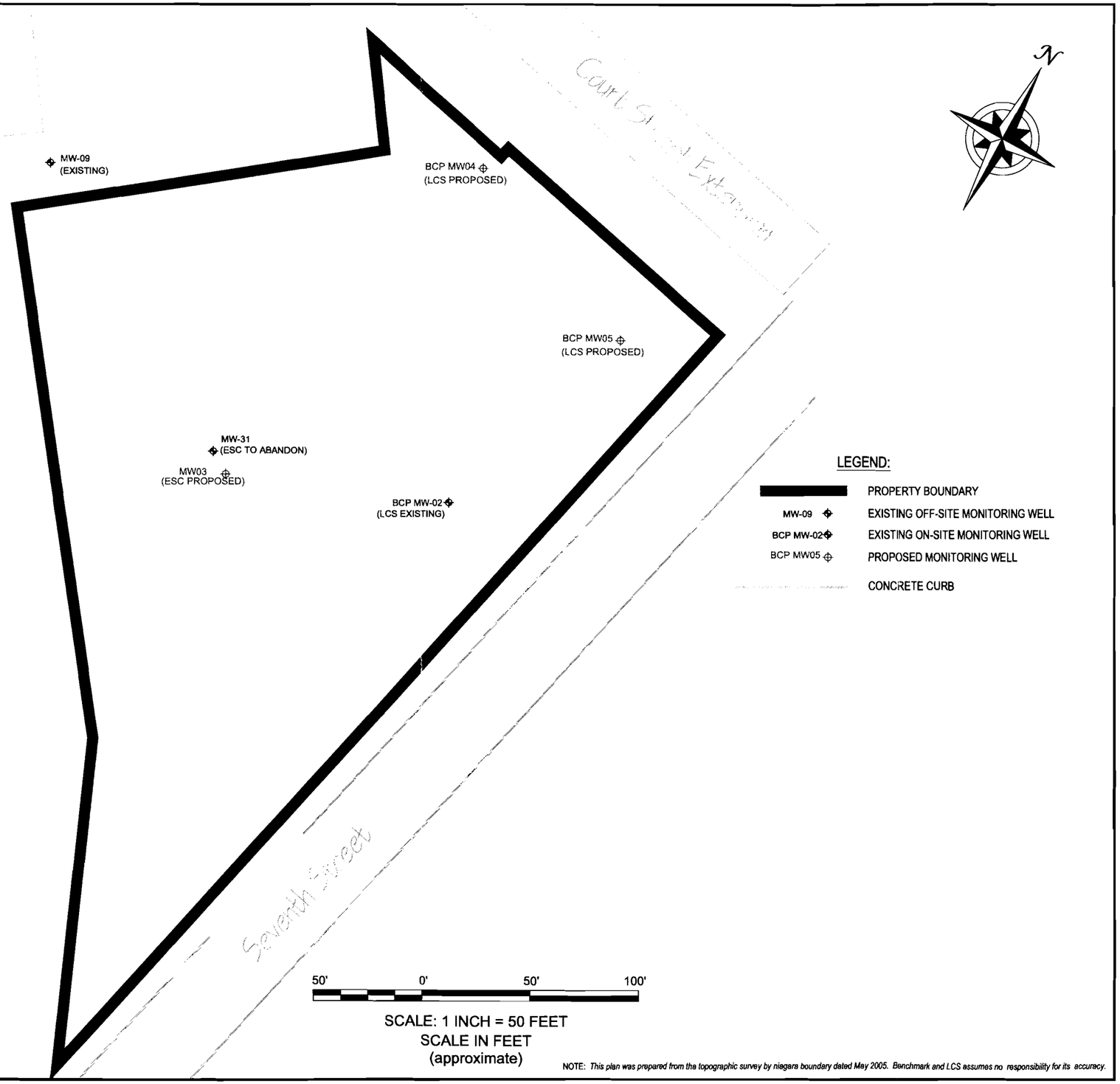
Figure 1- Site Location Map
4 New Seventh Street Site
Buffalo, New York

LCS INC.
Environmental and Real Estate Consultants

BENCHMARK
ENVIRONMENTAL
ENGINEERING &

F:\CAD\Benchmark\LCS\Seventh Street Site\SMP Plan\Figure 2- Site Layout and Monitoring Well Locations (REV NOV 2006).dwg





NOTE: *This plan was prepared from the topographic survey by niagara boundary dated May 2005. Benchmark and LCS assumes no responsibility for its accuracy.*

DATE: AUGUST 2006, revised NOVEMBER 2006
DRAFTED BY: BCH

LCS INC.

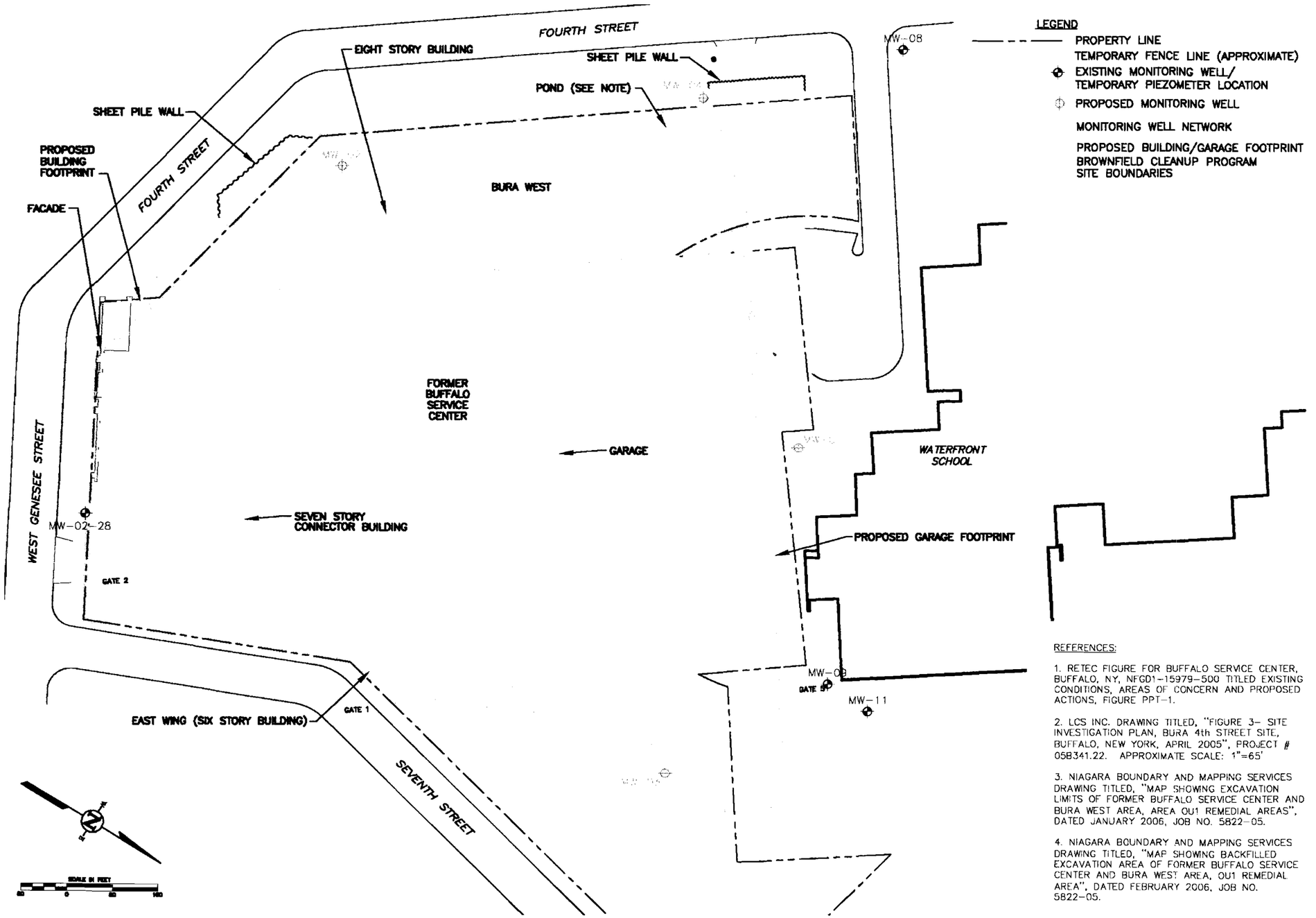
BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC

JOB NO.: 0102-002-100 / 05B341.26

SITE LAYOUT AND MONITORING WELL LOCATIONS

4 NEW SEVENTH STREET SITE
BUFFALO, NEW YORK
PREPARED FOR
257 W. GENESEE, LLC

FIGURE 2



REFERENCES:

1. RETEC FIGURE FOR BUFFALO SERVICE CENTER, BUFFALO, NY, NFGD1-15979-500 TITLED EXISTING CONDITIONS, AREAS OF CONCERN AND PROPOSED ACTIONS, FIGURE PPT-1.

2. LCS INC. DRAWING TITLED, "FIGURE 3- SITE INVESTIGATION PLAN, BURA 4th STREET SITE, BUFFALO, NEW YORK, APRIL 2005", PROJECT # 058341.22. APPROXIMATE SCALE: 1"=65'

3. NIAGARA BOUNDARY AND MAPPING SERVICES DRAWING TITLED, "MAP SHOWING EXCAVATION LIMITS OF FORMER BUFFALO SERVICE CENTER AND BURA WEST AREA, AREA OU1 REMEDIAL AREAS", DATED JANUARY 2006, JOB NO. 5822-05.

4. NIAGARA BOUNDARY AND MAPPING SERVICES DRAWING TITLED, "MAP SHOWING BACKFILLED EXCAVATION AREA OF FORMER BUFFALO SERVICE CENTER AND BURA WEST AREA, OU1 REMEDIAL AREA", DATED FEBRUARY 2006, JOB NO. 5822-05.

NOTE: *This figure was prepared by ECS for the Final Site Management Plan, Former Buffalo Service Center Site (C915194). Benchmark and LCS assumes no responsibility for its accuracy.*

LCS INC.

BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC

JOB NO.: 0102-002-100 / 05B341.26

BSC SITE LAYOUT AND MONITORING WELL LOCATIONS

4 NEW SEVENTH STREET SITE
BUFFALO, NEW YORK

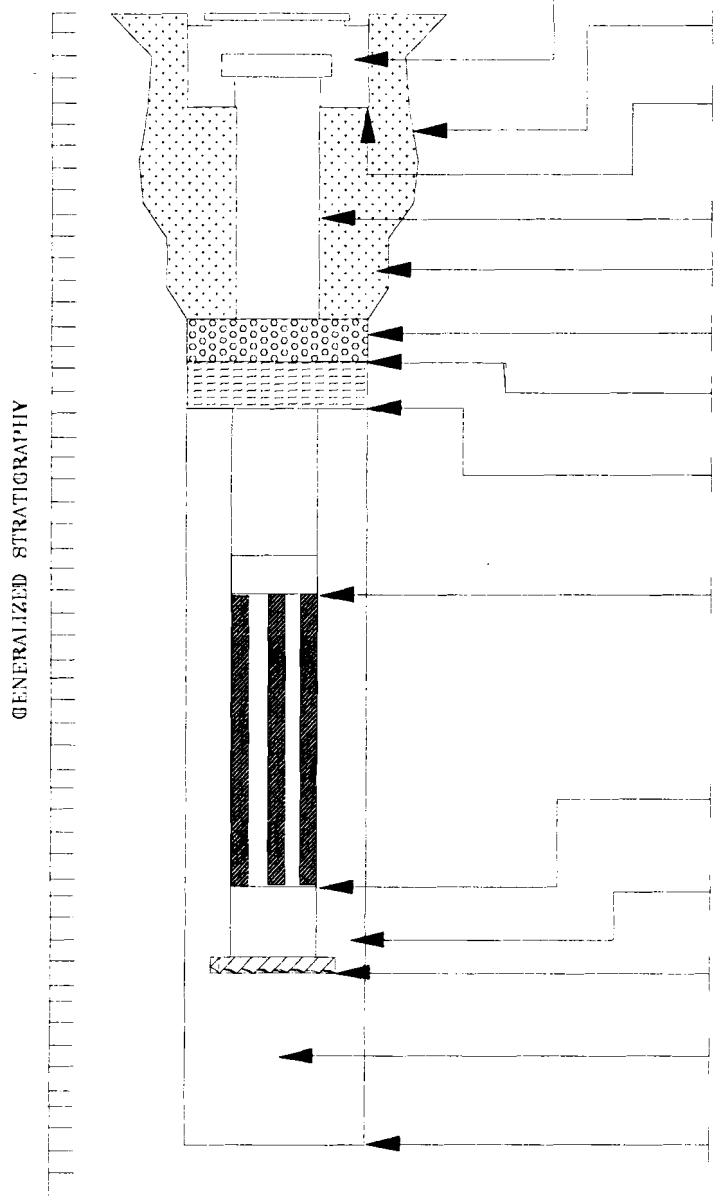
PREPARED FOR
257 W. GENESEE, LLC

FIGURE 3

DATE: DECEMBER 2006
DRAFTED BY: BCH

LCS Inc. WELL CONSTRUCTION DETAIL

PROJECT/LOCATION:	4 New Seventh Street, Buffalo, New York	PROJECT No.	05B341.26
CLIENT:	257 W. Genesee, LLC	WELL No.	Typical Well
DATE COMPLETED:	To be determined	SUPERVISED BY:	LCS, Inc.



REFERENCE POINT
Elevation/Depth: NA

SURFACE SEAL
Type/Depth: Concrete / 1.0 ft. bgs

DEPTH OF SURFACE CASING: 1.0 ft. bgs

RISER PIPE Size/Type: 2 inch diameter / Sch. 40 PVC

DIAMETER OF BOREHOLE: 6 inches

TYPE OF FILL: NA

TOP OF SEAL Elevation/Depth: 1.0 ft. bgs
TYPE OF SEAL: Hydrated Bentonite

TOP OF FILTER PACK Elevation/Depth: 3.0 ft. bgs
FILTER PACK MATERIAL: #00 Sand

TOP OF SCREEN Elevation/Depth: 5.0 ft. bgs
SCREEN SIZE/TYPE: 0.010 inch / Sch. 40 PVC

BOTTOM OF SCREEN Elevation/Depth: 15 ft. bgs

BOTTOM OF FILTER PACK
Elevation/Depth: 12 ft. bgs

BOTTOM OF PLUGGED BLANK SECTION
Elevation/Depth: 15 ft. bgs

TYPE OF FILLER
BELOW PLUGGED BLANK: #00 Sand

BOTTOM OF BOREHOLE
Elevation/Depth: 15 ft. bgs

NOTES ft. bgs = feet below ground surface
NA = Not Applicable

TABLE

Table 1

Existing Monitoring Well Information
4 New Seventh Street
Buffalo, New York

Monitoring Well	Well Depth	Casing Diameter	Screen Length
BCP MW-02	15.5 ft. bgs	2.0 inch ID	10 feet
MW-09	19.0 ft. bgs	2.0 inch ID	10 feet

ft. bgs = feet below ground surface

APPENDIX A – MONITORING WELL BORING LOGS

LCS Inc. SUBSURFACE LOG

PROJECT/ LOCATION: 4 New 7th Street, Buffalo, New York PROJECT No. 04B341.26

CLIENT: 257 W. Genesee, LLC BORING/WELL No. BCP BH02/ BCP MW-02

DATE STARTED: 5/9/06 DATE COMPLETED: 5/9/06 RECORDED BY: JMR

GROUNDWATER DEPTH WHILE DRILLING: ~7 ft. bgs AFTER COMPLETION: NA

WEATHER: ~65°F, Sunny DRILL RIG: Geoprobe DRILLER: BMS Drilling Services, Inc.

DRILL SIZE/TYPE: Macro-core SAMPLE HAMMER: WEIGHT NA FALL NA

Sample No.	PID/HNu Reading (ppm)	Depth (Feet)	Type *	Blows/6"	N	Recovery (Inches)	Material Classification and Description (Unified Soil Classification System-Visual Manual Method)
1	0.1	0-4	U	-	-	10	0-0.3ft: Grey gravel (coarse, angular, loose, dense)
2	1.6	4-6	U	-	-	20	0.3-1ft: Black sandy gravel (coarse, angular, dense, moist)
3	1.0	6-8	U	-	-	20	1-4ft: Brown silty sand (fine, medium dense, moist)
4	2.3	8-10	U	-	-	22	4-5ft: Reddish brown silty sand (fine, dense, moist)
5	1.2	10-12	U	-	-	22	5-10ft: Light brown silty sand (fine, dense, moist to wet)
6	1.5	12-14	U	-	-	22	10-13ft: Light brown clayey silty sand (fine, dense, wet)
7	1.0	14-16	U	-	-	22	13-17ft: Light brown silty sand (fine, medium dense, wet)
8	2.3	16-19	U	-	-	10	17-19ft: Grey silty sand (fine, dense,wet)
							Refusal @ ~19 ft. bgs

NOTES NA = Not Applicable Fill to ~5 ft. bgs

ft. bgs = feet below ground surface No suspect odors detected

*SS - SPLIT-SPOON SAMPLE U - UNDISTURBED TUBE P - PISTON TUBE C - CORE

RETEC

1001 W Seneca St, Suite 204
Ithaca, NY 14850

Well ID: MW-31

Project Name:	Buffalo Service Center	**Drilling Method:**	Hollow Stem Auger
Project Number:	NFGD1-15979-330	**Sampling Method:**	Split Spoon
Date Started:	8/20/03	**Ground Elevation (ft/msl):**	583.49
Date Finished:	8/20/03	**Total Depth (ft):**	19.0 ft bgs.
Drilling Company:	SLC	**Logged By:**	J Edwards

Depth (Feet)	Blow Counts	Recovery (Feet)	PID (ppm)	Sample ID	Sample Interval	Lithology	USCS	Geologic Description	Well Construction	Remarks
0	1						Fill	Fill: Clayey SILT mixed with, brick fragments and angular gravel; moist.		Flush mounted well cap.
-1	5 12	1.6	0.0							Concrete seal from 0-1.0 ft bgs.
-2	18 13									Bentonite seal from 1.0-3.0 ft bgs.
-3	12 10	1.2	0.0							
-4	6 6							Fill: Brown SAND mixed with concrete fragments; moist.		
-5	13 6	1.0	0.0							
-6	5 2						ML	Tan and grey SILT, trace subrounded gravel; moist. Becomes wet at 6.4 ft bgs.		
-7	3 3	1.7	0.0							
-8	3 9			MW-31 (7-9)			SM	Tan fine SAND; uniform, wet.		Granulated sand-pack from 3.0-19.0 ft bgs.
-9	4 5	1.4	0.0							
-10	6 4									
-11	4 4	1.4	0.0				ML	Tan SILT, trace rounded gravel; firm, moist.		
-12	6 8									
-13	7 12	2.0	0.0				SM	Tan fine SAND; uniform, wet.		2", 10 Slot PVC screen from 4.0-19.0 ft bgs.
-14	10 6									
-15	4 2	1.6	0.0				ML	Reddish clayey SILT; firm, uniform, moist.		
-16	2 2									
-17	3 7	1.8	0.0							
-18	20 11	1.0	0.0							Bedrock at 19.0 ft bgs.
-19	50/2									

PART 2 – SOIL/FILL MANAGEMENT PLAN

4 NEW SEVENTH STREET SITE

4 NEW SEVENTH STREET
BUFFALO, NEW YORK

BROWNFIELD CLEANUP PROGRAM NO. C915203

Contents

1.0 Field Procedures

This Soil/Fill Management Plan (S/FMP) pertains to the 4 New Seventh Street Site and the BURA East property, as described in detail in the Interim Remedial Measures Work Plan (LCS, 2006) pertaining to the Brownfield Cleanup Program. The objective of this S/FMP is to set guidelines for management of soil and fill material during any future activities after remediation and initial development which would involve excavation of soil/fill at the properties from depths of 12-inches below finished grade.

2.0 Nature and Extent of Contamination

The constituents of interest (COIs) related to the former gasoline station and other historical users of the Site, consist primarily of gasoline-related VOCs. LCS' Remedial Investigation/Remedial Alternatives Report (RI/RAR) provides detailed information pertaining to the environmental conditions before remediation. LCS' Final Engineering Report provides detailed information pertaining to the environmental conditions following remediation.

As the surface soils (12 inches) was replaced with TAGM compliant fill this S/FMP does not apply to any future work within the top 12-inches of soil/imported fill at the site.

3.0 Contemplated Use

The contemplated future use of the property is commercial/industrial. Proposed development includes construction of a parking garage and surface parking lot and green space. Any other use must be approved by the New York State Department of Health (NYSDOH).

4.0 Management of Soils

The purpose of this section is to provide guidelines for management of excavated subsurface soil (greater than 12 inches) and fill during any future intrusive work which involves excavation of soils/fill at the properties.

The S/FMP includes the following conditions:

- Any excavation, including construction or utilities work, must be replaced or repaired using an acceptable borrow source. The disturbed area must be covered with at least 12 inches of clean soil and reseeded or covered with impervious product to match pre-existing conditions.
- Surface erosion and run-off must be controlled during construction activities.
- Soil that is excavated from the properties, and is intended to be removed from the property, must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives as described in Section 4.2.
- Excavated soil may be reused as backfill material provided it satisfies the SSALs developed for this SMP as follows:

Parameter	Maximum Concentration in Soil/Fill (ppm)
Soil/Fill	
Benzene	0.06
Ethylbenzene	5.5
Toluene	1.5
o-xylene	1.2
m-xylene	1.2
p-xylene	1.2
Isopropylbenzene	14
n-propylbenzene	14
p-Isopropyltoluene	11
1,2,4-Trimethylbenzene	13
1,3,5-Trimethylbenzene	3.3
n-Butylbenzene	25
sec-Butylbenzene	25
Naphthalene	13
Methyl t-butyl ether (MTBE)	0.12

- Any fill material imported for filling and grading purposes shall be from an acceptable borrow source free of industrial and/or other potential sources of chemical or petroleum contamination. Off-site borrow sources should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, and TAL metals plus cyanide. The soil will be acceptable for use as cover material provided that all parameters meet the NYSDEC recommended soil cleanup objectives included in TAGM 4046.
- Prior to any construction activities, workers are to be notified of the site conditions with clear instructions regarding how the work is to proceed. Intrusive work will be performed in accordance with all applicable local, state, and federal regulations to protect worker health and safety.

4.1 Excavated Soil Disposal

Soil that is excavated which cannot or will not be used as fill will be further characterized prior to transportation for disposal at a permitted facility. Sampling and analysis requirements will be coordinated with the disposal facility proposed for use. For excavated soil (or other fill) with visual evidence of contamination (i.e., staining or elevated PID measurements), one composite sample and a duplicate sample will be collected for each 100 cubic yards of stockpiled soil. For excavated soil that does not exhibit visual evidence of contamination but must be sent for off-site disposal, one composite sample and a duplicate sample will be collected for 2000 cubic yards of stockpiled soil, and a minimum of 1 sample will be collected for volumes less that 2000 cubic yards.

The composite sample will be collected from five locations within each stockpile. A duplicate composite sample will also be collected. PID measurements will be recorded for each of the five individual locations. One grab sample will be collected from the individual location with the highest PID measurements. If none of the five individual sample locations exhibit PID readings, one location will be selected at random. The composite sample will be analyzed for site-related COIs and other COIs as identified by disposal facility. Stockpiled soil cannot be transported on or off-site until the analytical results are received and approval granted by the disposal facility.

The stockpiled soils must be covered to prevent windblown dispersion. Dust management measures (e.g., suppression with water spray) may also be conducted as necessary.

4.2 Fill Material

Fill material used to backfill excavations or placed to increase grades or elevation shall meet the following criteria.

- Excavated on-site soil proposed for use shall be sampled and analyzed. If analytical results indicate that the contaminants, if any, are present at concentrations below the Site Specific Action Levels (SSALs) identified by this S/FMP, the soil can be used as backfill on the Site.
- Any off-site material imported for filling and grading purposes shall be from an acceptable borrow source free of industrial and/or other potential sources of chemical or petroleum contamination and must satisfy TAGM 4046 concentrations for all parameters.

5.0 Reporting and Certification

Environmental Easements (a type of institutional control) shall be maintained for the Site as a result of the Brownfield Cleanup. As a result, the Owner shall complete and submit to the Department an annual report (located in Appendix A) by January 15th of each year. Such annual report shall contain certification that the institutional controls put in place, are still in place, have not been altered and are still effective; that the remedy and protective cover (first 12 inches of soil) have been maintained; that the conditions at the site are fully protective of public health and the environment; and should indicate any changes in site use. The annual report must be certified by a licensed Professional Engineer

If the cover system (first 12 inches of soil) has been breached during the year covered by that Annual Report, the owner of the property shall include a certification that all work was performed in conformance with this S/FMP.

Appendix A – Annual Certification Form

ENCLOSURE 1
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
INSTITUTIONAL AND ENGINEERING CONTROLS CERTIFICATION FORM

SITE DETAILS

SITE NO. **X-XX-XXX**

SITE NAME

SITE ADDRESS: ZIP CODE: XXXXX

CITY/TOWN:

COUNTY:

CURRENT USE:

CURRENT CERTIFICATION FREQUENCY: EVERY __ YEAR(S)

VERIFICATION OF SITE DETAILS

		YES	NO
1.	Are the SITE DETAILS above, correct?	☐	☐
	If NO, are changes handwritten above or included on a separate sheet?	☐	
2.	Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment since the initial/last certification?	☐	☐
	If YES, is documentation or evidence that documentation has been previously submitted included with this certification?	☐	
3.	Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property since the initial/last certification?	☐	☐
	If YES, is documentation or evidence that documentation has been previously submitted included with this certification?	☐	
4.	Has a change-of-use occurred since the initial/last certification?	☐	☐
	If YES, is documentation or evidence that documentation has been previously submitted included with this certification?	☐	
5.	Has any new information come to your attention to indicate that assumptions made in the qualitative exposure assessment for offsite contamination are no longer valid (applies to non-significant threat sites subject to ECL 27-1415.7(c))?	☐	☐
	If YES, is the new information or evidence that new information has been previously submitted included with this certification?	☐	
6.	Are the assumptions in the qualitative exposure assessment still valid (must be certified every five years for non-significant threat sites subject to ECL 27-1415.7(c))?	☐	☐
	If NO, are changes in the assessment included with this certification?	☐	

SITE NO. X-XX-XXX

Description of Institutional/Engineering Control	Control Certification	
	YES	NO
ENVIRONMENTAL EASEMENT	☐	☐
Type of Restriction here	☐	☐

CONTROL CERTIFICATION STATEMENT

For each institutional or engineering control listed above, I certify by checking "Yes" that all of the following statements are true:

(a) the institutional control and/or engineering control employed at this site is unchanged from the date the control was put in-place, or last approved by the Department;

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

(c) nothing has occurred that would constitute a violation or failure to comply with any Site Management Plan for this control; and

(d) access to the site will continue to be provided to the Department to evaluate the remedy, including access to evaluate the continued maintenance of this control.

(e) if a financial assurance mechanism is required under the remedial work plan for the site, the mechanism remains valid and sufficient for their intended purpose under the work plan.

CONTROL CERTIFICATIONS
SITE NO. X-XX-XXX

SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE

I certify that all information and statements in this Institutional and Engineering Controls Certification form are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I _____(print name), _____

(print business address), am certifying as _____ (Owner or Owner's Designated Site Representative (if the site consists of multiple properties, I have been authorized and designated by all site owners to sign this certification) for the Site named in the Site Details section of this form.

_____ _____
Signature of Site Owner or Representative Rendering Certification Date

QUALIFIED ENVIRONMENTAL PROFESSIONAL (QEP) SIGNATURE

I certify that all information and statements in this Institutional and Engineering Controls Certification form are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I _____(print name), _____

(print business address), am certifying as a Qualified Environmental Professional for the_____

_____ (Owner or Owner's Representative) for the Site named in the Site Details section of this form.

_____ _____ _____
Signature of Qualified Environmental Professional, for the Owner or the Owner's Representative, Rendering Certification Stamp (if Required) Date

PART 3 – ENVIRONMENTAL EASEMENT

4 NEW SEVENTH STREET SITE

4 NEW SEVENTH STREET
BUFFALO, NEW YORK

BROWNFIELD CLEANUP PROGRAM NO. C915203

COVER SHEET REV 02-14-06

ERIE COUNTY CLERKS OFFICE

County Clerk's Recording Page

Return To:

BOX 29 ADM

Book: **11118** Page: **9141**

Page Count: **9**

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Rec Date: **09/07/2006**

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Control #: **2006197238**

User ID: **francine**

Trans Num: **212199**

DEED SEQ: **TT200603152**

MTG SEQ:

UCC:

SCAR:

INDEX:

Party 1:

257 W GENESEE LLC

Party 2:

PEOPLE OF THE STATE OF NEW YORK

Recording Fees:	
RECORDING	$44.00
COE COUNTY	1.00
COE STATE GENERAL	$14.25
COE STATE RM	$4.75
TP584	$10.00

Consideration Amount:	**$1.00**
BASIC	**$0.00**
SONYMA	**$0.00**
ADDL	**$0.00**
NFTA MT	**$0.00**
TRANSFER	**$0.00**
NFTA TT	**$0.00**

Total: **$74.00**

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTIONS 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

David J. Swarts
County Clerk

Box 29 (ADM)

ENVIRONMENTAL EASEMENT

THIS INDENTURE made this 19th day of July, 2006, between 257 W. Genesee, LLC having an office at 600 E. 96th St., Suite 100, Indianapolis, Indiana 46240, (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

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

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

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

WHEREAS, Grantor, is the owner of real property located in the City of Buffalo, Erie County, New York known and designated on the tax map of the City of Buffalo as tax parcel number 110-60-2-2, being the same as that property conveyed to Grantor by deeds on March 29, 2005 and recorded in the Land Records of the Erie County Clerk in Liber 11093 of Deeds at page 492, November 10, 2005, recorded in Liber 11108 of Deeds at page 9335, and November 18, 2005, recorded in Liber 11111 of Deeds at page 7773, comprised of approximately 8.21 acres, and hereinafter more fully described in Schedule A attached hereto and made a part hereof (the " Controlled Property"); and;

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

F197231

CTY - 0

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7854-8-0

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Numbers B9-0695-05-06(A), B9-0695-05-06(B), and B9-0712-06-01, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

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

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for Commercial and /or Industrial use, as long as the following long-term engineering controls are employed:

i) Implementation of the Operation, Monitoring, and Maintenance Work Plan including the Soil/Fill Management Plan,
ii) Use of groundwater for potable and non-potable purposes is prohibited.

B. The Controlled Property may not be used for a higher level of use such as unrestricted or residential use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

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

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

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

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit, to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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

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

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

B. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement

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

B. If any person intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or the Satisfactory Completion of Project provided under ECL Article 56, Title 5 with respect to the Controlled Property.

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

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:

Division of Environmental Enforcement
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany New York 12233-5500

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

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

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

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is

situated in the manner prescribed by Article 9 of the Real Property Law.

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

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

257 W. GENESEE, LLC,
a New York limited liability company
By: Duke HN New York, LLC,
An Indiana limited liability company, its sole member
By: Duke Construction Limited Partnership,
its sole member
By: Duke Business Centers Corporation, its sole
general partner

By: _____
John R. Gaskin
Senior Vice President

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

By: _____
Denise M. Sheehan, Commissioner

Grantor's Acknowledgment

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

On the 19th day of July, in the year 2006, before me, the undersigned, personally appeared John R. Gaskin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Michael A. Piette
Notary Public - State of New York

MICHAEL A. PIETTE
NOTARY PUBLIC, State of New York
Qualified in Niagara County
Commission Expires January 31st, 2007

Grantee's Acknowledgment

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

On the 17th day of August, in the year 2006 before me, the undersigned, personally appeared Denise M. Sheehan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Mark D. Sanza
Notary Public - State of New York

MARK D. SANZA
Notary Public, State of New York
No. 02SA6010701
Qualified in Albany County
Commission Expires July 20, 2010

No: 5006-25086

The land referred to in this Commitment is described as follows:

Parcel A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot Number 16 and Lot Number 2 of the South Village of Black Rock, bounded and described as follows:

BEGINNING at the point of intersection of the northwest line of Genesee Street and the northeast line of Fourth Street as originally located; thence northwesterly along said line of Fourth Street 614.85 feet more or less to a south line of lands conveyed to New York State Urban Development Corporation by deed recorded in the Erie County Clerk's Office in Liber 8442 of Deeds at page 247; thence northeasterly at an interior angle of 91° 10' 34" and along the south line of said lands of the New York State Urban Development Corporation a distance of 162.00 feet; thence southerly at an interior angle of 89° 13' 29" a distance of 27.50 feet; thence easterly at an interior angle of 270° 46' 31' with the last described line a distance of 208.00 feet to the former west line of Jackson Street; thence southeasterly along said line of Jackson Street 240 feet more or less to an angle in said line of Jackson Street; thence southeasterly continuing along the southwest line of Jackson Street (a portion of which is now the southwest line of Seventh Street) 415 feet more or less to its intersection with the northwest line of Genesee Street; thence southwesterly along said line of Genesee Street 282 feet to the point of beginning.

Parcel B (257 West Genesee)

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot 16 and part of Lot 2, South Village of Black Rock, bounded and described as follows:

BEGINNING at a point on the north line of Fourth Street as dedicated on July 27, 1982 at its intersection with the east line of former Fourth Street (now abandoned), said point being also on the west line of lands conveyed to Niagara Gas Corporation by deed recorded in the Erie County Clerks' Office in Liber 1586 of Deeds at Page 365;

THENCE: Northwesterly, along the northeast line of Fourth Street as dedicated on July 27, 1982, a distance of 202.18 feet to an angle point in the east line of Fourth Street as dedicated on July 27, 1982;

THENCE: Northerly, along the east line of Fourth Street as dedicated on July 27, 1982, at in interior angle of 139° -24'-58" with the last described line, a distance of 469.32 feet to a point on the southerly line of lands conveyed to New York State Urban Development Corporation by deed recorded in Liber 8442 of Deeds at page 247;

THENCE: Easterly, along a southerly line of said New York State Urban Development Corporation lands, a distance of 130.75 feet to a point,

THENCE: southerly, at an interior angle of 91° -33'-6" along the east line of former Fourth Street and west line of said Niagara Gas Corporation lands, a distance of 619.52 feet to the POINT OF BEGINNING.

Parcel C (4 New Seventh Street)

ACAO 8/95 MJK MJK 07/07/06 09:11:52

No: 5006-25086

The land referred to in this Commitment is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Disposition Lot 2, Outer Lot 16 of the Village of New Amsterdam and part of the bed of Busti Terrace being more particularly bounded and described as follows:

BEGINNING at the intersection of the northwesterly right of way bounds of New Seventh Street, being 66 feet in width, with the southerly right of way bounds of former Court Street as a 6 rod road;

THENCE westerly along the southerly right of way bound of former Court Street a distance of 129.80 feet to a point;

THENCE southerly at a right angle a distance of 5.00 feet to a point;

THENCE westerly parallel with the southerly right of way bound of former Court Street, and distant 5.00 feet southerly therefrom a distance of 80.00 feet to a point on a northeasterly line of lands conveyed to the New York State Urban Development Corporation by deed recorded in Liber 8442 of Deeds at page 247;

THENCE southeasterly along said northeasterly line of lands conveyed to the New York State Urban Development Corporation, at an interior angle to the right as measured from the last described course of 41° 55' 39" for a distance of 51.26 feet to a point;

THENCE southwesterly at an exterior angle to the left as measured from the last described course of 92° 43' 40" a distance of 171.96 feet to a point lying on a southwesterly boundary of said lands conveyed to the New York State Urban Development;

THENCE southeasterly along said southwesterly boundary of lands conveyed to the New York State Urban Development and the southeasterly extension thereof, at an interior angle to the right as measured from the last described course 90° 46' 33" for a distance of 248.91 feet to a point;

THENCE continuing southeasterly at an exterior angle to the left as measured from the last described course of 166° 03' 00" for a distance of 152.16 feet to the aforementioned northwesterly right of way bounds of New Seventh Street;

THENCE northeasterly along said northwesterly right of way bounds of New Seventh Street at an interior angle to the right as measured from the last described course of 36° 04' 28" for a distance of 455.41 feet to the point of beginning.

Honorable David J Swarts
County Clerk
Erie County
92 Franklin Street
Buffalo, NY 14202
(716) 858-8865

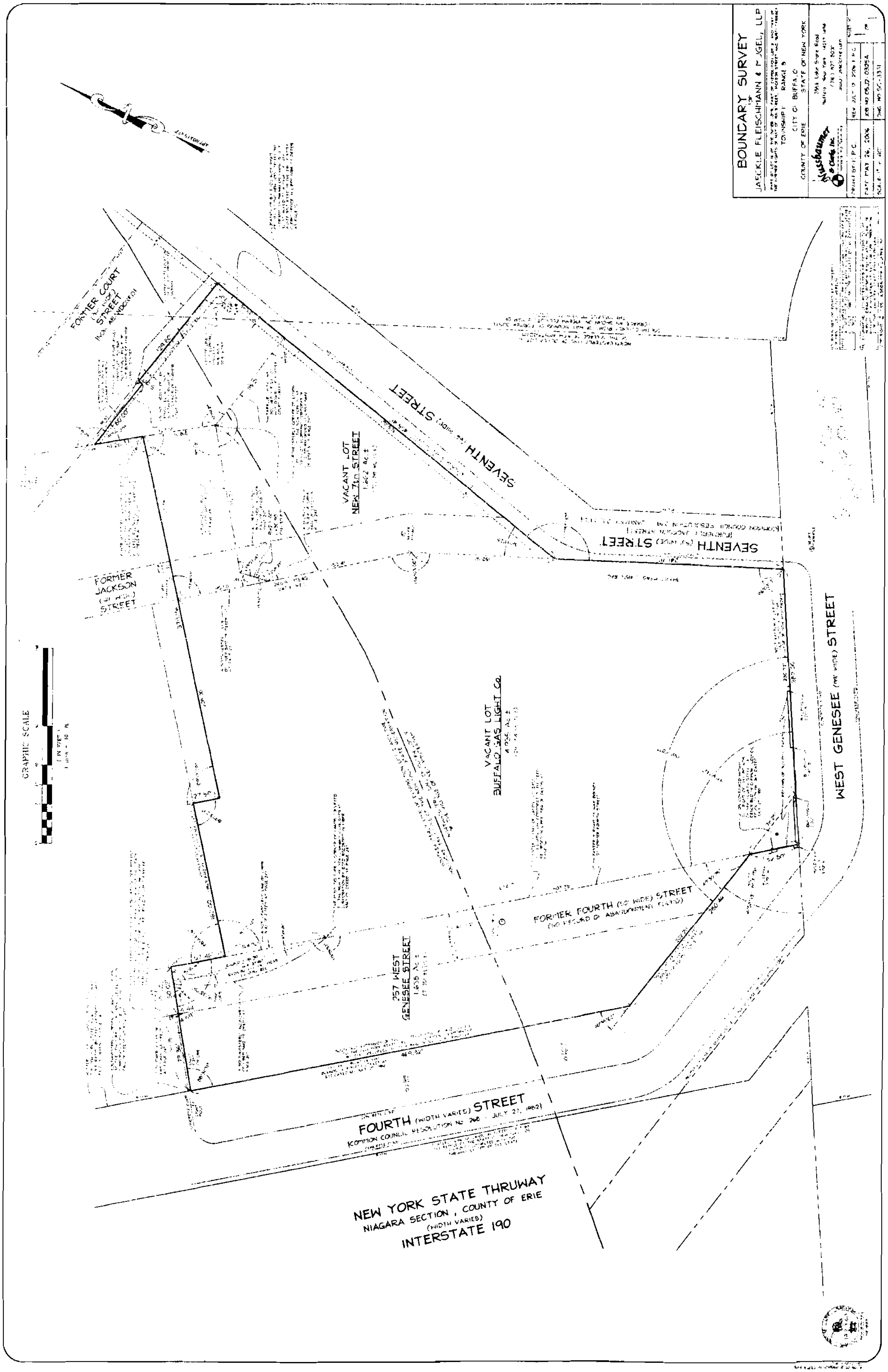
DATE:09/07/2006
TIME:11:40:24 AM
RECEIPT:212199

HARTER SECREST

ITEM -01 785U 11:40:24 AM
FILE:2006197238 BK/PG:D11118/9141
DEED SEQ:TT200603152
257 W GENESEE LLC
PEOPLE OF THE STATE OF NEW YORK

RECORDING FEE			64.00
TP584			10.00
MARKOFF FEE			0.00
Sub. Total		74.00	
AMOUNT DUE:	$74.00		
PAID CHECK:	$74.00		
Check #:3961			$74.00
TOTAL PAID:	$74.00		

REC BY:FRANCINE
County Clerk
Have a nice day!


BOUNDARY SURVEY
JAECKLE FLEISCHMANN & MUGEL, LLP
TOWNSHIP 11 RANGE 8
CITY OF BUFFALO
COUNTY OF ERIE STATE OF NEW YORK
SEVENTH STREET
SEVENTH STREET
FORMER COURT STREET
FORMER JACKSON STREET
VACANT LOT
NEW 7th STREET
VACANT LOT
BUFFALO GAS LIGHT Co
WEST GENESEE STREET
FORMER FOURTH STREET
257 WEST GENESEE STREET
FOURTH STREET
NEW YORK STATE THRUWAY
NIAGARA SECTION, COUNTY OF ERIE
(WIDTH VARIES)
INTERSTATE 190
GRAPHIC SCALE