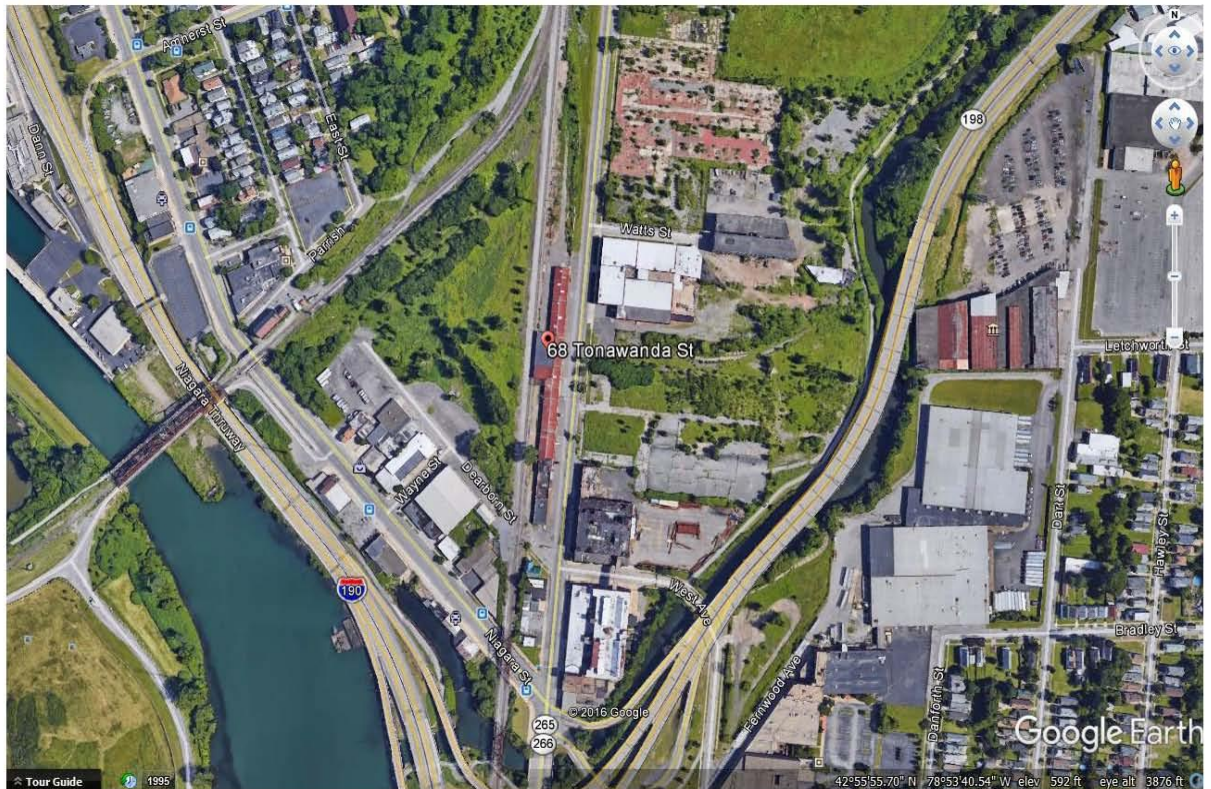


**APPLICATION
NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM**



**68 TONAWANADA STREET
BUFFALO, NEW YORK**

**SUBMITTED BY:
Buffalo Freight House LLC**

**MARCH 2017
REV. APRIL 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 7*

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.**

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 **Refer to Exhibit B**
- the date the Certificate of Completion is anticipated.

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? Yes No If no, please attach a metes and bounds description of the property. Refer to Figure 3a and 4				
2. Is the required property map attached to the application? Yes No (application will not be processed without map) Refer to Figure 3a				
3. Is the property within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)? Yes No (See DEC's website for more information) Refer to Figure 3b 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)? Yes No 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? Yes No				
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? Yes No If yes, attach relevant supporting documentation.				
7. Are there any lands under water? Yes No 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)

Type

Issuing Agency

Description

None related to the proposed development

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: JA _____

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

Section V. Additional Requestor Information See Instructions for Further Guidance		<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	
Section VI. Current Property Owner/Operator Information – if not a Requestor		Refer to Exhibit E - Prior Owners/Operators	
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	
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. Refer to Exhibit E - Prior Owners/Operators			
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".			
Section VII. Requestor Eligibility Information (Please refer to ECL § 27-1407)			
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?

Yes No **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

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?
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

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 Refer to Exhibit H	
1. What is the current zoning for the site? What uses are allowed by the current zoning? Residential Commercial Industrial Refer to Figure 7 - Zoning If zoning change is imminent, please provide documentation from the appropriate zoning authority.	
2. Current Use: Residential Commercial Industrial Vacant Recreational (check all that apply) Refer to Exhibits C, D and E 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.	
3. Reasonably anticipated use Post Remediation: Residential Commercial Industrial (check all that apply) Attach a statement detailing the specific proposed use. If residential, does it qualify as single family housing? Refer to Exhibit B Yes No	
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 acknowledge and agree to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter. 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 Manager (title) of Buffalo Freight House 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 to execute a BCA within 60 days of the date of DEC's approval letter. 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: 3-10-17 Signature: Jay

Print Name: Mr. Jason Yots, Esq.

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 7

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
Please answer questions below and provide documentation necessary to support answers.		
1. Is at least 50% of the site area located within an environmental zone pursuant to NYS Tax Law 21(b)(6)? Please see DEC's website for more information.	Yes	No
2. Is the property upside down or underutilized as defined below?	Upside Down?	Yes No
	Underutilized?	Yes No
<p>From ECL 27-1405(31):</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>From 6 NYCRR 375-3.2(I) as of August 12, 2016: (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 would need to be provided to the Department 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 of site within an En-Zone:** **0%** **<50%** **50-99%** **100%****Requestor's Requested Status:** **Volunteer** **Participant**

**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.

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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.

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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.

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**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.

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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.

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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.

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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

EXHIBIT A

Section I. Requester Information

Exhibit A

Section I. Requester members/owners

The owner will be Buffalo Freight House LLC, which will be owned by Buffalo Freight House Managing Member LLC. Karl Frizlen, Jason Yots, Michael Masters and Dennis Masters will own Managing Member.

Requester:

Buffalo Freight House LLC

c/o Common Bond Real Estate LLC
221 Bedford Avenue
Buffalo, NY 14216

Members/Owners Buffalo Freight House LLC:

1) Buffalo Freight House Managing Member LLC
c/o Common Bond Real Estate LLC
221 Bedford Avenue
Buffalo, NY 14216

Members/Owners of Buffalo Freight House Managing Member LLC:

1) Mr. Jason Yots
221 Bedford Avenue
Buffalo, NY 14216
716-440-0521
yots@commonbondrealestate.com

2) Mr. Karl Frizlen
257 Lafayette Avenue, Suite 101
Buffalo, NY 14213
Phone: 716-881-0046
Fax: 716-881-5110
frizlen@frizlengroup.com

3) Mr. Michael Masters
Mr. Dennis Masters
c/o BRD Construction
82 Pearl Street
Buffalo, NY 14202
716-847-0047
mmasters@brdconstruction.com
dmasters@brdconstruction.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 Exhibit 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)
2390 Clinton Street
Buffalo, New York 14227

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

Purpose of the Project

The purpose is to complete a remediation of the former rail and commercial industrial property into residential housing 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 rail/industrial/commercial which has impacted environmental media. The residential 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 reuse will result in repurposing an existing warehouse/manufacturing facility into 37 market rate apartments and 2,500 square feet of light commercial space as well as approximately 60 parking spaces.

The estimated value of the completed project is approximately \$7,000,000. There will be over 30-50 jobs created during construction and approximately 2-5 permanent jobs after.

Anticipated Remedial Costs

Project will exceed \$470,000 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 1.5 million.

Date Remedial Action to Start

Remedial Action and renovation is anticipated to start in fall to winter 2017-2018.

Date of Anticipated Certificate of Completion

The anticipated date of the certificate of completion is spring to summer of 2018.

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 (Exhibit I) 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.

Property Background/Historical Summary

The 68 Tonawanda Street property is approximately 1.74-acres and located in the Black Rock area of the City of Buffalo. The property 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. Currently the property is owned by 120 Tonawanda Street, Inc. and occupied by Atlas Steel and Steel Crazy Iron Art. The following environmental assessments have been completed on the property:

- “*Phase I Environmental Site Assessment 120 (68) Tonawanda Street and Adjacent Vacant Rail Road Property City of Buffalo, Erie County, New York*” Completed by PEI for Mr. Ed Hogel in February 2013.
- “*Limited Phase II Environmental Site Assessment – 120 (68) Tonawanda Street, Buffalo, New York*” Completed by PEI for Mr. Ed Hogel and Mr. Wayne Bacon, March 2014.
- “*Phase II Environmental Site Assessment – 68 Tonawanda Street, City of Buffalo, Erie County, New York*.” Completed for Mr. Jason Yots and Mr. Karl Frizlen, The Frizlen Group, Architects and Common Bond Real Estate LLC. Completed by PEI/BE3 February 2017

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. Located just north and across Tonawanda Street from the corner of West and Tonawanda Streets, the elongated subject 68 Tonawanda Street property is situated between the active rail lines and Tonawanda Street. The property contains the former ***New York Central Freight House and Office***. The property contains a long narrow 1½-story brick freight house structure. The structure does not contain a basement. The building has been recommended as National Register Eligible for its association with the transportation and industrial history of the City of Buffalo at the local, national and international levels.

Historical information and maps suggest that by 1889 the Black Rock Passenger Station was located in the southern part of the parcel with some sheds and other disconnected buildings including freight platforms and separate smaller freight houses extending north where the freight house is currently. By 1916 the existing freight house building was located on the parcel and rail tracts extended across the adjacent northern rail parcel. A review of 1916 historic maps suggests that the structure included a freight office. The former freight house building is currently being

used by EB Atlas Steel Corp. and Steel Crazy Iron Art which specialize in steel construction, architectural and ornamental metal work.

The structure contains eight separate bays. Floors are cement and lighting is a combination mercury and florescent. Various materials associated with steel construction and architectural art are found throughout the building including steel/metal, various steel working machines, welding equipment etc. Small quantities of paints and lacquers are also contained in the structure in 55-gallon drums or smaller containers. The building uses cooking grease and fry oil as a fuel for heating. This material is contained in 55-gallon drums and other size containers and fed into a heating system. North of the building contains a lay-down area where steel and other materials are stored. This lay-down area extends north onto the adjoining rail parcel. The rail parcel is vacant land beyond the lay-down section. A few 55-gallon drums were observed during the Phase I ESA in the lay-down area and behind the building. The 55-gallon drums at this facility are reportedly associated with three different purposes including storage of the vegetable oil used for heating system or they contain primer paint or sand used in the metal work. A covered section attached to the western side of the building is located along the northern end. This area has steel I-beams and other materials and appears to be used for both storage and manufacturing activities.

The subject parcel has been associated with rail operations since the mid-late 1800's. By the late 1800's the property contained freight platforms and separate freight depots. As a freight depot, much of the raw and manufactured products that supported the surrounding industry and residential community were probably temporarily stored at this location. Materials were on/off loaded from freight trains on the western rail side of the property and off/on loaded to vehicles on the eastern Tonawanda Street side of the property.

Rail tracts are located immediately adjacent to the west and a vacant undeveloped "triangle shaped" area is further west. Immediately south of the property is a vacant residential/restaurant structure and a vehicle repair shop towards the intersection of Niagara and Tonawanda Streets. Historically the property immediately south had a series of small store and residential structures. Tenements were indicated on the southern adjacent property during the early 1900's and by the 1950's these properties were restaurant and filling station/auto repair facilities. The area immediately north was mostly rail with an office and later a restaurant north of Parish Street at Tonawanda Street. Now mostly vacant, major manufacturing complexes including production of paint and lacquers, automotive parts, metal machining, brick and sewer pipe, and steel foundry operations were located east of the property across Tonawanda Street.

The following potential recognized environmental conditions were noted in the Phase I ESA:

- The property has been associated with rail use and freight storage since the mid-late 1800's. In general, railroad operations have historically produced low level contamination of surrounding areas and therefore the possibility of soil contamination associated with the former railroad operations cannot be discounted. Railroad environmental issues sometimes involve diesel fuel and other petroleum products and rail areas have also been associated with other contaminants such as heavy metals, chlorinated hydrocarbons, and PAHs above NYSDEC guidelines. In general, soils at

former rail road property typically consists of fill near the surface which is typically a black cindery fill layer consistent with materials typically found at rail yards including cinder, gravel, coal and sometimes slag. The fill typically contains elevated concentrations of a few PAHs and metals which may slightly exceed the New York State Department of Environmental Conservation (NYSDEC) soil cleanup guidance values. PAH and metal compounds are common constituents of fill material found in urban environments and are typically associated with rail yards and particularly with the cindery fill used at rail yards.

- The Fedders-Quigan Corporation occupied the southern portion of the freight house by at least 1950. The main Fedders complex was located across Tonawanda Street. Indications were that the subject property was used for freight warehousing products/raw materials. It is unknown if Fedders conducted any manufacturing in the subject property.
- The property has been associated with steel fabrication in the recent past. Depending on the extent of the fabrication, various materials such as metal shavings and metallic dust are likely present. Use of metal cleaning/polishing compounds, and abrasives as well as any fuel may have contributed to environmental impacts.
- Soil mounds and a small number of drums were observed in the rear of the property. These reportedly are empty drums that previously contained either paint primer, sand or used cooking grease/vegetable oil.
- Foundry and machine shop operations were located adjacent to the subject property. Environmental impacts associated with these facilities include elevated levels of lead and other metals in soils and wastes associated with slag/foundry sands such as phenols. Other contaminants, including solvents and petroleum products were associated with these adjacent properties. The large Pratt & Lambert paint; resin and lacquer facility which included above ground and underground storage of chemicals and petroleum in numerous tanks, drums and vessels was located adjacent to the property. It is possible that releases from these facilities have impacted area surface and near-surface soils above “normal” urban background with regard to metals and polycyclic aromatic hydrocarbons (PAH) as well as other organic compounds.
- A former Manufacturing Gas Plant (MGP) was located east and nearby the property during the early 1900’s until the 1950’s. Another MGP plant was located southeast across the creek in the early 1900’s. The distance from the subject properties and these facility was most likely too far to have a significant environmental effect on the subject parcels
- The adjacent Fedders complex properties have a history of chemical and petroleum use and storage. Industrial wastes were reported to include solder dross, degreasing still bottoms including trichloroethylene (TCE) and tetrachloroethene compounds, petroleum-based lubricating fluids and other products and wastes. However, it is likely based on topography and groundwater flow that this facility is mostly either cross/down-gradient of the subject properties.
- A gasoline service station and auto repair facility was located adjacent/nearby to the south. However, it is likely based on topography and groundwater flow that this property is cross/down-gradient of the property.

The 68 Tonawanda Street property has a long history of rail and varied commercial/industrial use which includes over 100 years up to its present use as steel fabricating operation. The results of

the Phase II ESA indicate that SVOCs (primarily PAHs) and metal compounds were detected throughout the site at variable levels above residential and restricted residential SCO in the soil fill that pose a potential risk to construction workers and future residents. Additionally, results indicate that volatile compounds and PCB/Pesticides were detected in concentrations below SCO in various locations across the property indicating potential impact from previous property operations. The potential of a petroleum impacted area in the southwest corner of the property was also identified.

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

The Site is located in the City of Buffalo on the west side of Tonawanda Street, Buffalo, New York just north of the corner of West Street and Tonawanda Street and south of the corner of Watts Street and Tonawanda Street (refer to Figures 2a and 2b). The property is approximately 1.74-acres. Please note, the property boundaries correspond to the tax map which lists 1.8 acres as the property size but a recent survey has the property size at 1.74-acres which we have used in this application. The property is in a Brownfield Opportunity Area (**Tonawanda Street Corridor BOA**) and an **En-zone**. Please refer to attached maps including **Figures 2, 3, 4, 5, 6 and 7, which show the property.**

Site Features

The 68 Tonawanda Street property is approximately 1.74-acres and located in the Black Rock area of the City of Buffalo. 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. Located just north and across Tonawanda Street from the corner of West and Tonawanda Streets, the elongated rectangular-shaped subject 68 Tonawanda Street property is situated between the active rail lines and Tonawanda Street. The property contains the former *New York Central Freight House and Office*. This long narrow 1½-story brick freight house structure was constructed in the early 1900s. The structure does not contain a basement. The building has been recommended as National Register Eligible for its association with the transportation and industrial history of the City of Buffalo at the local, national and international levels.

Current Zoning and Land Use

The property is currently partially utilized and the property and general area 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. The property contains the long narrow 1½-story brick freight house structure which was constructed in the early 1900s. The former freight house building is currently being used by EB Atlas Steel Corp. and Steel Crazy Iron Art which specialize in steel construction, architectural and

ornamental metal work. The structure contains eight separate bays. Floors are cement and lighting is a combination mercury and florescent. Various materials associated with steel construction and architectural art are found throughout the building including steel/metal, various steel working machines, welding equipment etc. Small quantities of paints and lacquers are also contained in the structure in 55-gallon drums or smaller containers. The building uses cooking grease and fry oil as a fuel for heating. This material is contained in 55-gallon drums and other size containers and fed into a heating system. North of the building contains a lay-down area where steel and other materials are stored. This lay-down area extends north onto the adjoining rail parcel. The rail parcel is vacant land beyond the lay-down section. A few 55-gallon drums were observed during the Phase I ESA in the lay-down area and behind the building. The 55-gallon drums at this facility are reportedly associated with three different purposes including storage of the vegetable oil used for heating system or they contain primer paint or sand used in the metal work. A covered section attached to the western side of the building is located along the northern end. This area has steel I-beams and other materials and appears to be used for both storage and manufacturing activities.

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 subject parcel has been associated with rail operations since the mid-late 1800's. By the late 1800's the property contained freight platforms and separate freight depots. As a freight depot, much of the raw and manufactured products that supported the surrounding industry and residential community were probably temporarily stored at this location. Materials where on/off loaded from freight trains on the western rail side of the property and off/on loaded to vehicles on the eastern Tonawanda Street side of the property. Historical information and maps suggest that by 1889 the Black Rock Passenger Station was located in the southern part of the parcel with some sheds and other disconnected buildings including freight platforms and separate smaller freight houses extending north where the freight house is currently. By 1916 the Freight house building was located on the parcel and rail tracts extended across the adjacent northern rail parcel. A review of 1916 historic maps suggests that the structure included a freight office.

Site Geology and Hydrogeology

In general, the more than a century of intense industrialization has altered the natural setting throughout the entire property and the area can best be described as highly disturbed. Based on the borings, field observations indicated that urban fill material (fill) exists at the property to a depth that varies from about two (2) to six feet (6) below ground surface (bgs) with fill below these depths observed in the mid to southern end of the property. Fill was deepest in borehole BH-4 where fill may be as deep as eleven (11) feet bgs. Both BH-4 and BH-9A encountered soil impacted with petroleum compounds especially at the six to eight foot depth. The property owner indicated that fill may be deep in places and that buried rail lines are located along the building associated with the off- and on-loading of freight. The fill mainly consisted of black and grey ash/cherty sand and gravel with some silt, sand, wood, brick and cement. 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).

Environmental Assessment

The 68 Tonawanda Street property has a long history of rail and varied commercial/industrial use which includes over 100 years up to its present use as steel fabricating operation. The Phase II ESA was limited in the number of soil borings and samples collected. Additional sampling and more wide-spread environmental assessment may result in additional elevated concentrations of compounds being detected. Soil – The results of the Phase II ESA indicate that SVOCs (primarily PAHs) and metal compounds were detected throughout the site at variable levels above residential and restricted residential SCOs in the soil fill that pose a potential risk to construction workers and future residents. Additionally, results indicate that volatile compounds and PCB/Pesticides were detected in concentrations below SCOs in various locations across the property indicating potential impact from previous property operations. The potential of a petroleum impacted area in the southwest corner of the property was also identified. Groundwater & Soil Vapor – groundwater and soil vapor have not been investigated but property contaminants and operations certainly may have impacted groundwater and may represent a vapor intrusion issue. These will be investigated during the RI portion of the BCP. Refer to Figure 6 and Exhibit I (Phase I and Phase II results)

EXHIBIT E

Section VI. Current Property Owners/Operator Information

Exhibit E

Section VI. Current Property Owner/Operator Information

The Current Owner

120 Tonawanda Street Inc
SBL: 88.50-2-1.2

Tax bills are being sent to at attention to E.B. Atlas Steel Corp., 120 Tonawanda St., Buffalo NY 14207. Mr. Edward Hogel is the president and Mr. Brian Hogel is the Vice President of 120 Tonawanda Street Inc and are the main contacts for E. B. Atlas Steel.

Mr. Edward Hogle
President, 120 Tonawanda Street Inc
495 Niagara Street
Tonawanda, New York 14150
716-876-0900

And

Mr. Brian Hogel
Vice President, 120 Tonawanda Street Inc
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

<u>Liber</u>	<u>Page</u>	<u>Sale Date</u>	<u>From</u>	<u>To</u>
9208	631	12-16-1982	Consolidated Rail Corporation	Nichter Associates, Inc.
9317	44	2-24-1984	Nichter Associates, Inc.	120 Tonawanda Street, Inc.

Historic Ownership/Operators

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

1) Nichter Associates– 1982-1984
26 Arthur Street
Buffalo, New York 14207
Domoinic J. Sapone – Vice President
Current Phone number unknown

2) Consolidated Rail Corporation (Conrail)

Six Penn Center Plaza
Philadelphia, PA. 19103
Telephone: (215) 977-4000

Consolidated Rail Corporation--best known as Conrail--was formed by the U.S. government out of six bankrupt railroads serving the northeastern United States. Conrail began operations in 1976. Between 1967 and 1972, six significant northeastern railroads went bankrupt: Central Railroad of New Jersey; Penn Central Transportation Company--created from the 1968 merger of Pennsylvania Railroad and New York Central Railroad; Lehigh Valley Railroad Company; Reading Company; Lehigh & Hudson River Railway Company; and Erie Lackawanna Railway Company. The roots of these companies stretched back as far as 1826.

Property Historical Use Summary

1984-Present – 120 Tonawanda Street, Inc. – Atlas Steel and Steel Crazy Iron Art
1983 – 1984 Nichter Associates, Inc.
1800's-1984 - Railroad

Detail

1889-1900 - The Black Rock Passenger Station and sheds were located on the southern part of the property adjacent to Dearborn Street. The property north along Tonawanda Street had rail tracks and freight platforms. Two small separate freight depots were located on the northern subject rail parcels

1916 -The New York Central Freight Station and rail tracts were located on the subject properties along Tonawanda Street. A freight office was at the southern end of the subject property at Dearborn and Tonawanda Streets.

1950 - The New York Central Freight Station and rail tracts were located on the subject properties along Tonawanda Street. A freight office was located at the southern end of the subject property at Dearborn and Tonawanda Streets. The freight house was occupied by the Fedders-Quigan Corporation for raw product warehousing in the southern portion and the Railway express agency was located in the very northern portion.

1981-1986 – The New York Central Freight Station and rail tracts were located on the subject properties along Tonawanda Street. A freight office was at the southern end of the subject property at Dearborn and Tonawanda Streets. The freight house was occupied by the Fedders-Quigan Corporation for raw product warehousing in the southern portion and the Railway express agency was located in the very northern portion in 1981 and both as vacant by 1986.

Nichter Associates purchased the property from the railroad in 1982.

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 following is a statement describing why the requestor should be considered a volunteer with specifics as to the appropriate care taken with respect to the chemical impacts found at the property:

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;
- Completing a Phase II which identified chemical release concerns;
- Completed some follow-up environmental assessments to gain some insight into the extent of the 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. 120 Tonawanda Street, 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, 120 Tonawanda Street, 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

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.

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 – (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

Note property is for sale/vacant

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

Note, these properties are vacant land

31 Tonawanda Street LLC (31 Tonawanda Street – 88.58-1-1)

148 Middlesex Road
Buffalo, New York 14216

Note, this property is vacant/under re-development

105 Tonawanda Street (105 Tonawanda Street – 88.50-1-11 and 0 Tonawanda Street (88.50-2-1.12 and 88.42-2-4.2)

Black Rock Rail, LLC

148 Middlesex Road
Buffalo, New York 14216

Note these properties are vacant lands.

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

Note, this property is vacant land

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

Buffalo Business Interiors
111-117 Tonawanda Street
Buffalo, New York 14207

Clinton Holcomb (1675 Niagara Street - 88.58-4-1.1)

Free Will Rental
1675 Niagara Street
Buffalo, New York 14207

And

Ministry Body of Christ
Pastor Timothy Gakodi

1675 Niagara 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

Note, this property is rail

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

Note, 1701 Niagara St. is occupied by Dival Safety below and 69 Wayne Street is vacant land

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

1701 Niagara Street
Buffalo New York 14207

Fred C Rumsey (1679 Niagara – 88.49-2.6)

Hudson Rumsey Company, Inc.
1679 Niagara Street
Buffalo, New York 14207

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

Note, these properties are for sale/not occupied

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

6225 Carmel Road
Charlotte, NC 28277

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: Niagara County Bureau - 849-4601

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

68 Tonawanda Street property meets the definition of a brownfield site under ECL Section 27-1405(2). The industrial operations at the property and nearby properties have impacted the areas environmental media. The confirmed contamination is both impacting and complicating the development and re-use of the property. The metals and PAHs found during the limited investigations to date and the history of industrial use including rail and manufacturing which 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 Site is currently utilized as an industrial/manufacturing facility. The planned use is residential housing. The City of Buffalo has recently adopted a revised Unified Development Ordinance that designates the Site N-1S (Secondary Employment Area). 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.

2. Current use

Currently the property is utilized as an industrial/manufacturing use. Currently the property is occupied and owned by the 120 Tonawanda Street, LLC and is being used for steel fabricating and iron art - EB Atlas Steel Corp. and Steel Crazy Iron Art which specialize in steel construction, architectural and ornamental metal work. Past uses of portions of the property include rail and rail depot.

The historic use and potential contaminant sources are summarized in Exhibits B and D which include dates and documentation when the previous operations ceased.

3. Reasonably anticipated use Post Remediation

The reuse will result in repurposing an existing warehouse/manufacturing facility into 37 market rate apartments and 2,500 square feet of light commercial space as well as approximately 60 parking spaces.

The estimated value of the completed project is approximately \$7,000,000. There will be over 100 jobs created during construction and approximately 15 permanent jobs after.

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 68 Tonawanda Street particularly attractive. The project area and scope fits well within The New York State Brownfield Opportunity Area (BOA) Program. The property is within **the Tonawanda Street Corridor BOA** which is at step 2 in the BOA process. 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 for housing. 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

Phase I Environmental Site Assessment- (“Phase I Environmental Site Assessment 120 (68) Tonawanda Street and Adjacent Vacant Rail Road Property City of Buffalo, Erie County, New York” Completed by PEI for Mr. Ed Hogel in February 2013).

Phase II Environmental Site Assessment- “Phase II Environmental Site Assessment 68 Tonawanda Street, Buffalo, Erie County New York” Completed by PEI/BE3 for Mr. Jason Yots & Mr. Karl Frizlen - The Frizlen Group, Architects and Common Bond Real Estate LLC, 221 Bedford Avenue, Buffalo, NY 14216. February 2017

Please see separate electronic file copies of Phase I and Phase II reports. These are contained on a disk in the back pocket of the hard copy and as separate electronic files on the electronic BCP application disks

FIGURES

Figure 1

New York State Printout of Entity

ACKNOWLEDGEMENT COPY
ARTICLES OF ORGANIZATION
OF
Buffalo Freight House LLC

Under Section 203 of the Limited Liability Company Law

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age, and acting as the organizer of the limited liability company hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York certifies that:

FIRST: The name of the limited liability company is:

Buffalo Freight House LLC

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

THIRD: 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:

Buffalo Freight House LLC
221 Bedford Ave.
Buffalo, NY 14216

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.

Jason Yots, Member (signature)

Jason Yots , ORGANIZER
221 Bedford Ave.
Buffalo, NY 14216

Filed by:
Richard Rogers
104 Prospect Ave.
Lower
Buffalo, NY 14216

ONLINE FILING RECEIPT

=====

ENTITY NAME: BUFFALO FREIGHT HOUSE LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM. LLC)

COUNTY: ERIE

=====

FILED:03/02/2017 DURATION:***** CASH#:170302010335 FILE#:170302010335
DOS ID:5095107

FILER:

EXIST DATE

RICHARD ROGERS
104 PROSPECT AVE.
LOWER
BUFFALO, NY 14216

03/02/2017

ADDRESS FOR PROCESS:

BUFFALO FREIGHT HOUSE LLC
221 BEDFORD AVE.
BUFFALO, NY 14216

REGISTERED AGENT:



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 to provide an email address to receive an email notification when the Biennial Statement is due.

=====

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

FEE:	200.00	PAYMENTS	200.00
	-----		-----
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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DOS-1025 (04/2007)

Authentication Number: 1703020333 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

Figures 2a and 2b

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

Figure 2: Property Location - USGS 7.5 Minute Quad Map

Source: Buffalo NW, NY - Ont. quadrangle, USGS 7.5-minute series, 1965

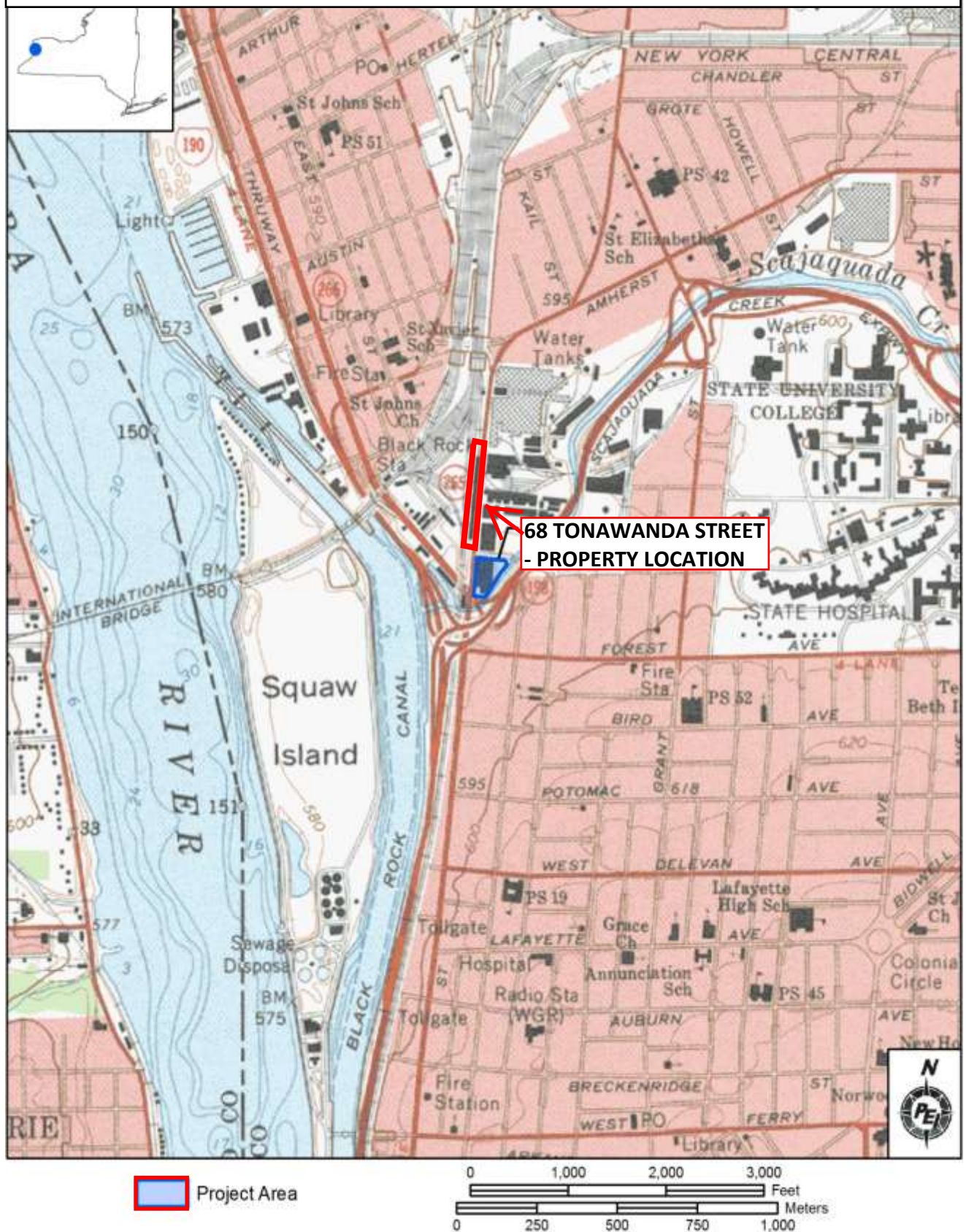




Figure 2b: Property location on Aerial
Source Bing Maps - Bird's-eye

Figures 3a and 3b

Tax Map & Enzone

Figure 3a: Tax Map

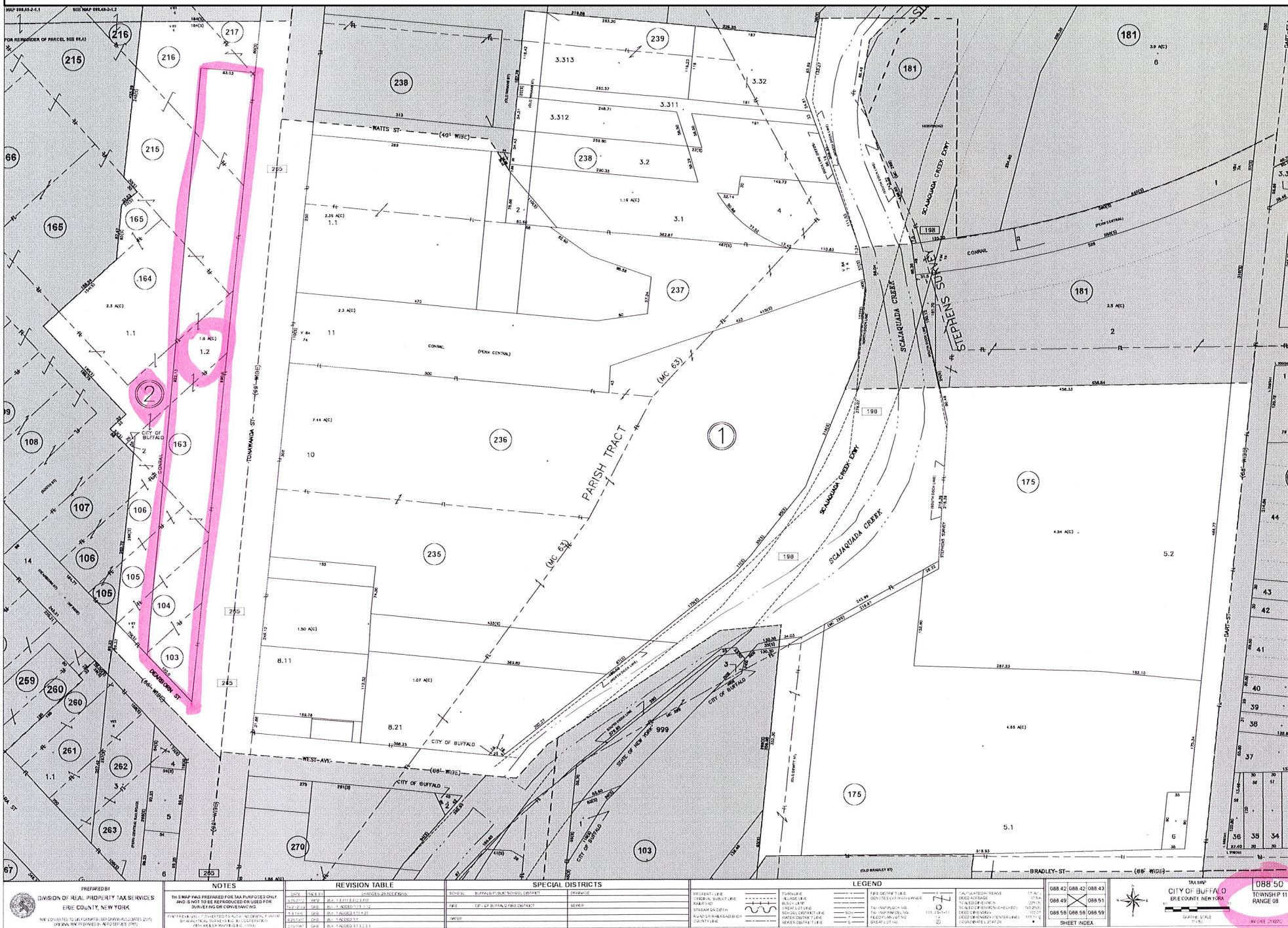
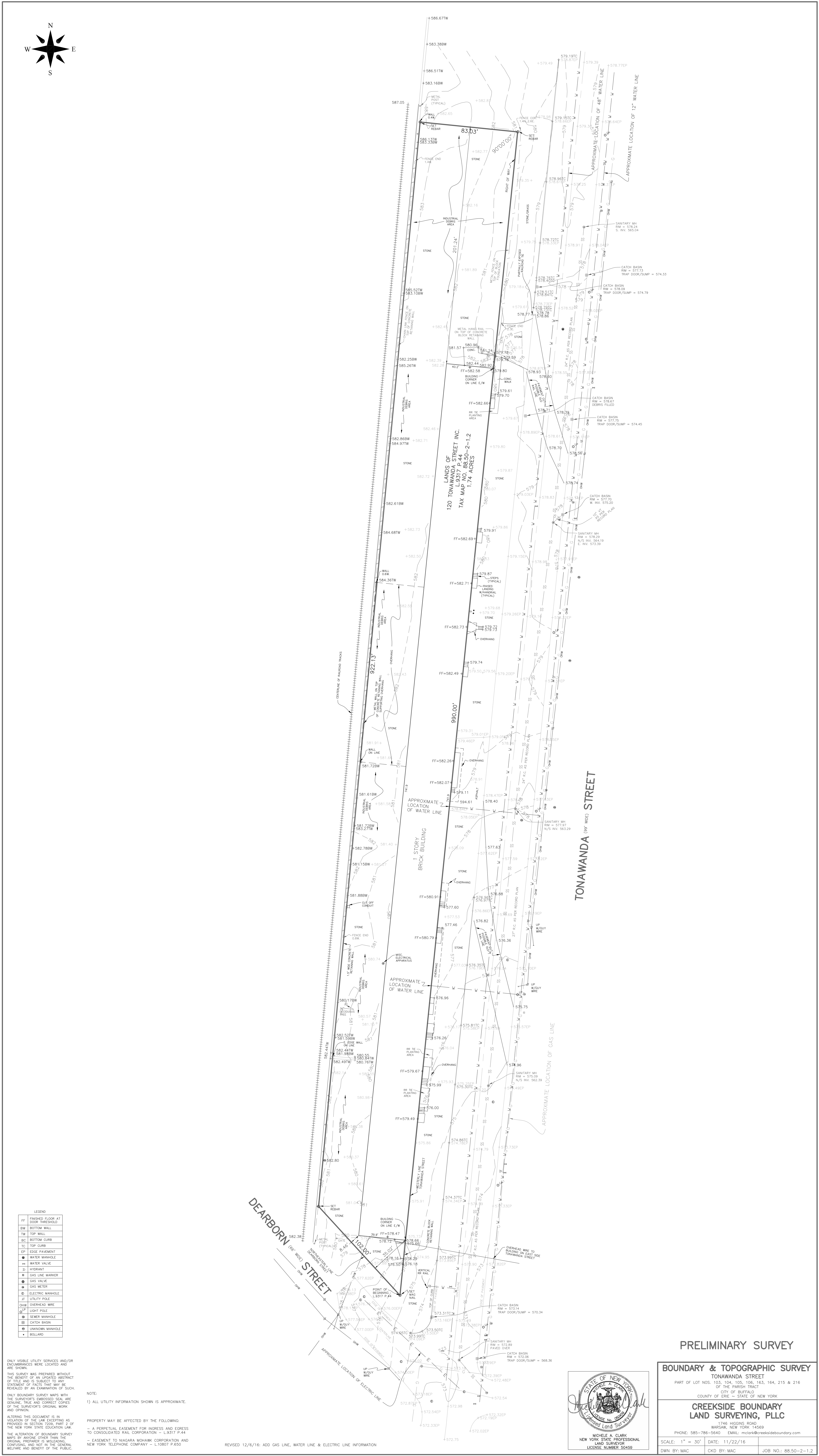




Figure 3b : Property Location in Census Tract 59
Enzone designation AB

Figure 4

Site Boundary Survey Map



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

0 376.17 752.3Feet

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: 4,514



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



Erie County On-Line Mapping Application



Legend

- Parcels
- Municipal Boundaries
- 2014_bdy

0 376.17 752.3Feet

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: 4,514



Figure 6

**Site Map Showing Impacts/Soil Results and Lab
Data Summary Table**



Figure 6: Approximate Location of Bore Holes and Sample Results With Results Above Guidance Values

Key: ● **BH-1** Borehole/Sample Location - 2014 Event
● **BH-1A** Borehole/Sample Location - 2017 Event

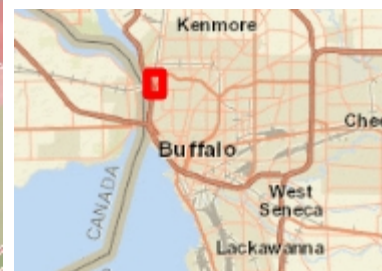
TABLE 1 - 68 TONAWANDA STREET - PHASE 2 ESA SOIL SAMPLE ANALYTICAL RESULTS SUMMARY														
Sampling Program	PEI - Phase 2 ESA SOIL BORING SAMPLING PROGRAM													
Sample Number	BH 3	BH 4	BH 9	BH 1A	BH 2A	BH 4A	BH 5A	BH 6A	BH 8A	BH 9A	NYSDEC	NYSDEC	NYSDEC	NYSDEC
Sample Date	3/5/2014	3/5/2014	3/5/2014	1/26/2017	1/26/2017	1/26/2017	1/26/2017	1/26/2017	1/26/2017	1/26/2017	PART 375	PART 375	CP-51	CP-51
Sample depth (bgs)	0' - 2'	5' - 6'	3' - 4'	1' - 4'	1' - 3'	1' - 6'	1' - 6'	0' - 3'	0' - 4'	6' - 8'	Residential	Restrict Res	Residential	Fuel Oil
Compounds	ppm	ppm	ppm	ppm	ppm	ppm	ppm	ppm	ppm	ppm	(a)	(b)	(c)	(d)
Metals														
Mercury	0.2	0.03	0.3	0.09	0.31	0.14	0.38	0.052	ND	0.207	0.81	1	NA	NA
Arsenic	6.70	3.7	13.8	4.83	10.3	6.93	25.7 (a) (b)	14.7	1.27	9.89	16	16	NA	NA
Barium	78.3	85	58.9	42.3	138	48.2	94.4	528	ND	82.4	350	400	NA	NA
Beryllium	ND	ND	ND	0.26	0.57	NA	0.67	ND	ND	1.55	14	72	NA	NA
Cadmium	ND	ND	ND	0.627	1.14	1.23	6 (a)(b)	11.7 (a)(b)	0.356	1.07	2.5	4.3	NA	NA
Chromium	85.7 (a)	13.4	17.6	7.57	14.8	17.1	15.1	191 (a) (b)	161 (a)	12	36	180	NA	NA
Copper	1960 (a) (b)	690 (a) (b)	829 (a)(b)	40.2	67.4	35.5	139	455 (a) (b)	161	224	270	270	NA	NA
Lead (Axial)	221.0	65.7	88.6	80.8	428 (a)(b)	183	189	355	4.93	117	400	400	NA	NA
Magnesium	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	N/A	N/A	NA	NA
Manganese	448	140	285	110	261	430	318	2090 (a) (b)	297	371	2000	2000	NA	NA
Nickel	45.9	16	14.4	8.31	15.2	9.64	27.6	153 (a)	71.7	9.02	140	310	NA	NA
Selenium	ND	ND	ND	2.5	3.96	5.75	6.59	26.8	ND	3.75	36	180	NA	NA
Silver	ND	ND	ND	0.66	1.1	ND	3.22	ND	ND	ND	36	180	NA	NA
Zinc	228	296	149	96	165	193	1450	3960 (a)	112	118	2200	10000	NA	NA
Total Cyanide	NA	NA	NA	ND	ND	0.548	ND	ND	ND	ND	27	27	NA	NA
PCBS														
PCB-1248	0.3	ND	ND	0.1	ND	ND	0.566	ND	ND	ND	1	1	NA	NA
PCB-1260	0.3	ND	ND	0.1	ND	5.52 (a)(b)	ND	0.698	ND	ND	1	1	NA	NA
Pesticides														
4,4-DDT	ND	ND	ND	0.016	ND	0.48	0.045	0.049	ND	ND	1.7	7.9	NA	NA
Aldrin	ND	ND	ND	0.005	ND	ND	0.004	ND	ND	ND	0.019	0.097	NA	NA
alpha-BHC	ND	ND	ND	0.003	ND	ND	ND	ND	ND	ND	0.097	0.48	NA	NA
beta BHC	ND	ND	ND	ND	ND	ND	ND	0.008	ND	ND	0.072	0.36	NA	NA
delta BHC	ND	ND	ND	0.004	ND	ND	ND	0.029	ND	ND	100	100	NA	NA
Endosulfan I	ND	ND	ND	0.004	ND	ND	ND	ND	ND	ND	4.8	24	NA	NA
Endosulfan II	ND	ND	ND	ND	ND	0.033	0.014	0.014	ND	ND	4.8	24	NA	NA
Endosulfan Sulfate	ND	ND	ND	0.019	ND	0.086	0.049	0.05	ND	0.007	4.8	24	NA	NA
Lindane	ND	ND	ND	0.014	ND	ND	ND	0.007	ND	0.01	0.28	1.3	NA	NA
Dieldrin	ND	ND	ND	0.007	ND	0.037	0.009	0.01	ND	0.004	0.039	0.2	NA	NA
Endrin	ND	ND	ND	0.009	ND	0.4	0.036	0.005	ND	ND	2.2	11	NA	NA
VOCs														
Acetone	ND	ND	ND	0.9	1.19	0.114	ND	ND	ND	ND	100	100	NA	NA
Carbon disulfide	ND	ND	ND	ND	ND	0.0069	ND	ND	ND	ND	NA	NA	100	NA
Naphthalene	ND	ND	ND	0.02	0.96	0.092	ND	ND	ND	ND	100	100	NA	12
m, p Xylene	ND	ND	ND	ND	ND	0.00766	ND	ND	ND	ND	100	100	NA	0.26
n-Butylbenzene	ND	0.5	ND	ND	ND	ND	ND	ND	ND	0.398	NA	ND	NA	12
n-propylbenzene	ND	0.2	ND	ND	ND	ND	ND	ND	ND	0.14	100	100	NA	3.9
Isopropylbenzene	ND	ND	ND	ND	ND	ND	ND	ND	ND	0.0526	NA	NA	100	2.3
Toluene	ND	ND	ND	ND	ND	0.0108	ND	ND	ND	ND	100	100	NA	0.7
Sec-Butylbenzene	ND	0.2	ND	ND	ND	ND	ND	ND	ND	0.19	100	100	NA	11
1,2,4 Trimethylbenzene	ND	1.7	ND	ND	ND	ND	ND	ND	ND	0.428	47	52	NA	3.6
1,3,5 Trimethylbenzene	ND	ND	0.4	ND	ND	ND	ND	ND	ND	ND	47	52	NA	8.4
TICs (Total)	0.03	66.9	128.4	ND	ND	ND	ND	ND	ND	35.9	N/A	N/A	NA	NA
SVOCs														
Anthracene	ND	ND	ND	5.3	2.00	ND	ND	ND	ND	ND	100	100	NA	NA
Benzo(a)anthracene	1.3 (a)(b)(d)	ND	ND	16.2(a)(b)(d)	ND	ND	1.130(a)(b)(d)	0.371	ND	0.419	1	1	NA	1
Benzo(a)pyrene	1.4 (a)(b)(d)	ND	ND	18.9(a)(b)(d)	ND	ND	0.782	0.317	ND	0.368	1	1	NA	1
Benzo(b)fluoranthene	1.1 (a)(b)(d)	ND	ND	19.9(a)(b)(d)	ND	ND	0.885	0.399	ND	0.417	1	1	NA	1
Benzo(g,h,i)perylene	1	ND	ND	13.5	ND	ND	0.544	0.403	ND	ND	100	100	NA	100
Benzo(k)fluoranthene	1.1 (a)(d)	ND	ND	9.9(a)(b)	ND	ND	0.555	ND	ND	ND	1	3.9	NA	0.8
Carbazole	ND	ND	ND	3.4(a)(b)	ND	ND	ND	ND	ND	ND	NA	NA	NA	NA
Chrysene	1.4 (a)(d)	ND	ND	17.5(a)(b)(d)	ND	ND	1.07 (a)(d)	0.385	ND	0.42	1	3.9	NA	1
Bis (2-ethylhexyl) phthalate	12	ND	ND	ND	ND	ND	ND	0.475	ND	ND	NA	NA	NA	50
Dibenzofuran	ND	ND	ND	ND	1.8	ND	ND	ND	ND	ND	NA	NA	NA	NA
2-methyl-naphthalene	ND	4.8 (c)	ND	ND	2.7 (c)	ND	ND	ND	ND	ND	NA	NA	0.41	NA
Fluoranthene	2.8	ND	ND	47.4	3.34	ND	2.49	0.711	ND	0.752	100	100	NA	NA
Fluorene	ND	ND	ND	ND	2.1	ND	ND	ND	ND	ND	100	100	NA	NA
Indeno(1,2,3-cd)pyrene	1.1 (a)(b)	ND	ND	ND	ND	ND	0.554	0.402	ND	ND	0.5	0.5	NA	NA
Phenanthrene	1.9	4.4	ND	23.2	5.00	ND	1.2	ND	ND	0.792	100	100	NA	NA
Pyrene	2.4	ND	ND	38.4	2.5	ND	1.71	0.483	ND	0.641	100	100	NA	NA
TICs (Total)	17.9	167.5	515	ND	ND	ND	ND	ND	ND	ND	N/A	N/A	NA	NA

ND - Non-Detect NA - Not Available
Shaded Value - Exceeds Part 375 and/or CP-51 SCOs
TICs - Tentatively Identified Compounds

Figure 7

Zoning Map

Figure 7: Zoning Map



Legend

- Council Districts
- Erie County Municipal Boundaries
- 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



0.1 0 0.07 0.1 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere
MIS Department, City of Buffalo

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.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Figure 8

Property Boundary & Adjacent Property Owners

Figure 8: Proposed Brownfield Property Boundary Lines & Adjacent Property Owners

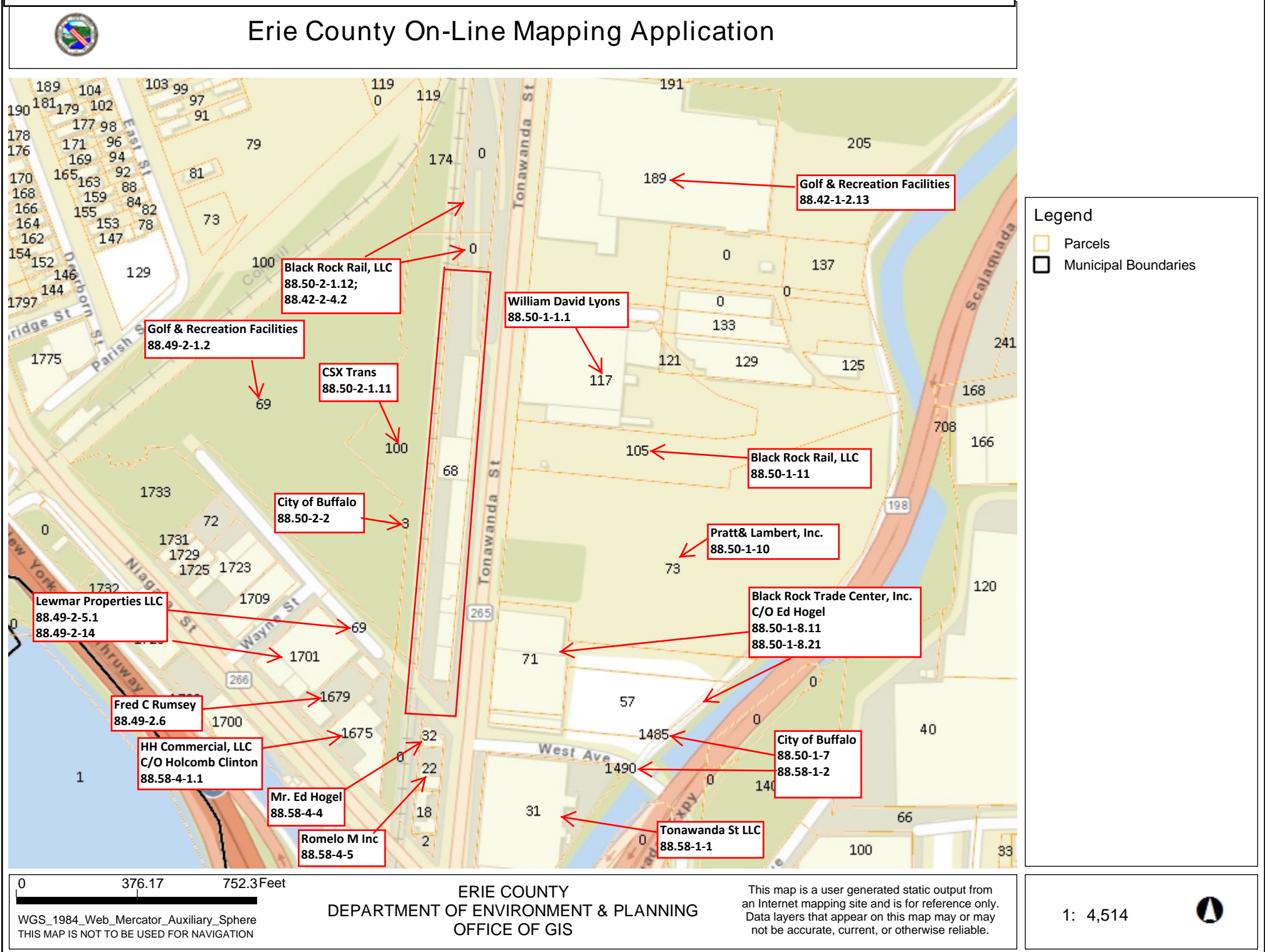


Figure 9

Library Letter

Figure 9: Library-Document Repository Letter

Panamerican Environmental, Inc.
2390 Clinton Street
Buffalo, New York 14227
Tel: (716) 821-1650
Fax: (716) 821-1607

PANAMERICAN

March 6, 2017

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

Re: BCP Application – 68 Tonawanda Street Project – 68 Tonawanda Street, Buffalo, New York

Dear Ms. Muscarella:

Buffalo Freight House 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 68 Tonawanda Street, Buffalo, New York. On behalf of the project applicant, Buffalo Freight House 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 2018.

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 716-821-1650.

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

Riverside Branch Library accepts the role of Public Repository

Accepted by:

Patti S. Foley
Name

Riverside Branch Library
Library Name

Manager-Librarian
Title

3/6/2017
Date

Figure 10

Proof of Site Access

CERTIFICATION

Date: March 1, 2017

Property Address: 68 Tonawanda St, Buffalo, NY 14207

Property Owner Name: 120 Tonawanda Street, Inc.

Property Owner Address: 68-120 Tonawanda Street, Buffalo NY

BCP Applicant Name: Buffalo Freight House LLC

BCP Project Number: C915316

The undersigned hereby certified as follows:

- 1.) I am duly authorized to furnish this Certification on behalf of 120 Tonawanda Street, Inc. (the "Owner").
- 2.) As of the date hereof, the Owner is the fee simple owner of the property located at 68 Tonawanda St, Buffalo, NY 14207 (the "Property").
- 3.) The Owner is aware that (a) Buffalo Freight House LLC (the "Applicant") is filing a Brownfield Cleanup Program Application ("BCPA") relating 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 purposes 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 WHEREOF, this Certification has been duly executed and delivered as of the date set forth above.

120 TONAWANDA STREET, INC.

By: Brian Hogle
Name: BRIAN HOGLE
Title: Vice President