

PERIODIC REVIEW REPORT

APRIL 18, 2021 TO APRIL 18, 2022
68 TONAWANDA STREET

SITE # 915316
68 TONAWANDA STREET
BUFFALO, NEW YORK 14207

Prepared for:

BUFFALO FREIGHT HOUSE, LLC
221 BEDFORD AVENUE
BUFFALO, NEW YORK 14216

Prepared by:



960 Busti Avenue
Suite B-150
Buffalo, New York 14213

June 2022

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1.0 EXECUTIVE SUMMARY

BE3 Corp (BE3) has prepared this Periodic Review Report (PRR), on behalf of Buffalo Freight House, LLC. to summarize the post-remedial status of the New York State Department of Environmental Conservation (NYSDEC) Brownfield Cleanup Program (BCP) at 68 Tonawanda Street (Site). The BCP site number is C915316.

This PRR has been prepared in accordance with NYSDEC DER-10 *Technical Guidance for Site Investigation and Remediation* (May 2010) and the NYSDEC's Institutional and Engineering Controls (IC/EC) Certification Form has been completed for the Site and provided in **Appendix A**.

This PRR has also been completed per the requirements stipulated in the approved Site Management Plan (SMP) dated December 2019 and describes any post-remedial activities conducted on-site during the April 18, 2021 through April 18, 2022 reporting period.

1.1 SITE BACKGROUND

The 68 Tonawanda Street site is a 1,740-acre site located at 68 Tonawanda Street in the City of Buffalo. The site is located within the City of Buffalo Tonawanda Street Corridor Brownfield Opportunity Area (BOA). The Site boundaries and survey maps are provided in **Appendix B – Environmental Easement**. The as-built Site cover system is shown on **Figure – C2.0**.

The area and Site have a long historic commercial and industrial use. Commercial/industrial 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 site is situated between active rail lines and Tonawanda Street. The site contained 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 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. The building was renovated as part of the re-development that occurred at the same time as the BCP remediation.

1.2 COMPLIANCE/RECOMMENDATIONS

All elements of the IC/EC Plan of the SMP were in compliance for the reporting period. Since compliance with the IC/EC and SMP have been met for this and previous reporting periods the site owner requests that future site inspections and submission of PRRs be terminated.

2.0 SITE OVERVIEW AND REMEDIATION

2.1 DESCRIPTION OF SELECTED FINAL REMEDY

Contaminated Materials Removal

A Track 4 cleanup was implemented based on the site-specific intended land use as indicated in **Figure C1.0** Architectural Site Plan. A minimum of one (1) foot of impacted soil was removed from all designed paved areas (roadways/parking) and two (2) feet removed from all designated greenspace areas and replaced with clean fill/topsoil. Figure C2.0 indicates the areas where impacted soil was removed and the as-built cover system installed. The As-built cover system and areas excavated are shown on **Figure C2.0**.

Underground Storage Tank (UST) Removal

An abandoned 1,000-gallon Underground Storage Tank (UST) was uncovered and removed from the southwest corner of the property (see **Figure C2.0** for location). Along with the UST approximately 30-40 Tons of impacted soil was removed for off-site disposal.

Cover [or Cap] System

Exposure to remaining contamination in soil/fill at the site is prevented by a soil cover system placed over the site. This cover system is comprised of a minimum of 24 inches of clean soil, asphalt pavement, concrete-covered sidewalks, and concrete building slabs. **Figure C2.0** shows the location of each cover type built at the Site.

2.2 NATURE AND EXTENT OF CONTAMINATION REMAINING AT SITE

Beneath the cover system (clean fill or hardscape) remains a certain amount of impacted soils consisting of primarily elevated metal and SVOCs (PAHs) compounds with minimum PCB impacts that exceed Part 375-6.8 Restricted Residential SCOs. A geofabric demarcation layer has been placed directly beneath the cover system to delineate the cover system from any remaining impacted soil.

Figures 3a and 3b provide soil sample results that exceed Unrestricted Use SCOs and the Restricted Residential SCOs respectively of the remaining soil contamination at the site below the cover system after completion of remediation. **Figure C2.0** shows the detailed cover system.

3.0 ENGINEERING AND INSTITUTIONAL CONTROLS

3.1 GENERAL

Since remaining contamination exists at the site, Institutional Controls (ICs) and Engineering Controls (ECs) are required to protect human health and the environment. The IC/EC Plan is one component of the SMP/EE and is subject to revision by the NYSDEC.

3.2 INSTITUTIONAL CONTROLS

A series of ICs is required by the SMP to: (1) implement, maintain and monitor Engineering Control systems; (2) prevent future exposure to remaining contamination; and, (3) limit the use and development of the site to restricted residential, commercial or industrial uses only. Adherence to these ICs on the site is required by the Environmental Easement and implemented under the SMP. ICs identified in the Environmental Easement may not be discontinued without an amendment to or extinguishment of the Environmental Easement. These ICs are:

- The property may be used for: to restricted residential, commercial or industrial use;
- All ECs must be operated and maintained as specified in the SMP;
- All ECs must be inspected at a frequency and in a manner defined in the SMP;
- The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Erie County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

- Data and information pertinent to site management must be reported at the frequency and in a manner as defined in the SMP;
- All future activities that will disturb remaining contaminated material must be conducted in accordance with the SMP;
- Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;
- Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by the Environmental Easement; and
- Vegetable gardens and farming on the site are prohibited.

The ICs identified are provided in the **Appendix B** - Environmental Easement and Boundary Survey Maps.

3.3 ENGINEERING CONTROLS

3.3.1 Cover System

Exposure to remaining contamination in soil/fill at the site is prevented by a cover system placed over the site. This cover system is comprised of a minimum of 24 inches of clean soil, asphalt pavement, concrete-covered sidewalks, and concrete building slabs. **Figure C2.0** shows the location of each cover type built at the Site. An Excavation Work Plan, which outlines the procedures required in the event the cover system and/or underlying residual contamination are disturbed, is provided in the SMP.

3.3.2 Sub-Slab Depressurization System (SSDS)

A SSDS was installed during the re-development of the existing site building in accordance with the NYSDOH Soil Vapor Intrusion Guidance. **Figure SK-05** depicts the construction details of the SSDS during the building re-development. No active system at 68 Tonawanda and the system is working passively, therefore no fans and no manometer required.

A soil vapor intrusion evaluation will be required for any new future buildings constructed on the site.

Monitoring and sampling the SSDS are not required by the SMP for this reporting period. However, annual inspections and routine maintenance of the system are required. During routine maintenance and/or inspections, the following activities are recommended:

- A visual inspection of the complete system (e.g., vent fan, piping, warning device or indicator, labeling on systems, soil vapor retarder integrity, etc.);
- Identification and repair of leaks per the NYSDOH Guidance; and,
- Inspection of the exhaust or discharge point to verify no air intakes have been located nearby.

4.0 SITE EVALUATION

4.1 SITE WIDE INSPECTION

A Site Wide Inspection was completed by BE3 on April 15, 2022. The results of the inspection are provided in BE3's Site Wide Inspection Form and site photographs are provided in **Appendix C**. The inspection concluded that the Site was in compliance with all SMP IC/EC.

4.2 COVER PERFORMANCE SUMMARY

The cover system has not been disturbed since initially placement. The soil cover and grass areas are well maintained. Concrete and asphalt areas are well maintained and undisturbed. No excavations into the cover system have occurred since initial placement. For further details see the Site Wide Inspection Form and Site photographs are provided in **Appendix C**.

4.3 SSDS PERFORMANCE SUMMARY

As noted in Section 3.3.2, monitoring and sampling the SSDS are not required by the SMP for this reporting period. However, during the Site Wide Inspection a visual inspection of the SSDS was conducted and found to be in compliance with SMP requirements including; no identification and/or repair of leaks per the NYSDOH Guidance have been required and verification that no air intakes have been located nearby the system exhaust/discharge point.

5.0 CONCLUSIONS

All components of the SMP (IC/EC) were in compliance with SMP requirements during the reporting period as follows:

Cover System – The cover system has not been disturbed since initially placement. The soil cover and grass areas are well maintained. Concrete and asphalt areas are well maintained and undisturbed.

SSDS – The SSDS system was inspected during the Site Wide Inspection with no problems noted. There has been no changes or maintenance required to the system during the reporting period.

6.0 CERTIFICATION OF ENGINEERING AND INSTITUTIONAL CONTROLS

Below is the signed certification as required by section 7.2 of the SMP.

For each institutional or engineering control identified for the site, I certify that all of the following statements are true:

- The inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under my direction;
- The institutional control and/or engineering control employed at this site is unchanged from the date the control was put in place, or last approved by the Department;
- Nothing has occurred that would impair the ability of the control to protect the public health and environment;
- Nothing has occurred that would constitute a violation or failure to comply with any site management plan for this control;
- Access to the site will continue to be provided to the Department to evaluate the remedy, including access to evaluate the continued maintenance of this control;

- If a financial assurance mechanism is required under the oversight document for the site, the mechanism remains valid and sufficient for the intended purpose under the document;
- Use of the site is compliant with the environmental easement;
- The engineering control systems are performing as designed and are effective;
- To the best of my knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program and generally accepted engineering practices; and
- The information presented in this report is accurate and complete.
- I certify that all information and statements in this certification form are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law. I, Jason M. Brydges, PE of BE3 Corp 960 Busti Avenue, Buffalo New York 14213, is certifying as Owner's Designated Site Representative for the site.

Jason M. Brydges, PE

FIGURES



GREENSPACE - REMOVE TOP 2' OF SOIL
AND REPLACE w/ 2' CLEAN FILL

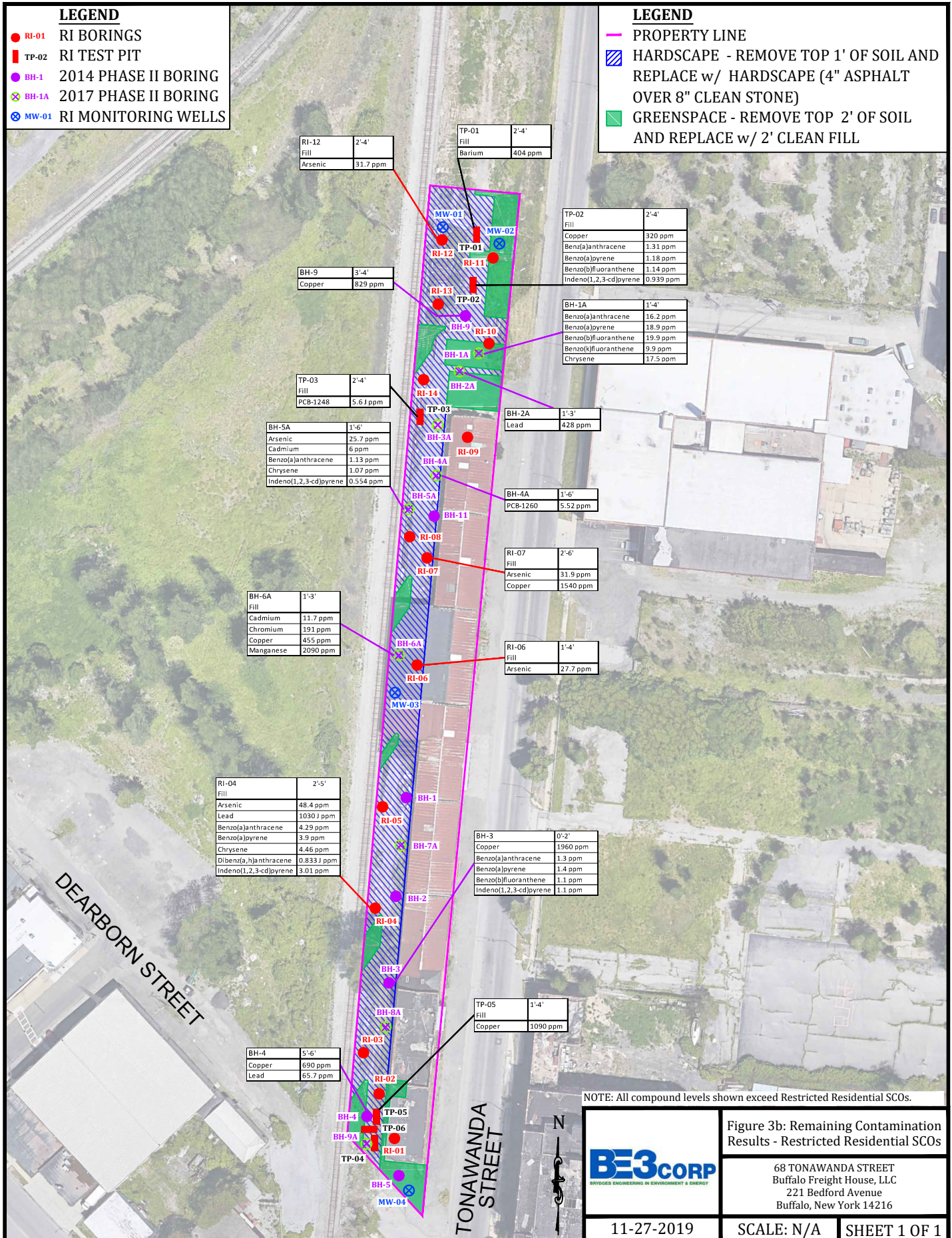


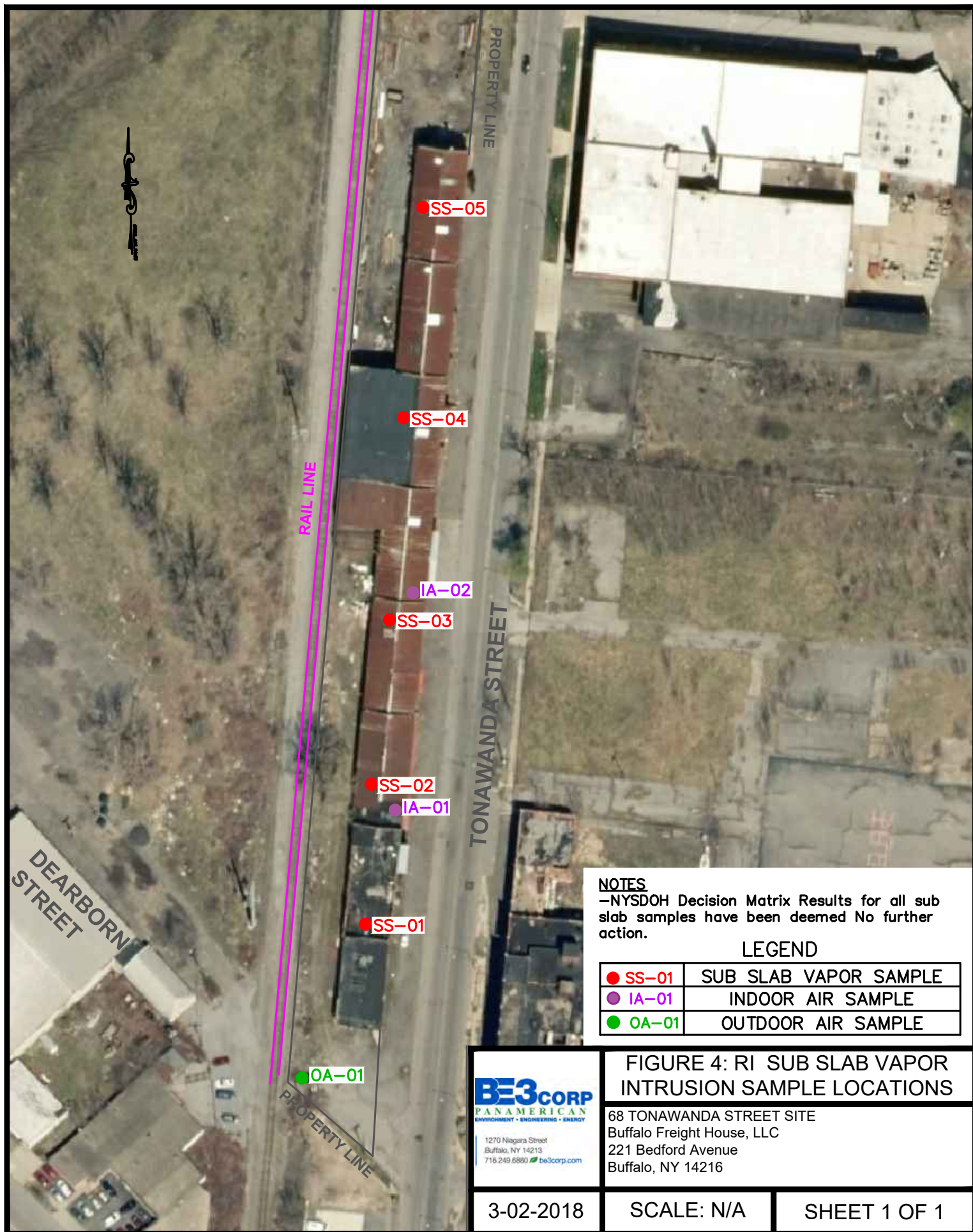
LEGEND

- RI-01 RI BORINGS
- TP-02 RI TEST PIT
- BH-1 2014 PHASE II BORING
- ⊗ BH-1A 2017 PHASE II BORING
- ⊗ MW-01 RI MONITORING WELLS

LEGEND

- PROPERTY LINE
- ▨ HARDSCAPE - REMOVE TOP 1' OF SOIL AND REPLACE w/ HARDSCAPE (4" ASPHALT OVER 8" CLEAN STONE)
- ▨ GREENSPACE - REMOVE TOP 2' OF SOIL AND REPLACE w/ 2' CLEAN FILL





NOTES
-NYSDOH Decision Matrix Results for all sub slab samples have been deemed No further action.

LEGEND

● SS-01	SUB SLAB VAPOR SAMPLE
● IA-01	INDOOR AIR SAMPLE
● OA-01	OUTDOOR AIR SAMPLE

FIGURE 4: RI SUB SLAB VAPOR INTRUSION SAMPLE LOCATIONS

BE3CORP
PANAMERICAN
ENVIRONMENT • ENGINEERING • ENERGY

1270 Niagara Street
Buffalo, NY 14213
716.249.6880 be3corp.com

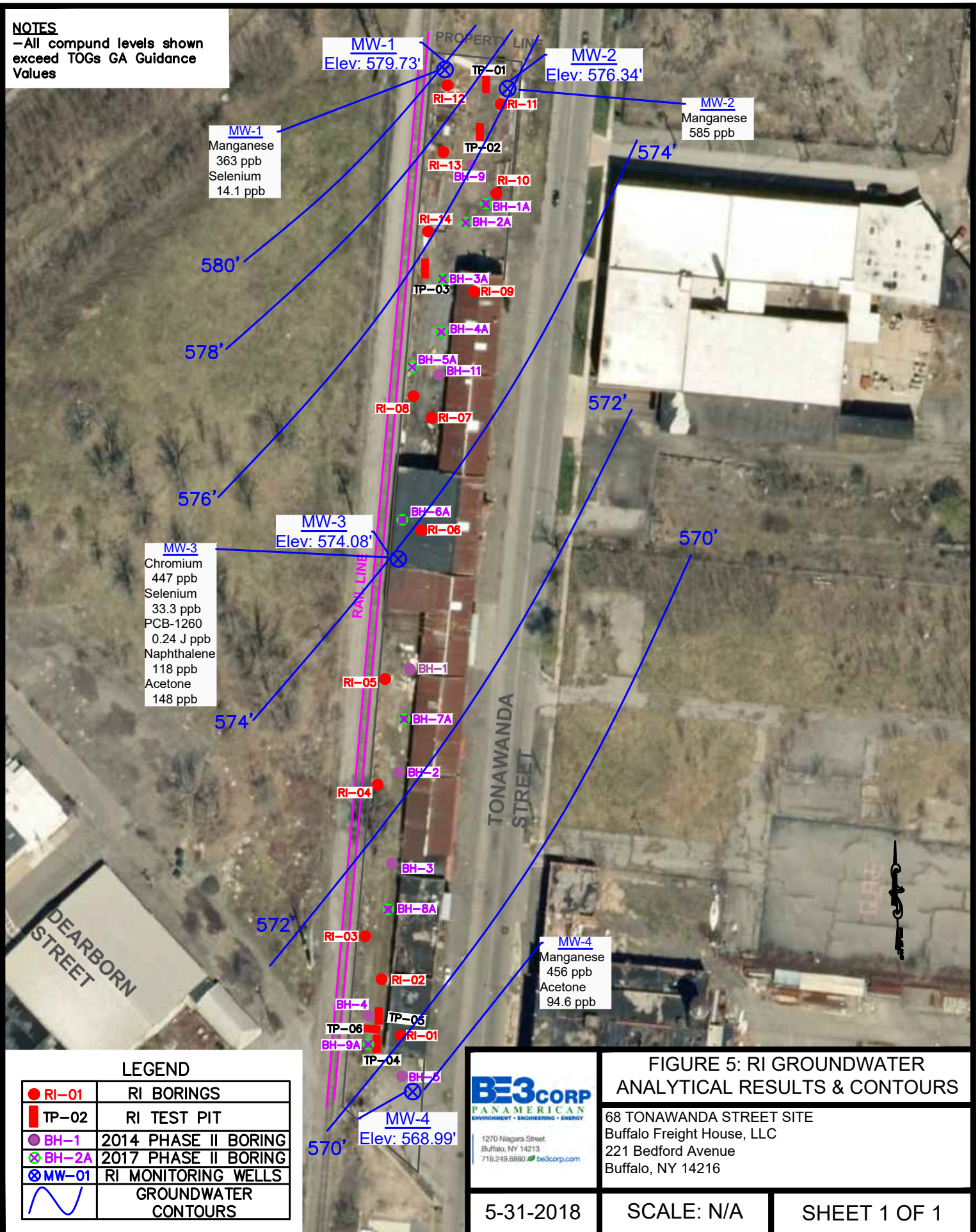
68 TONAWANDA STREET SITE
Buffalo Freight House, LLC
221 Bedford Avenue
Buffalo, NY 14216

3-02-2018

SCALE: N/A

SHEET 1 OF 1

NOTES
 -All compound levels shown
 exceed TOGs GA Guidance
 Values



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 1270 Niagara Street
 Buffalo, NY 14213
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Figure 6 Tax Map

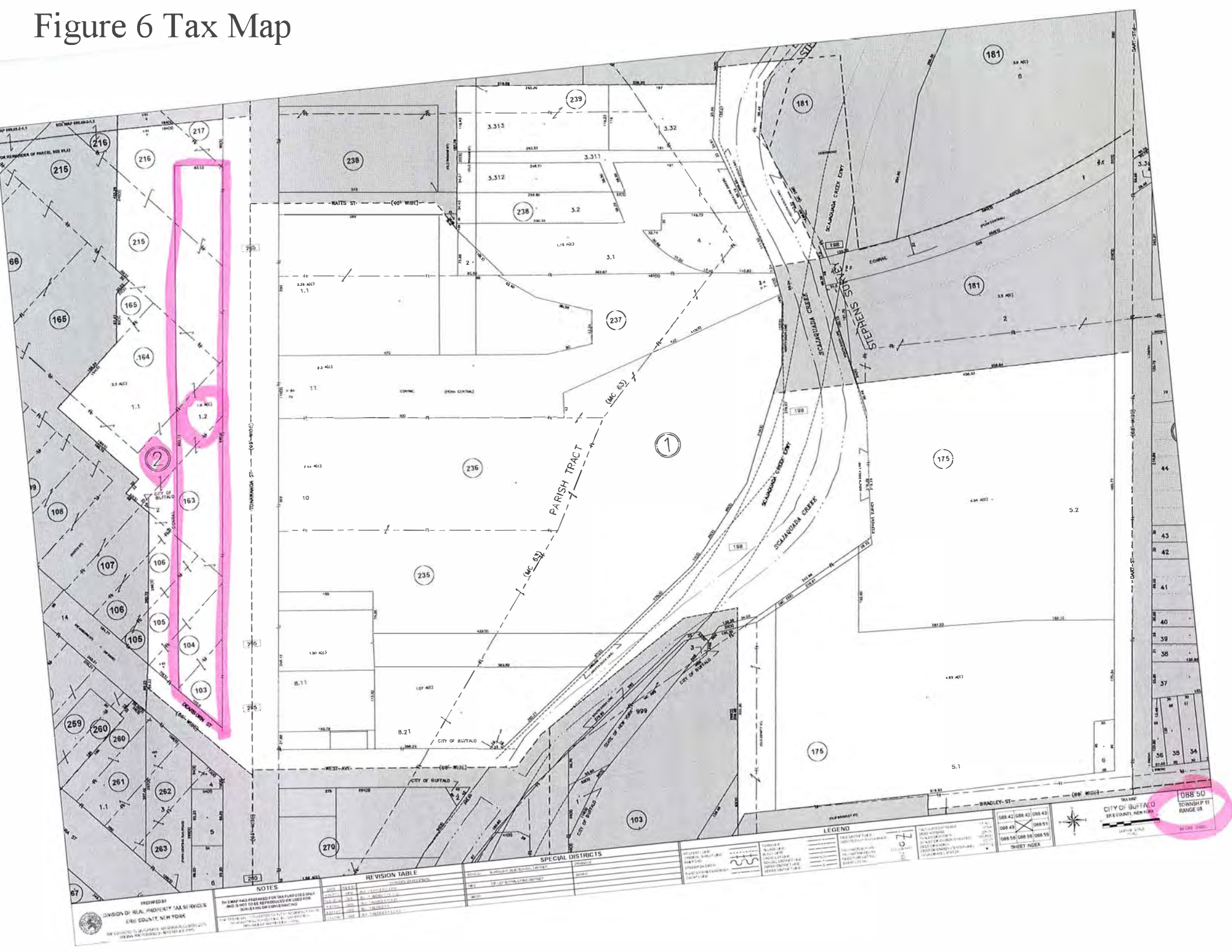




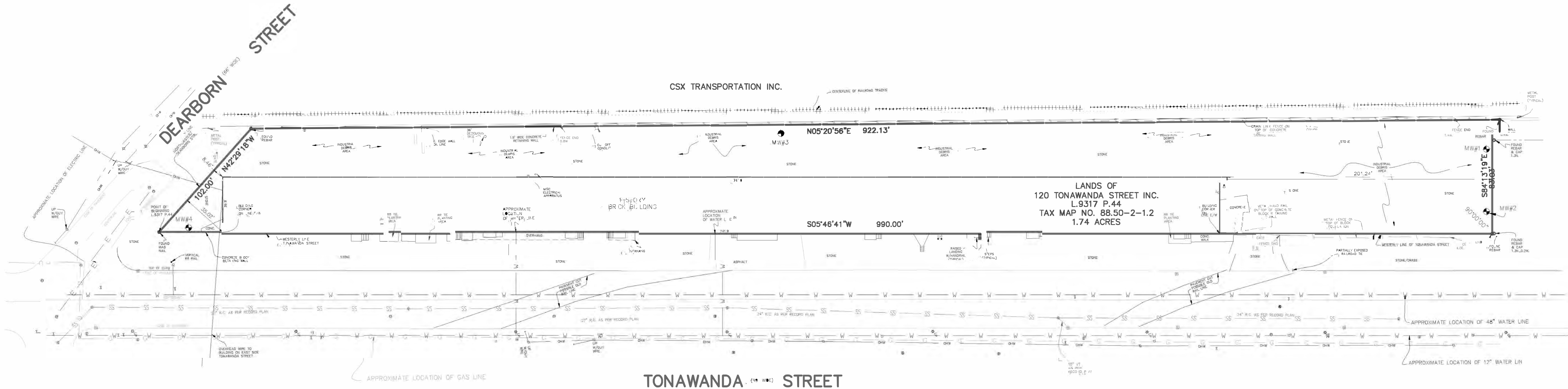
FIGURE 7 Boundary Survey

AS SURVEYED LEGAL DESCRIPTION AND ENVIRONMENTAL EASEMENT

"THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL EASEMENT HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 36 OF ARTICLE 71 OF THE NEW YORK ENVIRONMENTAL CONSERVATION LAW. THE ENGINEERING AND INSTITUTIONAL CONTROLS FOR THIS EASEMENT ARE SET FORTH IN THE SITE MANAGEMENT PLAN (SMP). A COPY OF THE SMP MUST BE OBTAINED BY ANY PARTY WITH AN INTEREST IN THE PROPERTY. THE SMP CAN BE OBTAINED FROM NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 625 BROADWAY, ALBANY, NY 12233 OR AT DERWEB@DEC.NY.GOV".

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE CITY OF BUFFALO, COUNTY OF ERIE AND STATE OF NEW YORK, BEING PART OF LOT NOS. 103-106, 163, 164, 215 AND 216 OF THE PARISH TRACT DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF INTERSECTION OF THE WESTERLY LINE OF TONAWANDA STREET (99 FEET WIDE) WITH THE NORTHEASTERLY LINE OF DEARBORN STREET (66 FEET WIDE), THENCE NORTH 42° 29'18" WEST, ALONG THE NORTHEASTERLY LINE OF DEARBORN STREET, A DISTANCE OF 102.00 FEET TO A POINT IN THE WESTERLY LINE OF LANDS OF CSX TRANSPORTATION INC.; THENCE NORTH 05° 20' 56" EAST, ALONG THE SAID WESTERLY LINE OF CSX TRANSPORTATION INC., A DISTANCE OF 922.13 FEET TO A POINT; THENCE SOUTH 84° 13' 19" EAST, A DISTANCE OF 83.03 FEET TO A POINT IN THE SAID WESTERLY LINE OF TONAWANDA STREET; THENCE SOUTH 05° 46' 41" WEST, ALONG SAID WESTERLY LINE OF TONAWANDA STREET, A DISTANCE OF 990.00 FEET TO THE POINT OR PLACE OF BEGINNING, CONTAINING 1.74 ACRES OF LAND.



LEGEND

	WATER MANHOLE
	WATER VALVE
	HYDRANT
	GAS LINE MARKER
	GAS VALVE
	GAS METER
	ELECTRIC MANHOLE
	UTILITY POLE
	OVERHEAD WIRE
	LIGHT POLE
	SEWER MANHOLE
	CATCH BASIN
	UNKNOWN MANHOLE
	BOLLARD
	MONITORING WELL NO. 1
	MONITORING WELL NO. 2

ONLY VISIBLE UTILITY SERVICES AND ENCUMBRANCES WERE LOCATED AND ARE SHOWN.

* THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF ANY ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATEMENT OF FACTS THAT MAY BE REVEALED BY AN EXAMINATION OF SUCH.

ON ANY BOUNDARY SURVEY MAPS WITH THIS SURVEYOR'S DISSESSMENT AND CORRECTIONS, ALL AND CORRECTED RESULTS OF THE SURVEYOR'S ORIGINAL WORK AND SPREADSHEET.

1. SURVING THIS DOCUMENT IS IN VIOLATION OF THE LAW EXCEPTING AS PROVIDED IN SECTION 22.09, PART 2 OF THE NEW YORK STATE ELECTION LAW.

2. THE ATTENTION OF BOUNDARY SURVEY MAPS BY ANYONE OTHER THAN THE ORIGINAL PREPARED IS MOST CONFUSING AND OF THE GENERAL BEST INTEREST AND BENEFIT OF THE PUBLIC.

NOTES:

- 1) ALL UTILITY INFORMATION SHOWN IS APPROXIMATE.
- 2) BEARING SYSTEM SHOWN REFERENCED TO THE NYS PLANE COORDINATE SYSTEM, WEST ZONE.

PROPERTY MAY BE AFFECTED BY THE FOLLOWING:

- 1) A PERPETUAL EASEMENT FOR INGRESS AND EGRESS TO CONSOLIDATED RAIL CORPORATION - L.9317 P.44
- 2) EASEMENT TO NIAGARA MOHAWK CORPORATION AND NEW YORK TELEPHONE COMPANY - L.10807 P.650

THIS BOUNDARY SURVEY WAS MADE BY MICHELE A. CLARK, NEW YORK STATE PROFESSIONAL LAND SURVEYOR, LICENSE NUMBER 50459, ON 05/15/18. THE SURVEY WAS MADE IN ACCORDANCE WITH THE NEW YORK STATE ELECTION LAW, SECTION 22.09, PART 2. THE SURVEY WAS MADE IN ACCORDANCE WITH THE NEW YORK STATE ELECTION LAW, SECTION 22.09, PART 2. THE SURVEY WAS MADE IN ACCORDANCE WITH THE NEW YORK STATE ELECTION LAW, SECTION 22.09, PART 2.



BOUNDARY SURVEY

68 TONAWANDA STREET

PART OF LOT NOS. 103, 104, 105, 106, 163, 164, 215 & 216 OF THE PARISH TRACT CITY OF BUFFALO COUNTY OF ERIE - STATE OF NEW YORK

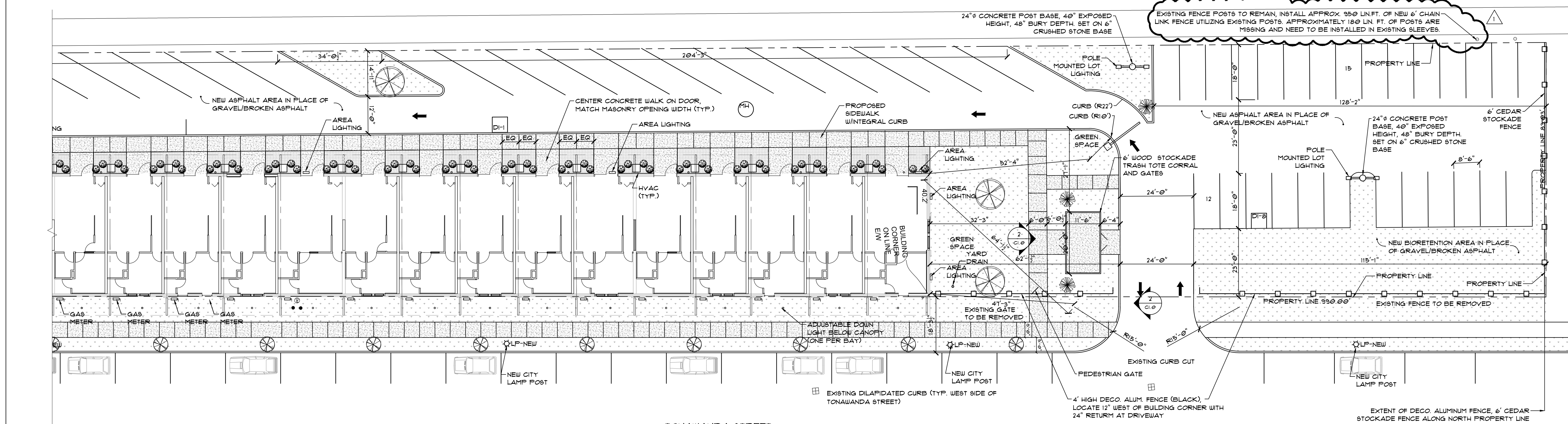
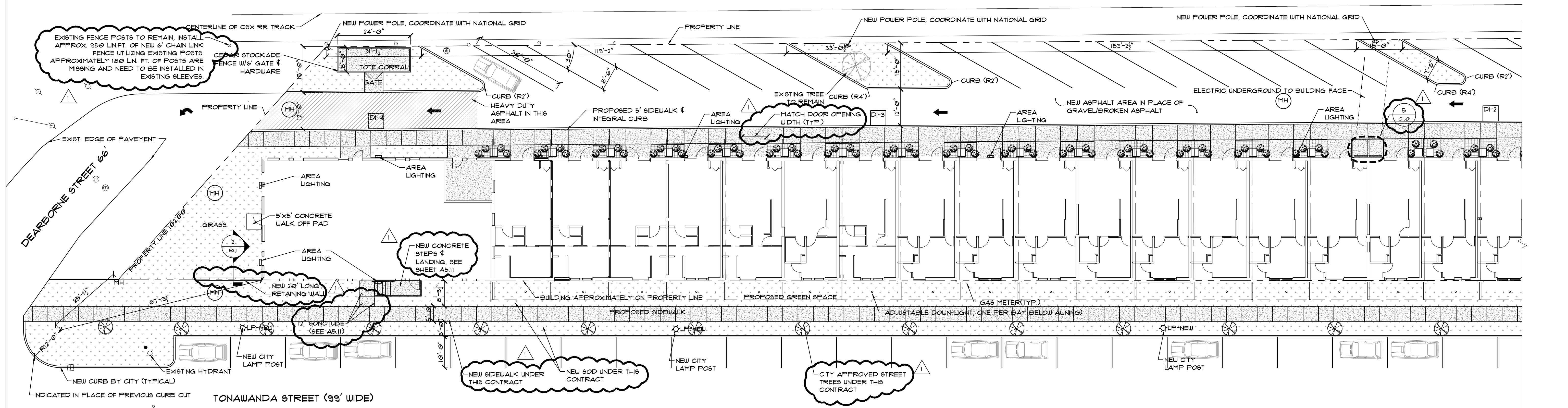
CREEKSIDE BOUNDARY LAND SURVEYING, PLLC

1746 HIGGINS ROAD

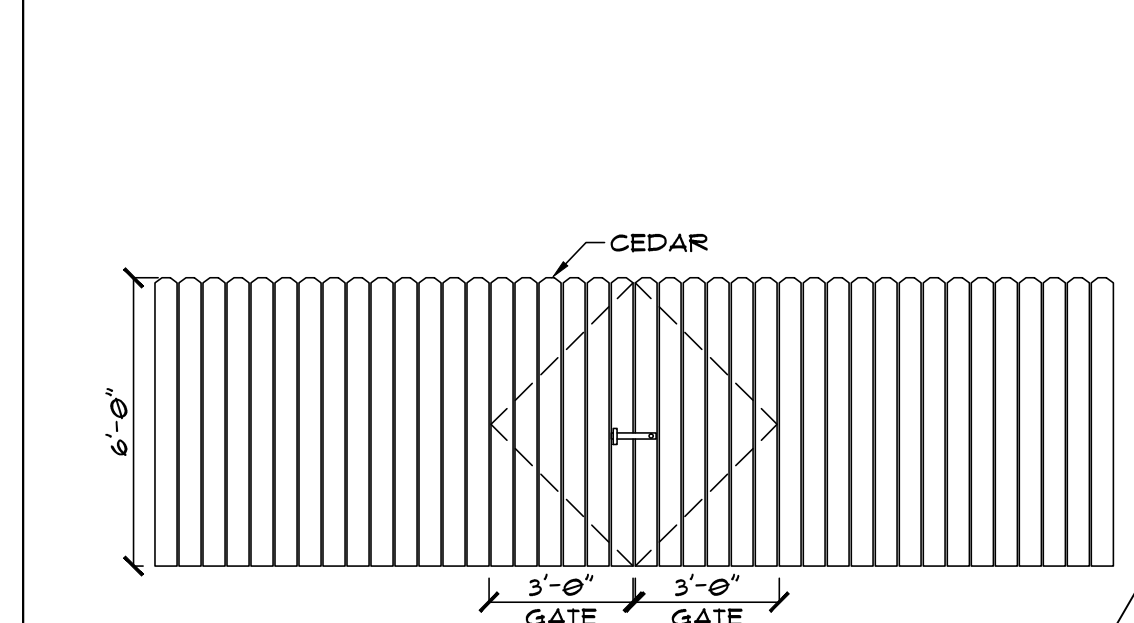
NIAGARA FALLS, NEW YORK 14303

PHONE: 365-786-5540 EMAIL: mclark@creeksideboundary.com

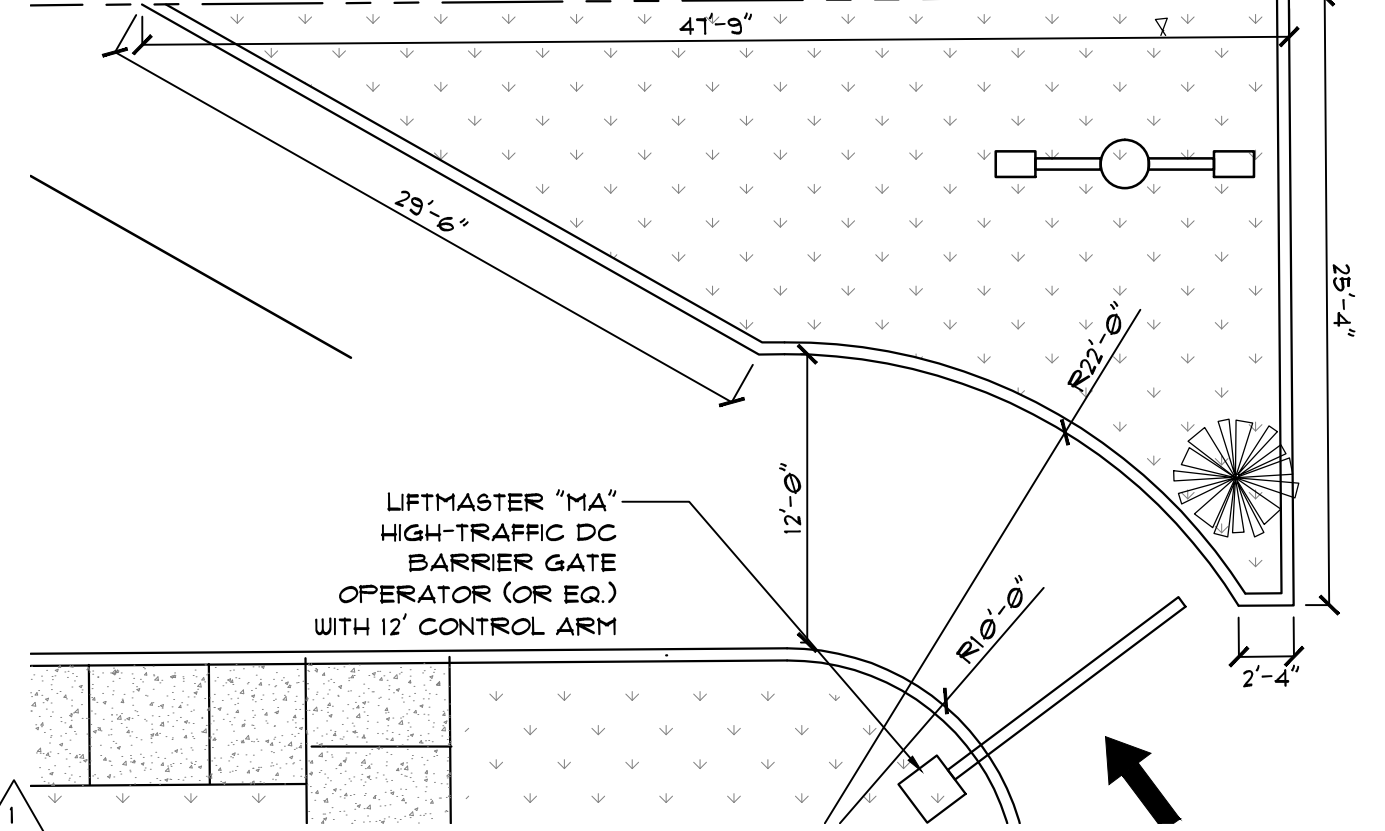
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DWN BY: MAC	CKD BY: MAC	JOB NO.: 80.50-2-1.2



1 ARCHITECTURAL SITE PLAN
1/8" = 1'-0"
SEE SURVEY & CIVIL PLANS FOR
DIMENSIONS & FURTHER INFORMATION

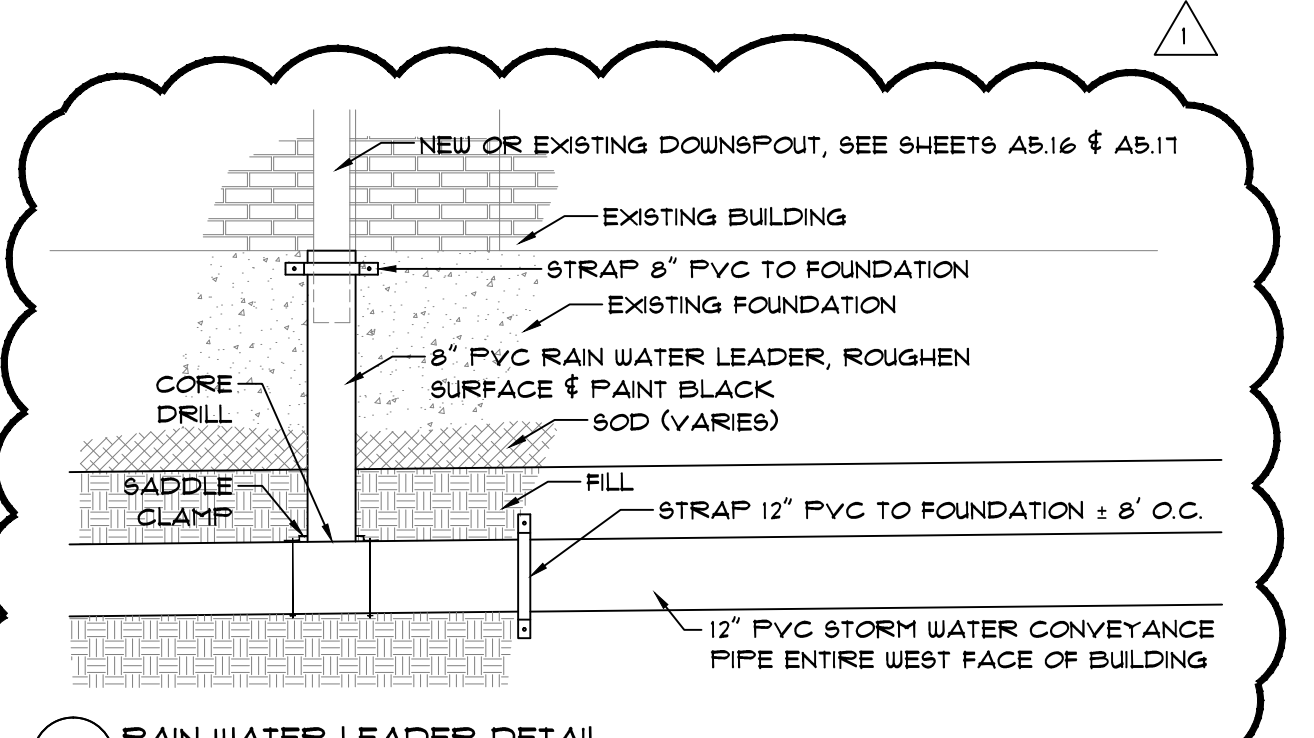


2 TRASH TOTE CORRAL
1/4" = 1'-0"

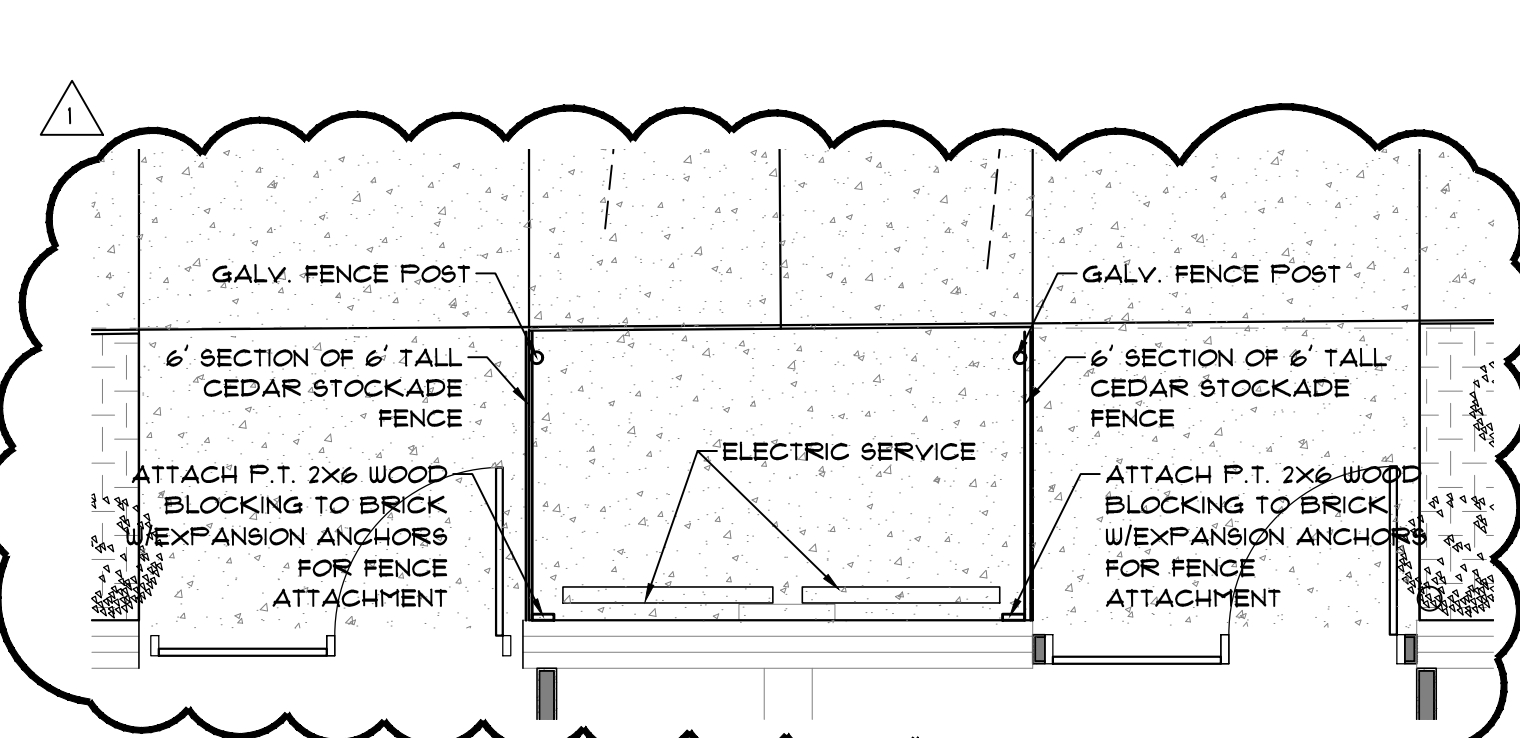


3 ENLARGED PARTIAL PLAN
1/8" = 1'-0"

TONAWANDA STREET



4 RAIN WATER LEADER DETAIL
3/16" = 1'-0"



5 ELECTRIC SERVICE AREA
1/4" = 1'-0"

THE FRIZLEN GROUP
ARCHITECTS

257 LAFAYETTE AVENUE
SUITE 102
BUFFALO, NEW YORK 14213
TEL: (716) 881-0006 FAX: (716) 881-5110 EMAIL: info@thefrizlogroup.com

ADAPTIVE RE-USE
68 TONAWANDA STREET
BUFFALO, NY 14207

ARCHITECTURAL SITE PLAN

DRAWINGS are and shall remain the property of the ARCHITECT, whether the project for which they are intended is executed or not. They are not to be used by anyone on other projects, or extensions to this project not covered in the CONTRACT, without written agreement with, and appropriate compensation to, THE FRIZLEN GROUP.

TFG #:

2171






REVISIONS	#	DESCRIPTION
1	ADDITIONAL INFO FOR BIDDING 5-5-18	

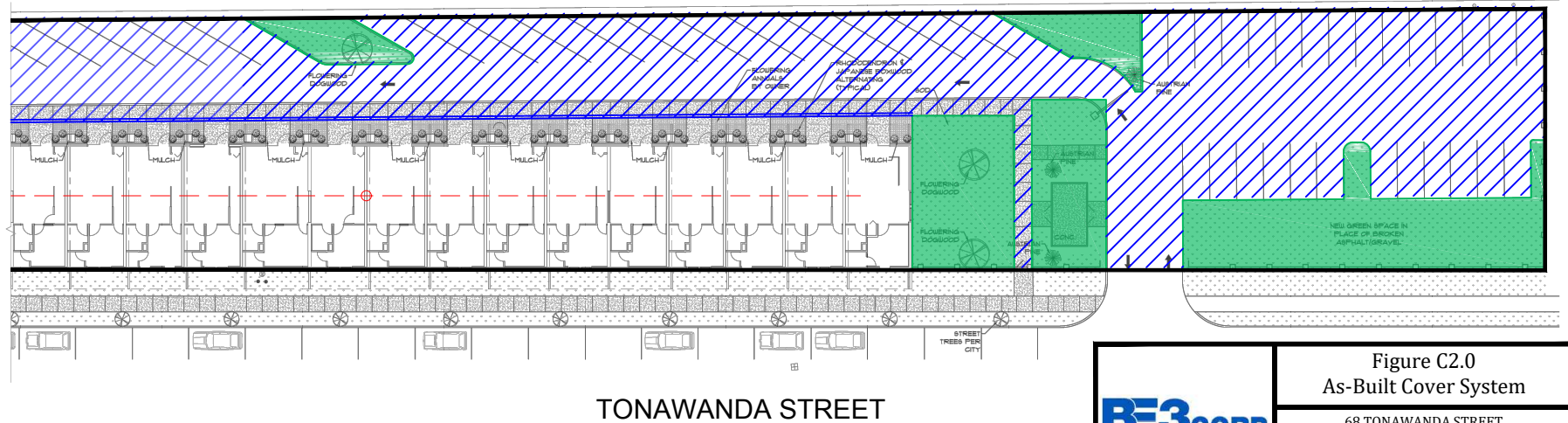
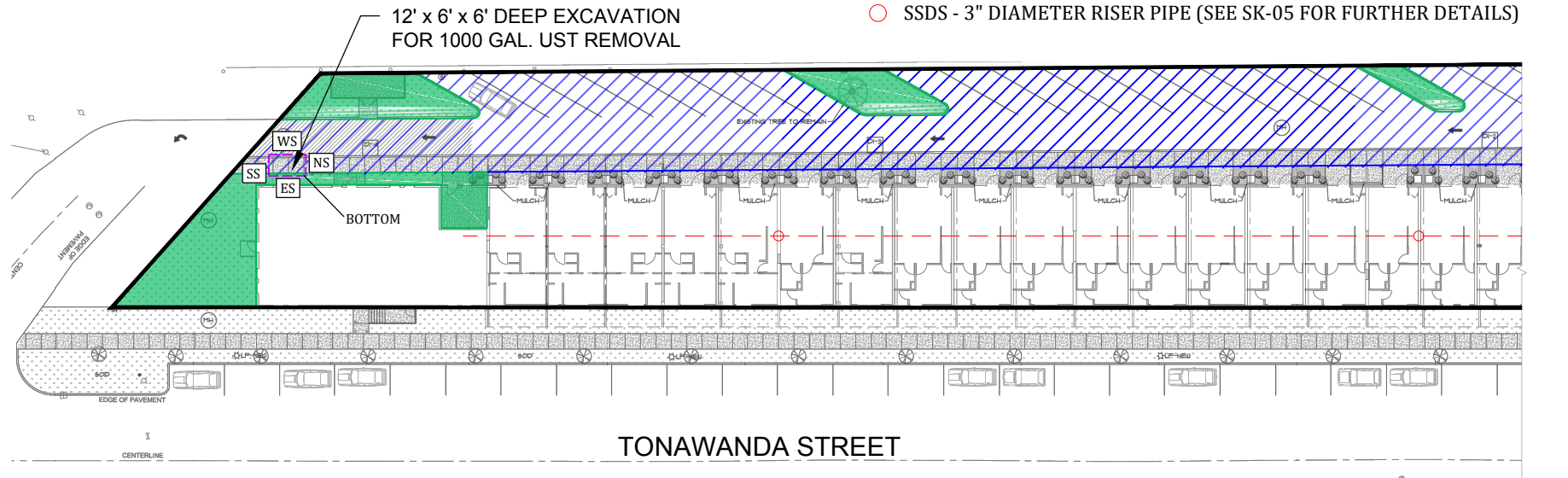
Sheet No.


C.I.Ø

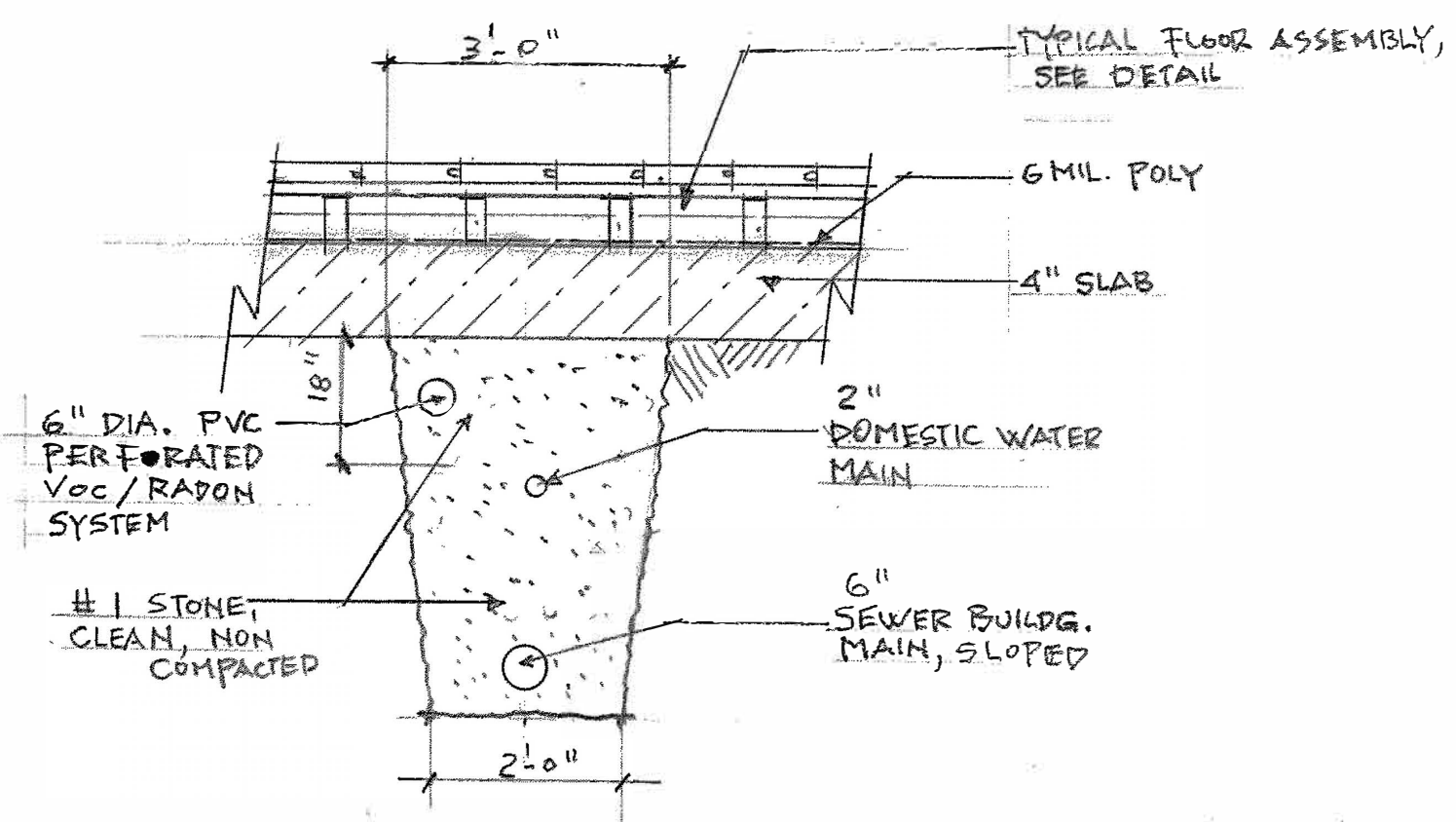
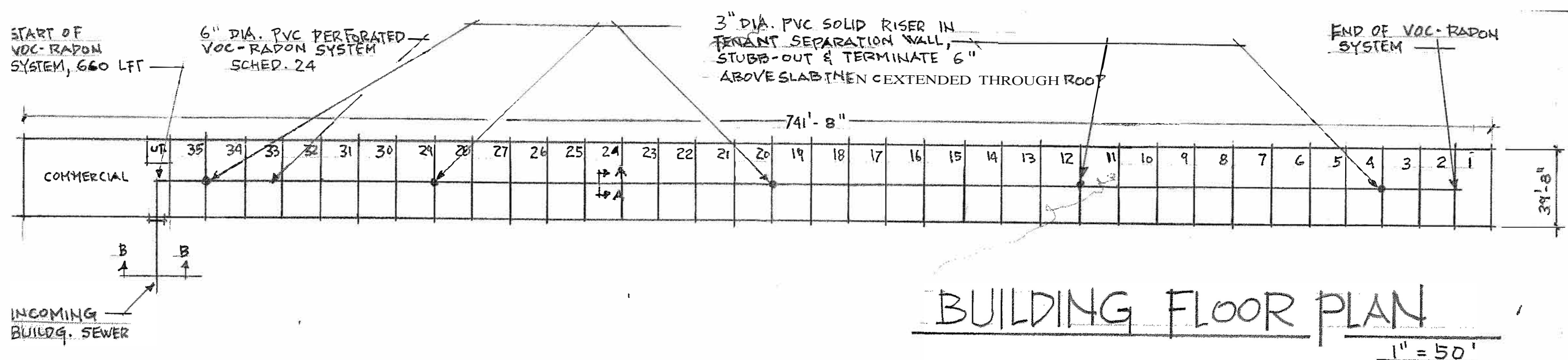
IFC Date: APRIL 9, 2018
Designed by: JPB
Drawn by: JPB
Checked by: KF
Approved by: JPB

LEGEND

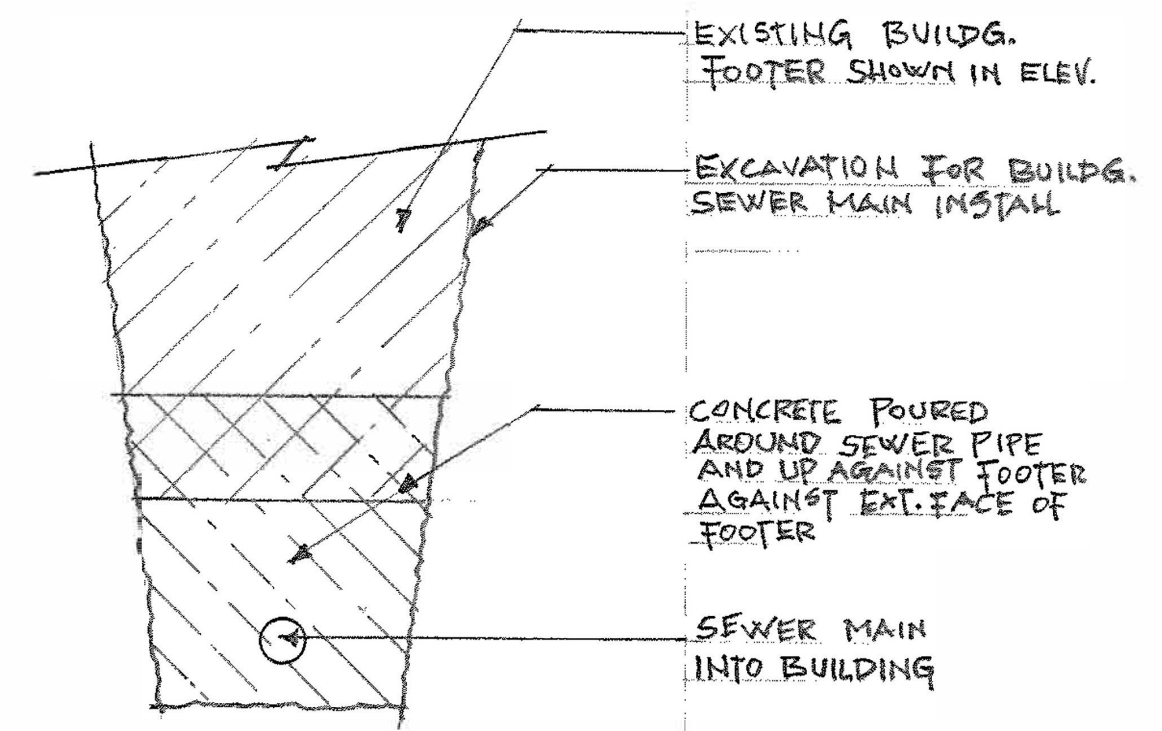
- PROPERTY LINE
-  HARDSCAPE - REMOVE TOP 1' OF SOIL AND REPLACE w/ HARDSCAPE (4" ASPHALT OVER 8" CLEAN STONE)
-  GREENSPACE - REMOVE TOP 2' OF SOIL AND REPLACE w/ 2' CLEAN FILL
-  CONFIRMATION SAMPLE IDENTIFICATION
-  SSDS - 6" DIAMETER PERFORATED PVC COLLECTION PIPE
-  SSDS - 3" DIAMETER RISER PIPE (SEE SK-05 FOR FURTHER DETAILS)








	<p>Figure C2.0 As-Built Cover System</p>	
	<p>68 TONAWANDA STREET Buffalo Freight House, LLC 221 Bedford Avenue Buffalo, New York 14216</p>	
12-09-2019	SCALE: N/A	SHEET 1 OF 1



Note: See Figure C2.0 for final layout

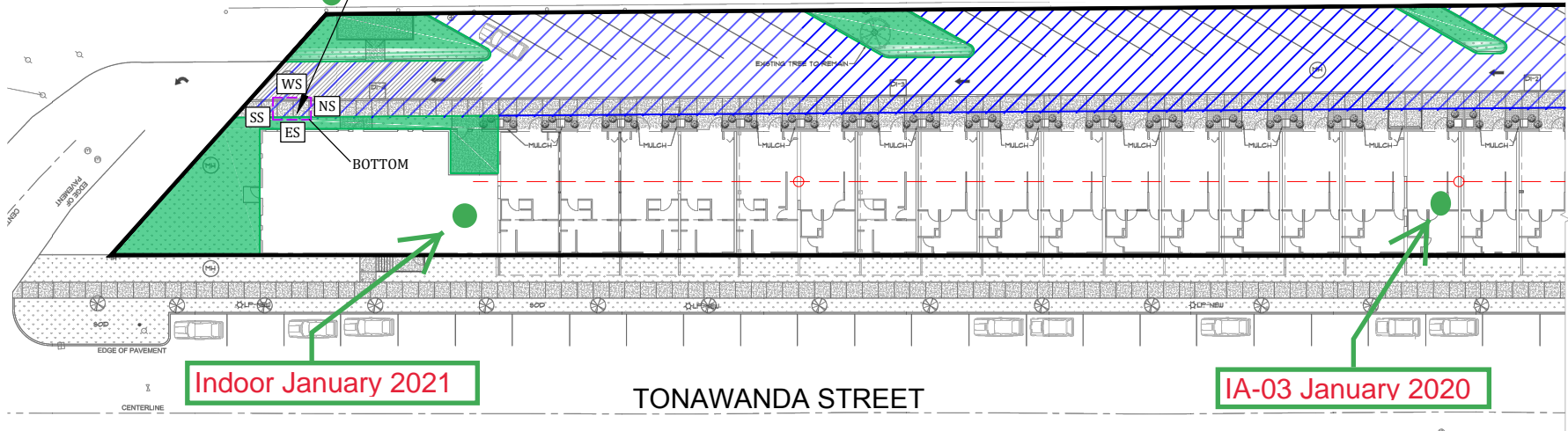


LEGEND

- PROPERTY LINE
-  HARDSCAPE - REMOVE TOP 1' OF SOIL AND REPLACE w/ HARDSCAPE (4" ASPHALT OVER 8" CLEAN STONE)
-  GREENSPACE - REMOVE TOP 2' OF SOIL AND REPLACE w/ 2' CLEAN FILL
-  CONFIRMATION SAMPLE IDENTIFICATION
-  SSDS - 6" DIAMETER PERFORATED PVC COLLECTION PIPE
-  SSDS - 3" DIAMETER RISER PIPE (SEE SK-05 FOR FURTHER DETAILS)

Outdoor January 2021

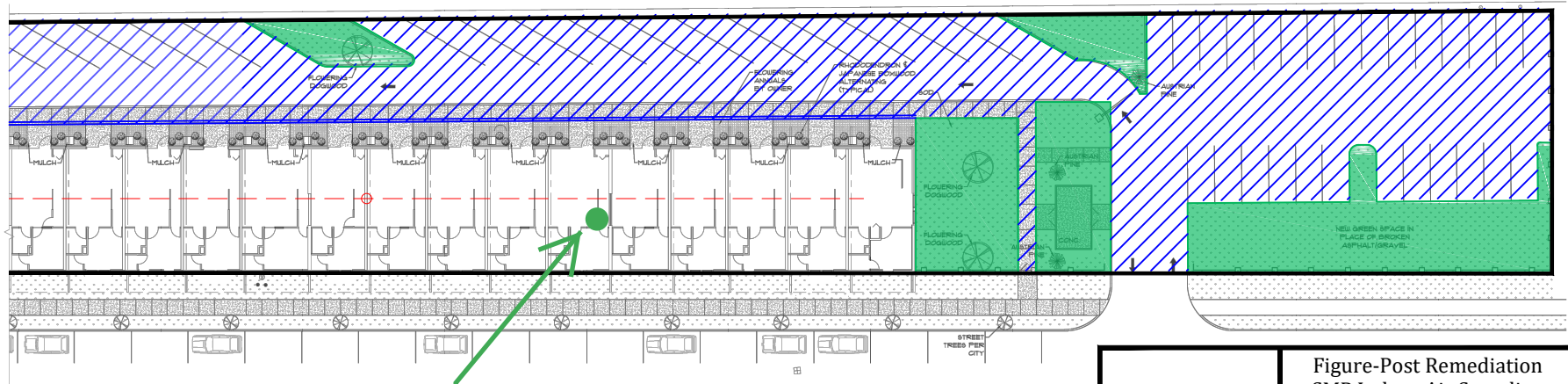
12' x 6' x 6' DEEP EXCAVATION FOR 1000 GAL. UST REMOVAL



Indoor January 2021

IA-03 January 2020

TONAWANDA STREET



IA-02 January 2020

TONAWANDA STREET

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Figure-Post Remediation
SMP Indoor Air Sampling

68 TONAWANDA STREET
Buffalo Freight House, LLC
221 Bedford Avenue
Buffalo, New York 14216

5-26-2021

SCALE: N/A

SHEET 1 OF 1

TABLES

TABLE 1
68 TONAWANDA STREET - RI & SMP GW SAMPLE COMPARISON ANALYTICAL RESULTS
SUMMARY

Contaminants	Sample Identification (results in ppb)									NYSDEC
	MW-1	MW-1	MW-2	MW-2	MW-3	MW-3B (2)	MW-3	MW-4	MW-4	TOGS 1.1.1. GA (1)
Sample Date	2/23/2018	6/25/2020	2/23/2018	6/25/2020	2/23/2018	7/6/2018	6/25/2020	2/23/2018	6/25/2020	
METALS										
Arsenic	8.3	ND	ND	14	7.9	ND	ND	ND	11.1	25
Barium	50.6	ND	106	ND	156	ND	130	ND	ND	1000
Beryllium	ND	ND	ND	ND	ND	ND	ND	ND	ND	3
Chromium	ND	ND	ND	ND	447	18.7	12.2	ND	ND	50
Copper	ND	ND	ND	ND	22.8	16.9 J	ND	ND	ND	200
Manganese	363	267	585	364	232	ND	121	456	476	300
Total Mercury	ND	ND	0.23	ND	ND	ND	ND	ND	ND	0.7
Selenium	14.1	ND	ND	ND	33.3	ND	ND	ND	ND	10
PCBs										
PCB-1260	ND	NA	ND	NA	0.24 J	N/A	ND	ND	NA	0.09
SEMIVOLATILE ORGANIC COMPOUNDS										
2-Methylnapthalene	ND	NA	ND	NA	21.6	N/A	ND	ND	NA	NA
Acenaphthene	ND	NA	ND	NA	15.7	N/A	ND	ND	NA	20
Fluorene	ND	NA	ND	NA	6.21	N/A	ND	ND	NA	50
Napthalene	ND	NA	ND	NA	118	N/A	ND	ND	NA	10
Field Parameters										
Turbidity (NTU)	47.7	25	6.2	0.5	800	721	463	93.1	14.5	NA
pH	7.18	8.43	6.4	8.41	10.36	10.13	10.98	7.22	8.7	NA
Dissolved Oxygen	0	1.11	15.75	3.82	0	0	3.08	0.74	4.04	NA
Temp (degrees C)	10.64	13.11	11.71	15.41	9.73	16.04	15.16	11.48	13.88	NA
Conductivity	1.32	1.6	3.65	4.73	5.13	5.27	2.62	3.37	4.75	NA

N/A - Not Applicable ND - Non-detect

(1) - TOGs 1.1.1 GA - Technical and Operational Guidance Series (1.1.1) Source of Drinking Water (Groundwater)

(2) - Field filtered metals sample

Exceeds TOGs GA Guidance Value

J - The analyte was positively identified; the associated numerical value is the approximate concentration of the analyte in the sample.

TABLE 7
68 TONAWANDA BUILDING - SUB SLAB VAPOR & AMBIENT AIR ANALYTICAL RESULTS SUMMARY
EPA Air Method Toxic Organics -15 (TO-15)

Contaminants	Sample Identification											NYSDOH (1)	NYSDOH (1)
	SS-01	IA-01	SS-02	IA-01	SS-03	IA-02	SS-04	IA-02	SS-05	IA-02	OA-01	Sub Slab Vapor Concentration	Indoor Air Concentration
	Sub Slab	Indoor	Sub Slab	Indoor	Sub Slab	Indoor	Sub Slab	Indoor	Sub Slab	Indoor	Outdoor	Decision Matrix - Min Action Level	Min Action Level
	2/20/2018	2/20/2018	2/20/2018	2/20/2018	2/20/2018	2/20/2018	2/20/2018	2/20/2018	2/20/2018	2/20/2018	2/20/2018	ug/m3	ug/m3
Volatile Organic Compounds (2)													
1,1,1-Trichloroethane	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	100	3
1,1-Dichloroethene	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	6	0.2
1,2,4-Trimethylbenzene	0.88	0.79	1.5	0.79	1.4	8.0	1.0	8.0	1.1	8.0	ND		
1,3,5-Trimethylbenzene	0.64	ND	1.1	ND	0.93	2.20	0.74	2.20	ND	2.20	ND		
2,2,4-trimethylpentane	ND	1.8	7.8	1.8	1.8	1.1	2.9	1.1	ND	1.1	ND		
4-ethyltoluene	ND	ND	0.54	ND	ND	1.90	ND	1.90	ND	1.90	ND		
Acetone	19	24	48	24	30	66	460	66	48	66	6.7		
Benzene	5.2	0.57	8.6	0.57	6.1	1.50	4.1	1.50	69	1.50	0.48		
Carbon disulfide	4.1	ND	5.8	ND	11	ND	170	ND	23	ND	ND		
Carbon tetrachloride	ND	0.31	ND	0.31	ND	0.4	ND	0.4	ND	0.4	0.44	6	0.2
Chloroethane	1.5	ND	2.3	ND	0.90	ND	1.6	ND	1.0	ND	ND		
Chloroform	ND	ND	3.0	ND	ND	ND	ND	ND	ND	ND	ND		
Chloromethane	ND	0.52	0.81	0.52	0.35	1.0	0.58	1.0	ND	1.0	0.68		
cis-1,2-Dichloroethene	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	6	0.2
Cyclohexane	3900	2.7	180	2.7	24	0.89	21	0.89	2500	0.89	3.80		
Ethyl acetate	2.7	ND	ND	ND	3.9	0.72	ND	0.72	ND	0.72	0.61		
Ethylbenzene	0.82	ND	ND	ND	0.78	4.90	ND	4.90	ND	4.90	ND		
Freon 11	1.8	1.1	2.0	1.1	1.0	1.40	1.5	1.40	110	1.40	1.00		
Freon 12	1.7	1.3	1.7	1.3	1.9	2.70	1.8	2.70	76	2.70	1.50		
Heptane	2000	1.9	100	1.9	35	2.50	230	2.50	1400	2.50	2.70		
Hexane	5100	4.7	92	4.7	46	2.40	170	2.40	1500	2.40	3.00		
Isopropyl alcohol	ND	ND	3.9	ND	ND	ND	ND	ND	ND	ND	ND		
m&p-Xylene	2.6	1.1	2.7	1.1	2.5	20	2	20	8	20	0.61		
Methyl Ethyl Ketone	2.1	1.5	3.8	1.5	5.7	34	16	34	3	34	1.30		
Methylene chloride	21	2.5	19	2.5	21	5.50	23	5.50	2.6	5.50	2.80	100	3
o-Xylene	ND	0.52	ND	0.52	1.1	8.0	ND	8.0	ND	8.0	ND		
Styrene	ND	ND	ND	ND	0.43	1.20	ND	1.20	ND	1.20	ND		
Tetrachloroethylene	ND	ND	ND	ND	ND	1.40	ND	1.40	5.4	1.40	ND	100	3
Toluene	42	14	15	14	54	130	58	130	92	130	4.60		
Trichloroethene	2.1	0.21	2.4	0.21	5.8	0.38	2.6	0.38	6.1	0.38	0.32	6	0.2
Vinyl chloride	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	6	0.2

N/A - Not Applicable ND - Non-detect

Red values are above Air Guideline Derived by NYSDOH in Table 3.1 of NYSDOH Guidance titled "Evaluating Soil Vapor Intrusion in the State of New York", October 2006 (and subsequent updates).

J indicates an estimated value

(1) New York State Department of Health (NYSDOH), Guidance for Evaluating Soil Vapor Intrusion in the State of New York, October 2006 and subsequent updates (select matrix compounds).

(2) Compounds with detected concentrations

NYSDOH Guidance for Evaluating Soil Vapor Intrusion in the State of New York, May 2017 Decision Matrices Notes:

NO FURTHER ACTION:

Given that the compound was not detected in the indoor air sample and that the concentration detected in the sub -slab vapor sample is not expected to significantly affect indoor air quality, no additional actions are needed to address human exposures

IDENTIFY SOURCE(S) AND RESAMPLE OR MITIGATE:

The concentration detected in the indoor air sample is likely due to indoor and/or outdoor sources rather than soil vapor intrusion given the concentration detected in the sub-slab vapor sample.

Therefore, steps should be taken to identify potential source(s) and to reduce exposures accordingly (e.g., by keeping containers capped or by storing VOC-containing products in places where people do not spend much time, such as a garage or shed).

Resampling may be recommended to demonstrate the effectiveness of actions taken to reduce exposures.

MONITOR:

Monitoring, including sub-slab vapor, basement air, lowest occupied living space air, and outdoor air sampling, is needed to determine whether concentrations in the indoor air or sub-slab vapor have changed.

Monitoring may also be needed to determine whether existing building conditions (e.g., positive pressure heating, ventilation and air-conditioning systems) are maintaining the desired mitigation endpoint and to determine whether changes are needed.

The type and frequency of monitoring is determined on a site-specific and building-specific basis, taking into account applicable environmental data and building operating conditions.

Monitoring is an interim measure required to evaluate exposures related to soil vapor intrusion until contaminated environmental media are remediated.

MITIGATE:

Mitigation is needed to minimize current or potential exposures associated with soil vapor intrusion. The most common mitigation methods are sealing preferential pathways in conjunction with installing a sub-slab depressurization system, and changing the pressurization of the building in conjunction with monitoring. The type, or combination of types, of mitigation is determined on a building-specific basis, taking into account building construction and operating conditions.

Mitigation is considered a temporary measure implemented to address exposures related to soil vapor intrusion until contaminated environmental media are remediated.

APPENDIX A

NYSDEC SMP PRR CERTIFICATION FORM



Enclosure 2
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Site Management Periodic Review Report Notice
Institutional and Engineering Controls Certification Form



Site Details

Box 1

Site No. C915316

Site Name 68 Tonawanda Street

Site Address: 68 Tonawanda Street Zip Code: 14207
City/Town: Buffalo
County: Erie
Site Acreage: 1.740

Reporting Period: April 18, 2021 to April 18, 2022

YES NO

- | | | |
|---|-------------------------------------|-------------------------------------|
| 1. Is the information above correct? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| If NO, include handwritten above or on a separate sheet. | | |
| 2. Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment during this Reporting Period? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Has there been any change of use at the site during this Reporting Period (see 6NYCRR 375-1.11(d))? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property during this Reporting Period? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If you answered YES to questions 2 thru 4, include documentation or evidence that documentation has been previously submitted with this certification form.

- | | | |
|--|--------------------------|-------------------------------------|
| 5. Is the site currently undergoing development? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|-------------------------------------|

Box 2

YES NO

- | | | |
|---|-------------------------------------|--------------------------|
| 6. Is the current site use consistent with the use(s) listed below?
Restricted-Residential, Commercial, and Industrial | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. Are all ICs in place and functioning as designed? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

**IF THE ANSWER TO EITHER QUESTION 6 OR 7 IS NO, sign and date below and
DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

A Corrective Measures Work Plan must be submitted along with this form to address these issues.

Signature of Owner, Remedial Party or Designated Representative

Date

Box 2A

YES NO

8. Has any new information revealed that assumptions made in the Qualitative Exposure Assessment regarding offsite contamination are no longer valid? ☐ YES ☒ NO

If you answered YES to question 8, include documentation or evidence that documentation has been previously submitted with this certification form.

9. Are the assumptions in the Qualitative Exposure Assessment still valid? ☒ YES ☐ NO
(The Qualitative Exposure Assessment must be certified every five years)

If you answered NO to question 9, the Periodic Review Report must include an updated Qualitative Exposure Assessment based on the new assumptions.

SITE NO. C915316**Box 3****Description of Institutional Controls**ParcelOwnerInstitutional Control**88.50-2-1.2**

Buffalo Freight House LLC

Ground Water Use Restriction
Soil Management Plan
Landuse Restriction
Monitoring Plan
Site Management Plan
O&M Plan
IC/EC Plan

An Environmental Easement was filed with the Erie County Clerk's Office on November 20, 2018. The Controlled Property may be used for restricted residential, commercial and industrial use as long as the following long-term institutional controls are employed: (1) all Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP); (2) all Engineering Controls must be inspected at a frequency and in a manner defined in the SMP; (3) the use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Erie County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department; (4) groundwater and other environmental or public health monitoring must be performed as defined in the SMP; (5) data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP; (6) all future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP; (7) monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP; (8) operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP; and (9) access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

Box 4**Description of Engineering Controls**ParcelEngineering Control**88.50-2-1.2**

Monitoring Wells
Vapor Mitigation
Cover System

(1) A site cover currently exists and will be maintained to allow for restricted residential/commercial/industrial use of the site. Any site redevelopment will maintain the existing site cover, which consists of structures such as buildings, concrete sidewalks, asphalt parking lots, and clean soil covers.

(2) A Sub-slab depressurization systems exists in the northern 2/3rds of the on-site building. This

Parcel

Engineering Control

system will continue to operate to prevent the migration of sub-slab soil vapor from soil and groundwater into the building.

Box 5

Periodic Review Report (PRR) Certification Statements

1. I certify by checking "YES" below that:

- a) the Periodic Review report and all attachments were prepared under the direction of, and reviewed by, the party making the Engineering Control certification;
- b) to the best of my knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and the information presented is accurate and complete.

YES NO

☒ ☐

2. For each Engineering control listed in Box 4, I certify by checking "YES" below that all of the following statements are true:

- (a) The Engineering Control(s) employed at this site is unchanged since the date that the Control was put in-place, or was last approved by the Department;
- (b) nothing has occurred that would impair the ability of such Control, to protect public health and the environment;
- (c) access to the site will continue to be provided to the Department, to evaluate the remedy, including access to evaluate the continued maintenance of this Control;
- (d) nothing has occurred that would constitute a violation or failure to comply with the Site Management Plan for this Control; and
- (e) if a financial assurance mechanism is required by the oversight document for the site, the mechanism remains valid and sufficient for its intended purpose established in the document.

YES NO

☒ ☐

**IF THE ANSWER TO QUESTION 2 IS NO, sign and date below and
DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

A Corrective Measures Work Plan must be submitted along with this form to address these issues.

Signature of Owner, Remedial Party or Designated Representative

Date

IC CERTIFICATIONS
SITE NO. C915316

Box 6

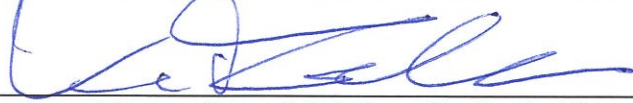
SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE

I certify that all information and statements in Boxes 1,2, and 3 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I KARL FRIZLEN at 257 LAFAYETTE AVE BFLD, NY
print name print business address

am certifying as MANAGING MEMBER (Owner or Remedial Party)

for the Site named in the Site Details Section of this form.


Signature of Owner, Remedial Party, or Designated Representative
Rendering Certification

5/12/22
Date

EC CERTIFICATIONS

Box 7

Qualified Environmental Professional Signature

I certify that all information in Boxes 4 and 5 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I Jason M. Brydges at BE3 Corp - 900 Busti Ave., Suite B-150
Buffalo, NY 14213
print name print business address

am certifying as a Qualified Environmental Professional for the Buffalo Freight House, LLC
(Owner or Remedial Party)



Signature of Qualified Environmental Professional, for
the Owner or Remedial Party, Rendering Certification

Stamp
(Required for PE)

Date

APPENDIX B

ENVIRONMENTAL EASEMENT AND SURVEY MAPS



**BORRELLI
& YOTS**

14 Franklin Street, Suite
813 Rochester, NY 14604

(585) 454-1905
www.borrelliyots.com

November 30, 2018

Via Email and US Mail

New York State Department of Environmental Conservation
c/o Bradford Burns, Esq.
Office of General Counsel
625 Broadway, Albany, NY 12233-1500

RECEIVED

DEC 4 - 2018

NYSDEC
OFFICE OF GENERAL COUNSEL

Re: Environmental Easement Site No. C915316
68 Tonawanda, Buffalo, NY 14207 (the "Property")
Buffalo Freight House LLC (the "Company")

Dear Mr. Burns:

We are submitting the following documents to you in connection with the Environmental Easement for the above Property, as requested in your November 2, 2018 letter, please find enclosed:

1. Copy of "file-stamped" Environmental Easement, an original duplicate of the same was recorded in the Erie County Clerk's Office on November 20, 2018; and
2. Certified copy of the Notice to the Municipality. A copy of the same was sent via certified mail, return receipt requested, on November 30, 2018.

If you need any additional documentation or have any questions, please let us know. Thank you.

Very truly yours,

BORRELLI & YOTS PLLC

By: _____

Jason A. Yots, Member

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:

BORRELLI&YOTS PLLC
14 FRANKLIN ST STE 813
ROCHESTER, NY 14604

Party 1:
BUFFALO FREIGHT HOUSE LLC

Party 2:

Book Type: D Book: 11337 Page: 6175

Page Count: 10

Doc Type: EASEMENT/RTWY

Rec Date: 11/20/2018

Rec Time: 04:46:07 PM

Control #: 2018232457

UserID: Kim F

Trans #: 18207648

Document Sequence Number
TT2018008817

Recording Fees:

RECORDING	\$70.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
TP584	\$10.00

Consideration Amount: 1.00

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

Total: \$100.00

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

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

Michael P. Kearns
Erie County Clerk

Record & Return:
Borrelli & Vots LLC
14 Franklin St, Ste 813
Rochester, NY 14609

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

THIS INDENTURE made this 29th day of October, 2018 between Owner(s) Buffalo Freight House, LLC, having an office at 221 Bedford Avenue, Buffalo, New York 14216, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

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

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

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

WHEREAS, Grantor, is the owner of real property located at the address of 68 Tonawanda Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel number: Section 88.50 Block 2 Lot 1.2, being the same as that property conveyed to Grantor by deed dated December 7, 2017 and recorded in the Erie County Clerk's Office in Liber and Page 11322/6333. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.740 +/- acres, and is hereinafter more fully described in the Land Title Survey dated May 15, 2018 prepared by Michele A. Clark, L.L.S. of Creekside Boundary Land Surveying, PLLC, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

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

785-9
232457

extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: C915316-06-17, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

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

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

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

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

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

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

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

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

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

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

contaminated material must be conducted in accordance with the SMP;

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

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

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

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

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

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

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

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

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

Law.

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

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

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

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

(i) are in-place;

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

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

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

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

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

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

(7) the information presented is accurate and complete.

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

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

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

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

5. Enforcement

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

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

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

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

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

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

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

Parties shall address correspondence to: Site Number: C915316
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

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

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

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

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

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

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

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

11. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

Remainder of Page Intentionally Left Blank

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

Buffalo Freight House, LLC:

By: J. A. Y

Print Name: Jason A. Yots

Title: Manager of
Managing Member Date: 10-16-18

Grantor's Acknowledgment

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 16th day of October, in the year 20 18 before me, the undersigned, personally appeared Jason A. Yots personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Richard T. Rogers
Notary Public - State of New York

RICHARD T. ROGERS
NOTARY PUBLIC-STATE OF NEW YORK
No. 02RO6375142
Qualified in Erie County
My Commission Expires 05-14-2022

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

By:

Michael J. Ryan, Director
Division of Environmental Remediation

Grantee's Acknowledgment

[illegible]

On the 29th day of October, in the year 2018 before me, the undersigned, personally appeared Michael J. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, ~~executed~~ the instrument.

Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2022

SCHEDULE "A" PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lots 103 - 106, 163, 164, 215 and 216 of the Parish Tract described as follows:

BEGINNING at the point of intersection of the westerly line of Tonawanda Street (99 feet wide) with the northeasterly line of Dearborn Street (66 feet wide);

Thence North $42^{\circ}29'18''$ West, along the northeasterly line of Dearborn Street, a distance of 102.00 feet to a point in the westerly line of lands of CSX Corporation Inc.;

Thence North $05^{\circ}20'56''$ East, along the said westerly line of CSX Corporation Inc., a distance of 922.13 feet to a point;

Thence South $84^{\circ}13'19''$ East, a distance of 83.03 feet to a point in the said westerly line of Tonawanda Street;

Thence South $05^{\circ}46'41''$ West, along said westerly line of Tonawanda Street, a distance of 990.00 feet to the point or place of beginning.

Containing 1.74 acres of land.



November 21, 2018

Mayor Byron W. Brown
City of Buffalo
201 City Hall
65 Niagara Square
Buffalo, NY 14202

Re: 68 Tonawanda Street - Environmental Easement

Dear Mayor Brown:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("Department") on October 29, 2018 and recorded in the Erie County Clerk's Office 11/20/2018, by Buffalo Freight House LLC, for property at 68 Tonawanda Street, Buffalo, NY 14207. Tax map No. 88.50-2-1.2, DEC Site No: C915316.

This environmental easement restricts future use of the above-referenced property to restricted residential uses. Any on-site activity must be done in accordance with the Environmental Easement and the Site Management Plan, which is incorporated into the Environmental Easement. Department approval is also required prior to any groundwater use.

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

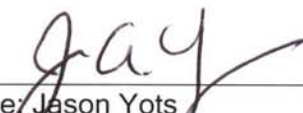
1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.

2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

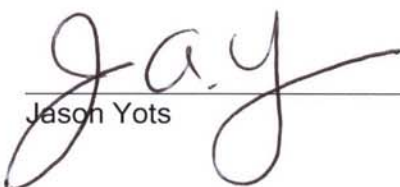
An electronic version of every environmental easement that has been accepted by the Department is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>. Please forward this notice to your building and/or planning departments, as applicable, to ensure your compliance with these provisions of New York State Environmental Conservation Law. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

BUFFALO FREIGHT HOUSE LLC

By: 
Name: Jason Yots
Title: Authorized Person

I hereby certify, under penalty of perjury that this copy is a true and complete copy of the original notice, mailed to the municipality via certified mail, return receipt requested, on November 30, 2018.


Jason Yots

7018 0360 0000 0900 9702

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com[®].

BUFFALO, NY 14202

Certified Mail Fee	\$3.45
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$2.05

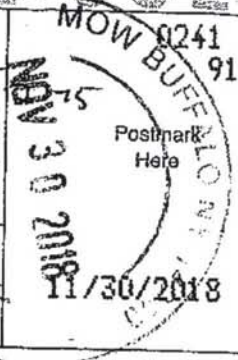
Total Postage and Fees

\$5.50

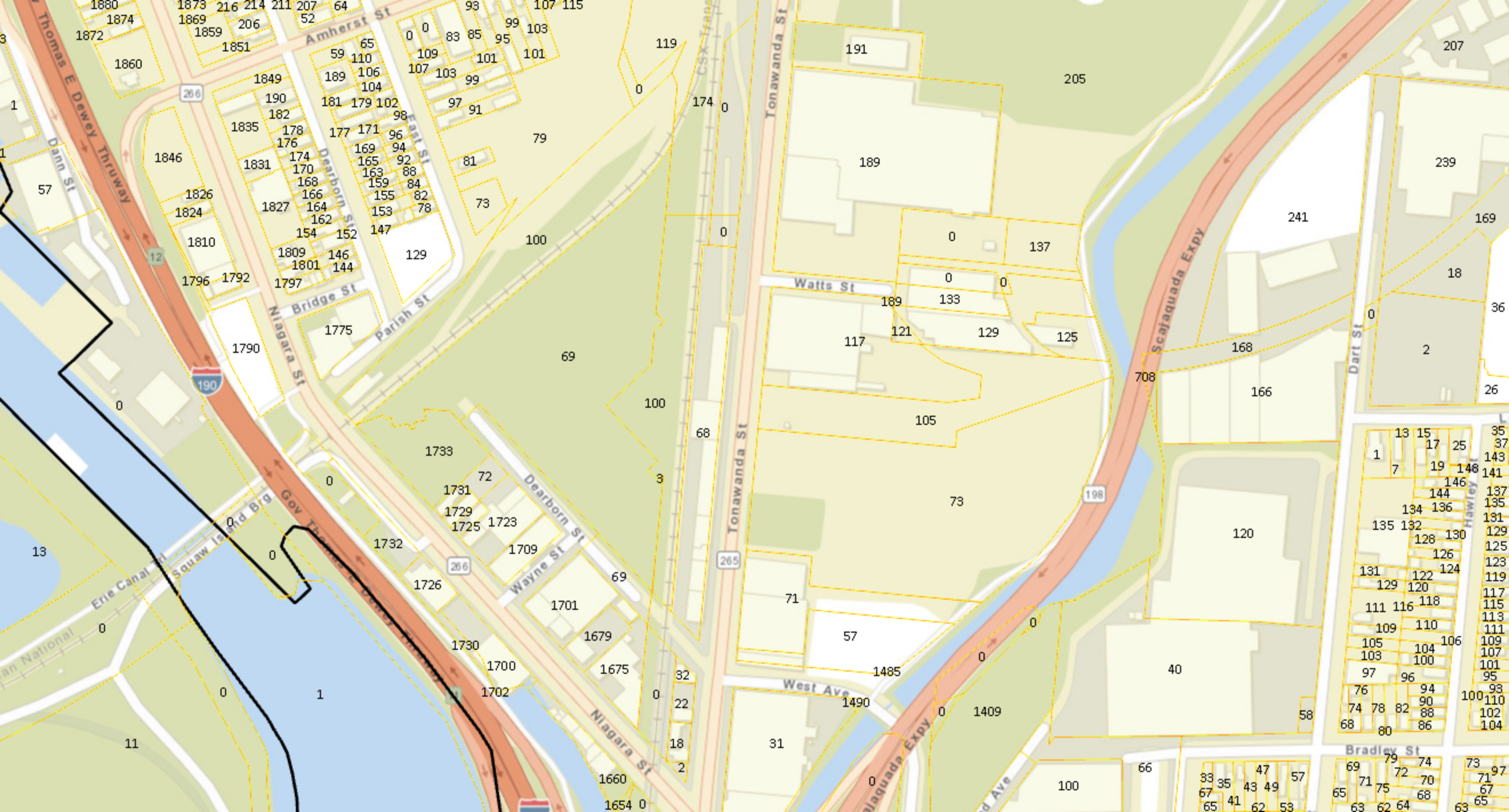
Sent To

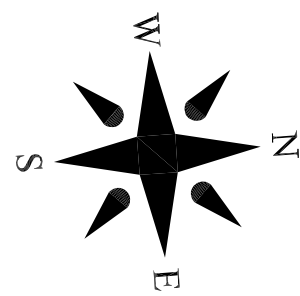
Street and Apt. No., or PO Box No.

City, State, ZIP+4[®]



Re: 68 Tonawanda St.
C 915316



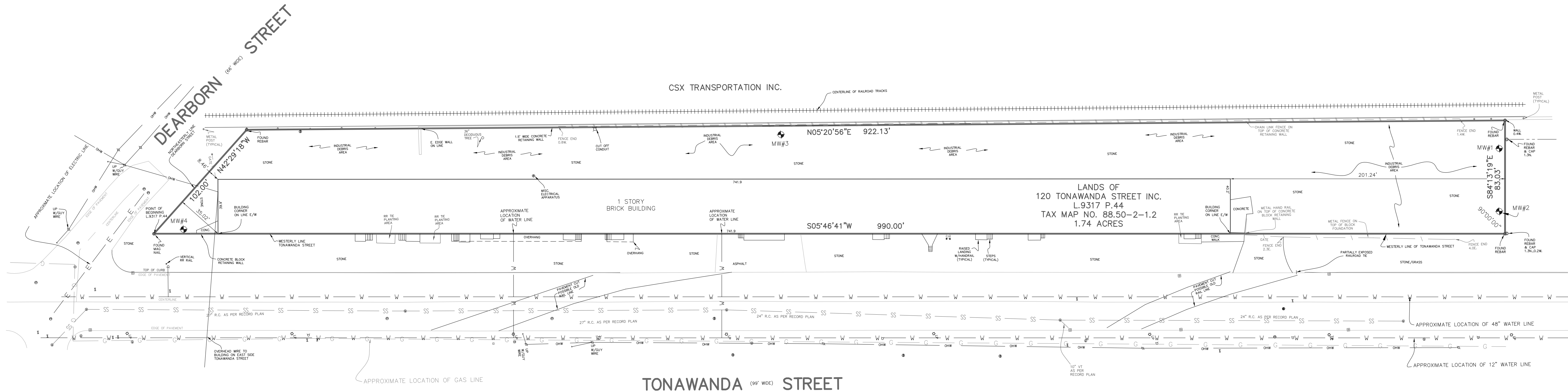


AS SURVEYED LEGAL DESCRIPTION AND ENVIRONMENTAL EASEMENT

"THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL EASEMENT HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 36 OF ARTICLE 71 OF THE NEW YORK ENVIRONMENTAL CONSERVATION LAW. THE ENGINEERING AND INSTITUTIONAL CONTROLS FOR THIS EASEMENT ARE SET FORTH IN THE SITE MANAGEMENT PLAN (SMP). A COPY OF THE SMP MUST BE OBTAINED BY ANY PARTY WITH AN INTEREST IN THE PROPERTY. THE SMP CAN BE OBTAINED FROM NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 625 BROADWAY, ALBANY, NY 12233 OR AT DERWEB@DEC.NY.GOV".

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE CITY OF BUFFALO, COUNTY OF ERIE AND STATE OF NEW YORK, BEING PART OF LOT NOS. 103–106, 163, 164, 215 AND 216 OF THE PARISH TRACT DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF INTERSECTION OF THE WESTERLY LINE OF TONAWANDA STREET (99 FEET WIDE) WITH THE NORTHEASTERLY LINE OF DEARBORN STREET (66 FEET WIDE), THENCE NORTH 42° 29'18" WEST, ALONG THE NORTHEASTERLY LINE OF DEARBORN STREET, A DISTANCE OF 102.00 FEET TO A POINT IN THE WESTERLY LINE OF LANDS OF CSX TRANSPORTATION INC.; THENCE NORTH 05° 20' 56" EAST, ALONG THE SAID WESTERLY LINE OF CSX TRANSPORTATION INC., A DISTANCE OF 922.13 FEET TO A POINT; THENCE SOUTH 84° 13' 19" EAST, A DISTANCE OF 83.03 FEET TO A POINT IN THE SAID WESTERLY LINE OF TONAWANDA STREET; THENCE SOUTH 05° 46' 41" WEST, ALONG SAID WESTERLY LINE OF TONAWANDA STREET, A DISTANCE OF 990.00 FEET TO THE POINT OR PLACE OF BEGINNING, CONTAINING 1.74 ACRES OF LAND.



LEGEND

	WATER MANHOLE
	WATER VALVE
	HYDRANT
	GAS LINE MARKER
	GAS VALVE
	GAS METER
	ELECTRIC MANHOLE
	UTILITY POLE
	OVERHEAD WIRE
	LIGHT POLE
	SEWER MANHOLE
	CATCH BASIN
	UNKNOWN MANHOLE
	BOLLARD
	MONITORING WELL NO.
	MONITORING WELL

ONLY VISIBLE UTILITY SERVICES AND/OR ENCUMBRANCES WERE LOCATED AND ARE SHOWN.

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATEMENT OF FACTS THAT MAY BE REVEALED BY AN EXAMINATION OF SUCH.

ONLY BOUNDARY SURVEY MAPS WITH THE SURVEYOR'S EMBOSSED SEAL ARE GENUINE, TRUE AND CORRECT COPIES OF THE SURVEYOR'S ORIGINAL WORK AND OPINION.

ALTERING THIS DOCUMENT IS IN VIOLATION OF THE LAW EXCEPTING AS PROVIDED IN SECTION 7209, PART 2 OF THE NEW YORK STATE EDUCATION LAW.

THE ALTERATION OF BOUNDARY SURVEY MAPS BY ANYONE OTHER THAN THE ORIGINAL PREPARED IS MISLEADING, CONFUSING, AND NOT IN THE GENERAL WELFARE AND BENEFIT OF THE PUBLIC.

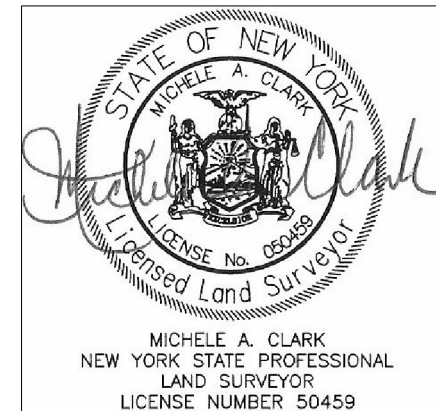
NOTES:

- 1) ALL UTILITY INFORMATION SHOWN IS APPROXIMATE.
- 2) BEARING SYSTEM SHOWN REFERENCED TO THE NYS PLANE COORDINATE SYSTEM, WEST ZONE.

PROPERTY MAY BE AFFECTED BY THE FOLLOWING:

- 1) A PERPETUAL EASEMENT FOR INGRESS AND EGRESS TO CONSOLIDATED RAIL CORPORATION – L.9317 P.44
- 2) EASEMENT TO NIAGARA MOHAWK CORPORATION AND NEW YORK TELEPHONE COMPANY – L.10807 P.650

REVISED 12/6/16: ADD GAS LINE, WATER LINE & ELECTRIC LINE INFORMATION
REVISED 5/15/18: UPDATE SURVEY, REVISE MAP TO INCLUDE ENVIRONMENTAL EASEMENT INFORMATION, TURN OFF ELEVATIONS FROM TOPOGRAPHIC SURVEY.



BOUNDARY SURVEY 68 TONAWANDA STREET PART OF LOT NOS. 103, 104, 105, 106, 163, 164, 215 & 216 OF THE PARISH TRACT CITY OF BUFFALO COUNTY OF ERIE ~ STATE OF NEW YORK		
CREEKSIDE BOUNDARY LAND SURVEYING, PLLC 1746 HIGGINS ROAD WARGENTON, NEW YORK 14569 PHONE: 585-786-5640 EMAIL: mclark@creeksideboundary.com		
SCALE: 1" = 40'	DATE: 5/15/18	SHEET 1 OF 1
DWN BY: MAC	CKD BY: MAC	JOB NO.: 80.50-2-1.2



APPENDIX C

SITE WIDE INSPECTION FORMS AND SITE PHOTOS



BE3, DPC
960 Busti Avenue Suite B-150
Buffalo, New York

SITE WIDE INSPECTION FORM

Date: 4/15/22

Site Name: 68 Tonawanda

Location: 68 Tonawanda Street, Buffalo NY 14207

General Site Conditions:

Property contains a large building consisting of apartments on one end (Residential space) and a commercial business/restaurant on the southern end. Also contains a parking area north and south of the 68 Tonawanda Building.

Weather Conditions: 51 degrees, Partly Cloudy

Compliance/Evaluation ICs and ECs :

Property is in compliance with all SMP ICs and ECs. Soil and grass cover system on site appeared to be unchanged from previous years. No ruts or marks were obvious. Asphalt parking lots and concrete areas appear to be in good condition and maintaining the cover system. No excavation has occurred into the cover system. SSDS is operating in passive mode.

Site management Activities (sampling, H & S Inspection, etc.):

Monitoring wells were visually examined and found to be in good condition.

Compliance with Permits and O & M Plan:

The SSDS was inspected and was in compliance with the SMP O & M Plan.

Records Compliance:

Records are maintained. No issues have occurred during the reporting period that have warranted any compliance or system reporting.

General Comments:

Property and compliance systems appear to be well maintained and functioning as required by the SMP.

INSPECTOR'S NAME: Dalton Stack



1. Entrance to parking lot on residential side of 68 Tonawanda site. Facing west from Tonawanda Street.



2. Grass cover next to parking lot on residential side of 68 Tonawanda. Facing north from driveway entrance.



3. Parking lot for residential side of 68 Tonawanda. Facing North from driveway entrance.



4. Drive thru parking area located on north and west side of residential side of 68 Tonawanda. Facing south from driveway entrance.

BE3 Photolog

Date: 4/15/22



5. Grass and sidewalk area on the north side of 68 Tonawanda site. Facing south from driveway entrance.



6. Grass and sidewalk area on the north side of 68 Tonawanda site. Facing west from Tonawanda Street.



7. Drive thru area and parking located on west side of 68 Tonawanda site. Facing south from north end of residential side of site.



8. Drive thru area and parking located on west side of 68 Tonawanda site. Facing south from parking spot 15

BE3 Photolog

Date: 4/15/22



9. Drive thru area and parking located on west side of 68 Tonawanda site. Facing south from middle of property.



10. Drive thru area and parking located on west side of 68 Tonawanda site. Facing south from parking spot 28.



11. Drive thru area and parking located on west side of 68 Tonawanda site. Facing south from parking spot 32.



12. Drive thru area and parking located on west side of 68 Tonawanda site. Facing south from the most southern apartment on residential side of 68 Tonawanda.

BE3 Photolog

Date: 4/15/22



13. . Drive thru area and parking located on west side of 68 Tonawanda site. Facing south from west Side of hatchet and Hops building



14. Southern end of building on 68 Tonawanda Site. Facing east from western end of property.



15. Southern end of drive thru area at 68 Tonawanda site. Facing southeast from southwest end of property.



16. Parking space at southern end of property. Facing north from southern end of property line.

BE3 Photolog

Date: 4/15/22



17. Driveway entrance and exit for Hatchet and Hops. Facing North from south end of property.



18. Sidewalk and green space located on the eastern side of 68 Tonawanda building. Facing North from southern end of property.



19. Sidewalk and green space located on the eastern side of 68 Tonawanda building. Facing North



20. Sidewalk and green space located on the eastern side of 68 Tonawanda building. Facing North

BE3 Photolog

Date: 4/15/22



21. Sidewalk and green space located on the eastern side of 68 Tonawanda building. Facing North



22. Sidewalk and green space located on the eastern side of 68 Tonawanda building. Facing North



23. Sidewalk and green space located on the eastern side of 68 Tonawanda building. Facing North



24. Sidewalk and green space located on the eastern side of 68 Tonawanda building. Facing North



25. Passive SSDS risers located on roof of the commercial side (Hatchet and Hops) of 68 Tonawanda.



26. Passive SSDS risers located on roof of residential side of 68 Tonawanda.