

Brownfield Cleanup Program Application

1585 Hertel Avenue Site
Buffalo, New York

January 2018

0437-017-001-003

Prepared For:

1585 Hertel LLC



Prepared By:





BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION FORM

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

☐ Yes

☒ No

If yes, provide existing site number: _____

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

Section I. Requestor Information - See Instructions for Further Guidance

DEC USE ONLY
BCP SITE #: _____

NAME 1585 Hertel LLC

ADDRESS 330 Depew Avenue

CITY/TOWN Buffalo, New York

ZIP CODE 14214

PHONE (716) 883-4400

FAX NA

E-MAIL jdaly@trautmanassoc.com

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.

See Attachment 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

1. What stage is the project starting at?

☒ Investigation

☐ Remediation

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

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

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

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

See Attachment 2

See Figure 5

Section III. Property's Environmental History**See Attachment 3**

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).

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	X		
Chlorinated Solvents			
Other VOCs			
SVOCs			
Metals	X		
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

See Attachment 3

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):

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> Coal Gas Manufacturing | <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Agricultural Co-op | <input type="checkbox"/> Dry Cleaner |
| <input type="checkbox"/> Salvage Yard | <input type="checkbox"/> Bulk Plant | <input type="checkbox"/> Pipeline | <input checked="" type="checkbox"/> Service Station |
| <input type="checkbox"/> Landfill | <input type="checkbox"/> Tannery | <input type="checkbox"/> Electroplating | <input type="checkbox"/> Unknown |

Other: Gasoline station

Section IV. Property Information - See Instructions for Further Guidance

PROPOSED SITE NAME 1585 Hertel Avenue

ADDRESS/LOCATION 1585 Hertel Avenue

CITY/TOWN Buffalo, New York

ZIP CODE 14216

MUNICIPALITY(IF MORE THAN ONE, LIST ALL): City of Buffalo

COUNTY Erie

SITE SIZE (ACRES) 0.18

LATITUDE (degrees/minutes/seconds)

42 ° 56 ' 50.8 "

LONGITUDE (degrees/minutes/seconds)

78 ° 50 ' 57.7 "

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

1585 Hertel Avenue

78.74

3

1

0.18

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. [See Attachment 4](#)

2. Is the required property map attached to the application? [See Figures 2, 3, & 4](#) ☒ Yes ☐ No
(application will not be processed without map)

3. Is the property within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)?
(See [DEC's website](#) for more information) ☐ Yes ☒ No

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

None/unknown

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/unknown

10. Property Description and Environmental Assessment – **please refer to application instructions for the proper format of each narrative requested.** See Attachment 4

Are the Property Description and Environmental Assessment narratives included in the **prescribed format**? ☒ 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?
If yes, requestor must answer questions on the supplement at the end of this form. ☐ Yes ☐ No NA

12. Is the Requestor now, or will the Requestor in the future, seek a determination that the property is Upside Down? ☐ Yes ☐ No NA

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 NA

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

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

Initials of each Requestor: _____

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

Section V. Additional Requestor Information See Instructions for Further Guidance		DEC USE ONLY BCP SITE NAME: _____ BCP SITE #: _____	
NAME OF REQUESTOR'S AUTHORIZED REPRESENTATIVE Mr. John Daly		See Attachment 1	
ADDRESS 330 Depew Avenue			
CITY/TOWN Buffalo, New York		ZIP CODE 14214	
PHONE (716) 883-4400	FAX NA	E-MAIL jdaly@trautmanassoc.com	
NAME OF REQUESTOR'S CONSULTANT Mr. Christopher Boron			
ADDRESS 2558 Hamburg Turnpike, Suite 300			
CITY/TOWN Buffalo, New York		ZIP CODE 14218	
PHONE (716) 856-0599	FAX (716) 856-0583	E-MAIL cboron@benchmarkturnkey.com	
NAME OF REQUESTOR'S ATTORNEY Craig A. Slater, Esq.			
ADDRESS 500 Seneca Street, Suite 504			
CITY/TOWN Buffalo, NY		ZIP CODE 14204	
PHONE (716) 845-6760	FAX (716) 845-6764	E-MAIL cslater@cslaterlaw.com	
Section VI. Current Property Owner/Operator Information – if not a Requestor			
CURRENT OWNER'S NAME O'Dalaigh Real Estate LLC		OWNERSHIP START DATE: Feb. 2017	
ADDRESS Same as Requestor			
CITY/TOWN Same as Requestor		ZIP CODE Same as Requestor	
PHONE Same as Requestor	FAX Same as Requestor	E-MAIL Same as Requestor	
CURRENT OPERATOR'S NAME Same as Requestor			
ADDRESS Same as Requestor			
CITY/TOWN Same as Requestor		ZIP CODE Same as Requestor	
PHONE Same as Requestor	FAX Same as Requestor	E-MAIL Same as Requestor	
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. See Attachment 5 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)		See Attachment 6	
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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
2. Is the requestor subject to an existing order for the investigation, removal or remediation of contamination at the site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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.

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)

Mr. John Daly is a member of 1585 Hertel LLC and owner of O'Dalaigh Real Estate LLC, which owns the property.

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

See Attachment 1

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

Section VIII. Property Eligibility Information - See Instructions for Further Guidance

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.

NA ☐ 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

See Attachment 7

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.

**See Figure 8 for
Adjacent
Property Owners**

Section X. Land Use Factors		See Attachment 8
<p>1. What is the current zoning for the site? What uses are allowed by the current zoning? <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Industrial If zoning change is imminent, please provide documentation from the appropriate zoning authority.</p>		
<p>2. Current Use: <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Vacant <input type="checkbox"/> Recreational (check all that apply) 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.</p>		
<p>3. Reasonably anticipated use Post Remediation: <input checked="" type="checkbox"/> Residential <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Industrial (check all that apply) Attach a statement detailing the specific proposed use.</p> <p>If residential, does it qualify as single family housing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>		
<p>4. Do current historical and/or recent development patterns support the proposed use?</p>		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>5. Is the proposed use consistent with applicable zoning laws/maps? Briefly explain below, or attach additional information and documentation if necessary.</p> <div style="border: 1px solid red; padding: 5px; margin: 10px auto; width: fit-content;"> See Attachment 8 and Figure 8 </div>		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>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.</p> <div style="border: 1px solid red; padding: 5px; margin: 10px auto; width: fit-content;"> See Attachment 8 and Figure 9 </div>		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

XI. Statement of Certification and Signatures

(By a requestor other than an individual)

I hereby affirm that I am Owner (title) of 1585 Hertel LLC (entity); that I am authorized by that entity to make this application and execute the Brownfield Cleanup Agreement (BCA) and all subsequent amendments; that this application was prepared by me or under my supervision and direction. If this application is approved, I acknowledge and agree: (1) to execute a BCA within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the [Proposed DER-32, Brownfield Cleanup Program Applications and Agreements](#); and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 12-26-17

Signature: _____

Print Name: John Daly

SUBMITTAL INFORMATION:

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

FOR DEC USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

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

BCP App Rev 9

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> 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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down or underutilized as defined below?	Upside Down? <input type="checkbox"/> Yes <input type="checkbox"/> No Underutilized? <input type="checkbox"/> Yes <input type="checkbox"/> 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 will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.);
- ☐ This is Not an Affordable Housing Project.

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

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

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

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

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

BCP Application Summary (for DEC use only)

Site Name: 1585 Hertel Avenue

City:

Site Address: 1585 Hertel Avenue

County:

Zip: 14216

Tax Block & Lot

Section (if applicable): 78.74

Block: 3

Lot: 1

Requestor Name:

City:

Requestor Address:

Zip:

Email:

Requestor's Representative (for billing purposes)

Name: Mr. John Daly

Address: 330 Depew Avenue

City:

Zip:

Email: jdaly@trautmanassoc.com

Requestor's Attorney

Name: Craig A. Slater, Esq.

Address: 500 Seneca Street, Suite 504

City:

Zip:

Email: cslater@cslaterlaw.com

Requestor's Consultant

Name: Mr. Christopher Boron

Address: 2558 Hamburg Turnpike, Suite 300

City: Buffalo, New York

Zip: 14218

Email: cboron@benchmarkturnkey.com

Percentage claimed within an En-Zone: ☐ 0% ☐ <50% ☐ 50-99% ☐ 100%

DER Determination: ☐ Agree ☐ Disagree

Requestor's Requested Status: ☐ Volunteer ☐ Participant

DER/OGC Determination: ☐ Agree ☐ Disagree

Notes:

For NYC Sites, is the Requestor Seeking Tangible Property Credits: ☐ Yes ☐ No

Does Requestor Claim Property is Upside Down: ☐ Yes ☐ No

DER/OGC Determination: ☐ Agree ☐ Disagree ☐ Undetermined

Notes:

Does Requestor Claim Property is Underutilized: ☐ Yes ☐ No

DER/OGC Determination: ☐ Agree ☐ Disagree ☐ Undetermined

Notes:

Does Requestor Claim Affordable Housing Status: ☐ Yes ☐ No ☐ Planned, No Contract

DER/OGC Determination: ☐ Agree ☐ Disagree ☐ Undetermined

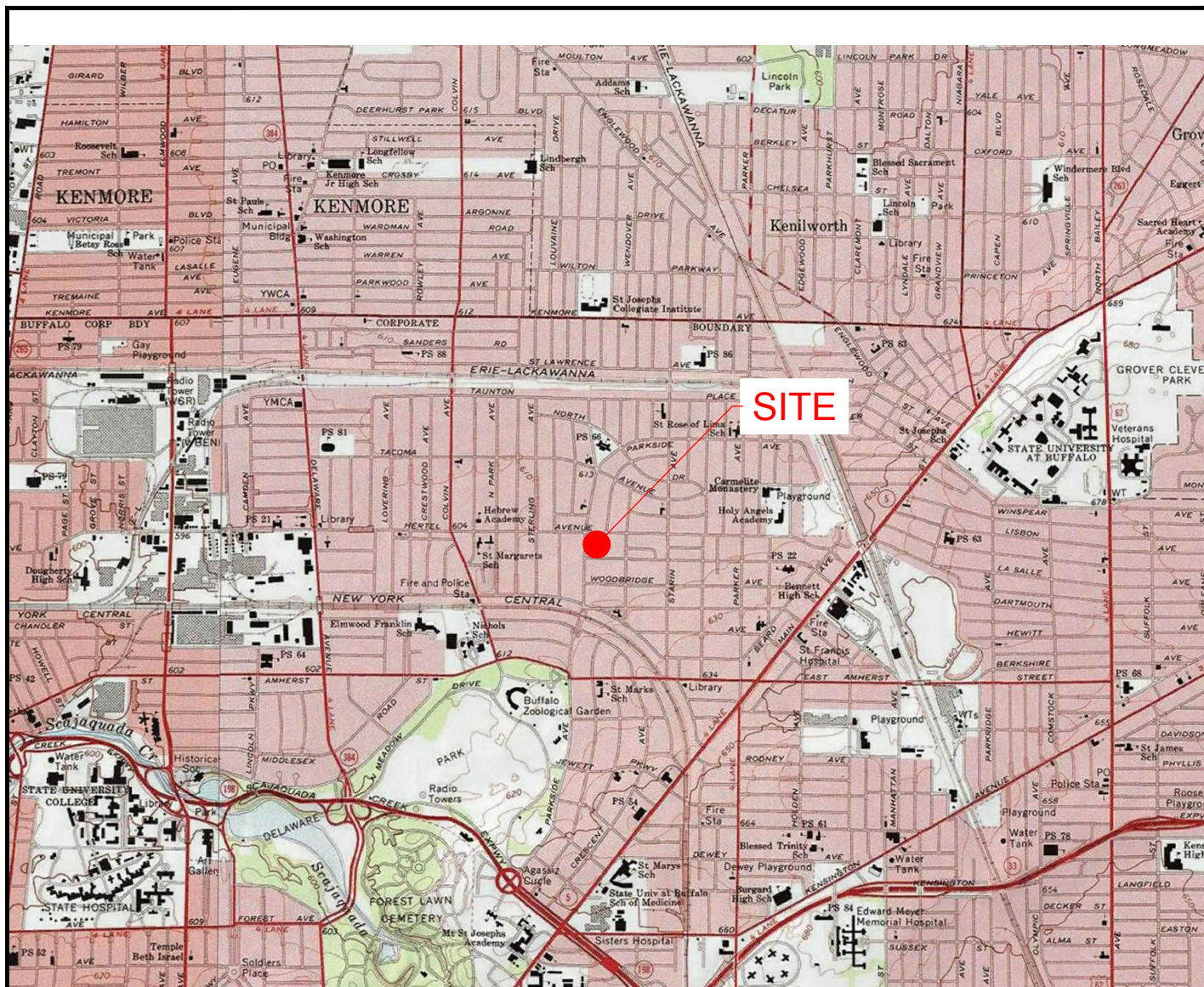
Notes:

LIST OF APPLICATION FIGURES

NYSDEC Brownfield Cleanup Program Application
1585 Hertel Avenue Site
Buffalo, New York

Figure 1	Site Location and Vicinity Map
Figure 2	Site Plan (Aerial)
Figure 3	Tax Map
Figure 4	Property Base Map (1000' Set Back)
Figure 5	Project Schedule
Figure 6A	Conceptual Building Rendering
Figure 6B	Preliminary Project Floor Plan Rendering Conceptual Building Rendering
Figure 7	Site Plan with Phase I ESA RECs, Limited Phase II Boring Locations and Areas of Impacts
Figure 8	Adjacent Property Owners
Figure 9	Zoning Map
Figure 10	USDA Soil Type Map

FIGURE 1



3,000' 0' 3,000' 6,000'

SCALE: 1 INCH = 3,000 FEET
SCALE IN FEET
(approximate)



2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599

SITE LOCATION AND VICINITY MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

1585 HERTEL AVENUE SITE
BUFFALO, NEW YORK

PREPARED FOR

1585 HERTEL LLC

PROJECT NO.: B0437-017-001

DATE: DECEMBER 2017

DRAFTED BY: CMS-CMC

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FIGURE 2



SCALE: 1 INCH = 80 FEET
SCALE IN FEET
(approximate)

LEGEND:

- BCP SITE BOUNDARY
- - - - PARCEL BOUNDARY



2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599

PROJECT NO.: 0437-017-001

DATE: DECEMBER 2017

DRAFTED BY: CMC

SITE PLAN (AERIAL)

BROWNFIELD CLEANUP PROGRAM APPLICATION

1585 HERTEL AVENUE SITE

BUFFALO, NEW YORK

PREPARED FOR

1585 HERTEL LLC

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FIGURE 3



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SUITE 300
BUFFALO, NY 14218
(716) 856-0599

PROJECT NO.: 0437-017-001

DATE: DECEMBER 2017

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TAX MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

1585 HERTEL AVENUE SITE

BUFFALO, NEW YORK

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FIGURE 4



SCALE: 1 INCH = 500 FEET
SCALE IN FEET
(approximate)

LEGEND:

- BCP SITE BOUNDARY
- - - - PARCEL BOUNDARY



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(716) 856-0599

PROJECT NO.: 0437-017-001

DATE: DECEMBER 2017

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PROPERTY BASE MAP (1,000' SET BACK)

BROWNFIELD CLEANUP PROGRAM APPLICATION

1585 HERTEL AVENUE SITE

BUFFALO, NEW YORK

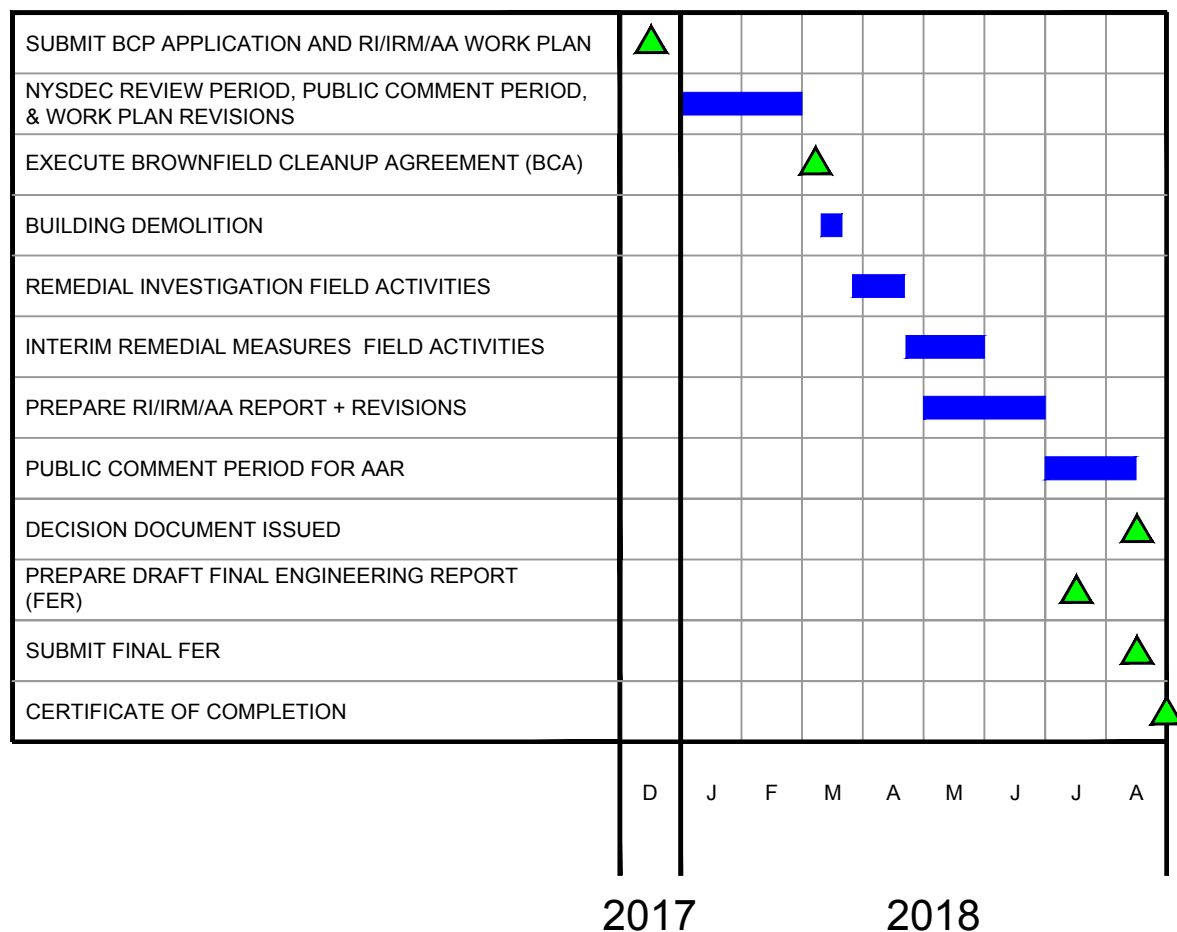
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PROJECT TASKS:



2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
(716) 856-0599

PROJECT NO.: 0437-017-001

DATE: DECEMBER 2017

DRAFTED BY: CMC

PRELIMINARY PROJECT SCHEDULE

BROWNFIELD CLEANUP PROGRAM APPLICATION

1585 HERTEL AVENUE SITE
BUFFALO, NEW YORK

PREPARED FOR
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FIGURE 5

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SUITE 300
BUFFALO, NY 14218
(716) 856-0599

PROJECT NO.: 0437-017-001

DATE: DECEMBER 2017

DRAFTED BY: CMC

CONCEPTUAL BUILDING RENDERING

BROWNFIELD CLEANUP PROGRAM APPLICATION

1585 HERTEL AVENUE SITE

BUFFALO, NEW YORK

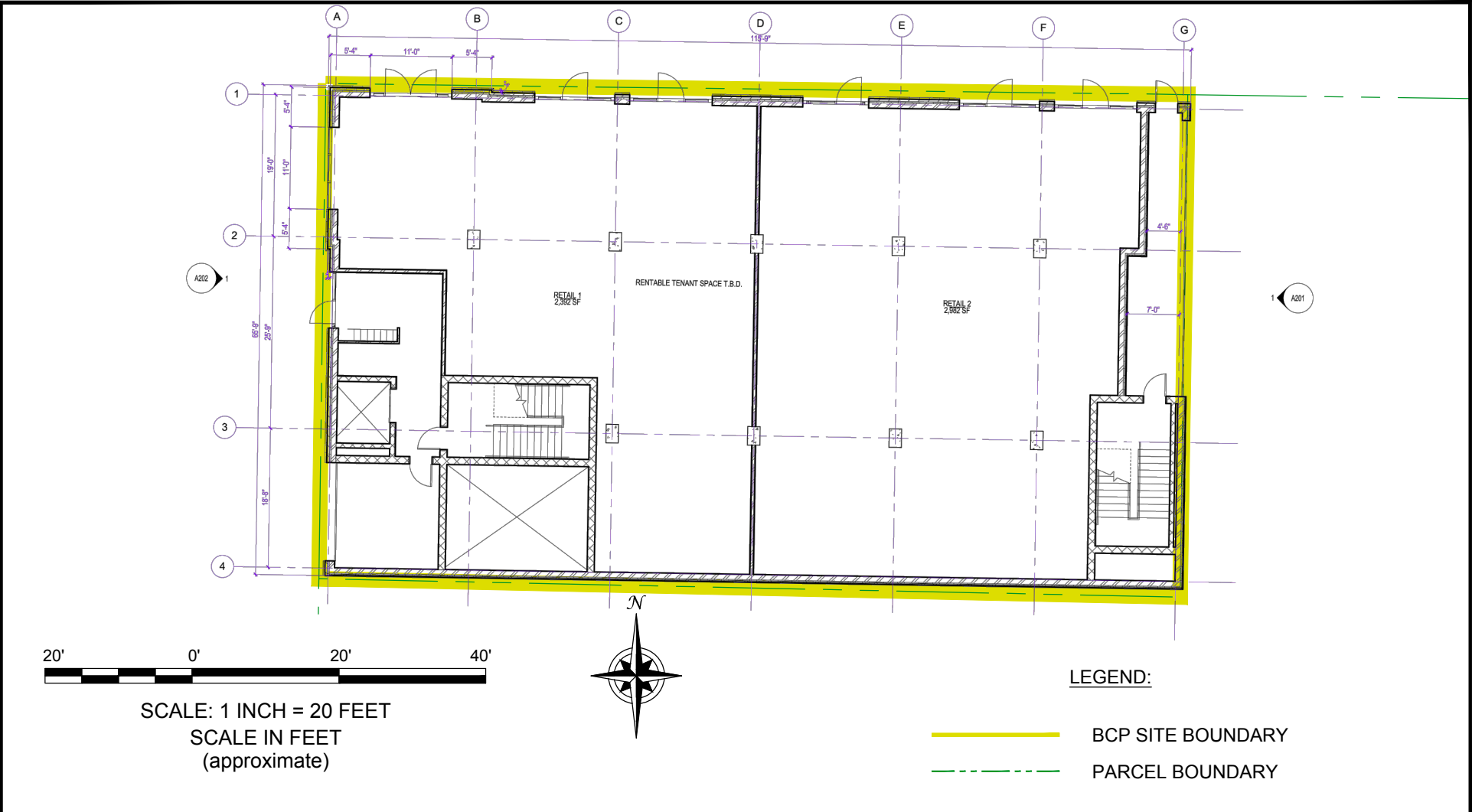
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FIGURE 6A

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F:\CAD\Benchmark\1585 Hertel LLC\BCP Application\Figure 6b: Preliminary Project Rendering.dwg



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SUITE 300
BUFFALO, NY 14218
(716) 856-0599

PROJECT NO.: 0437-017-001

DATE: DECEMBER 2017

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PRELIMINARY PROJECT FLOOR PLAN RENDERING

BROWNFIELD CLEANUP PROGRAM APPLICATION

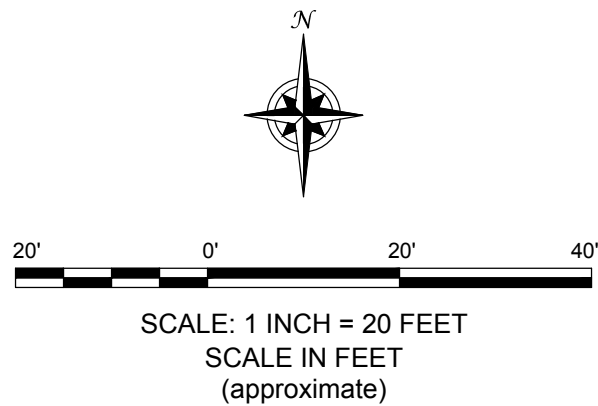
1585 HERTEL AVENUE SITE

BUFFALO, NEW YORK

PREPARED FOR
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FIGURE 6B

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BCP SITE BOUNDARY

PARCEL BOUNDARY

SB-1 ● LIMITED PHASE II BORING LOCATIONS

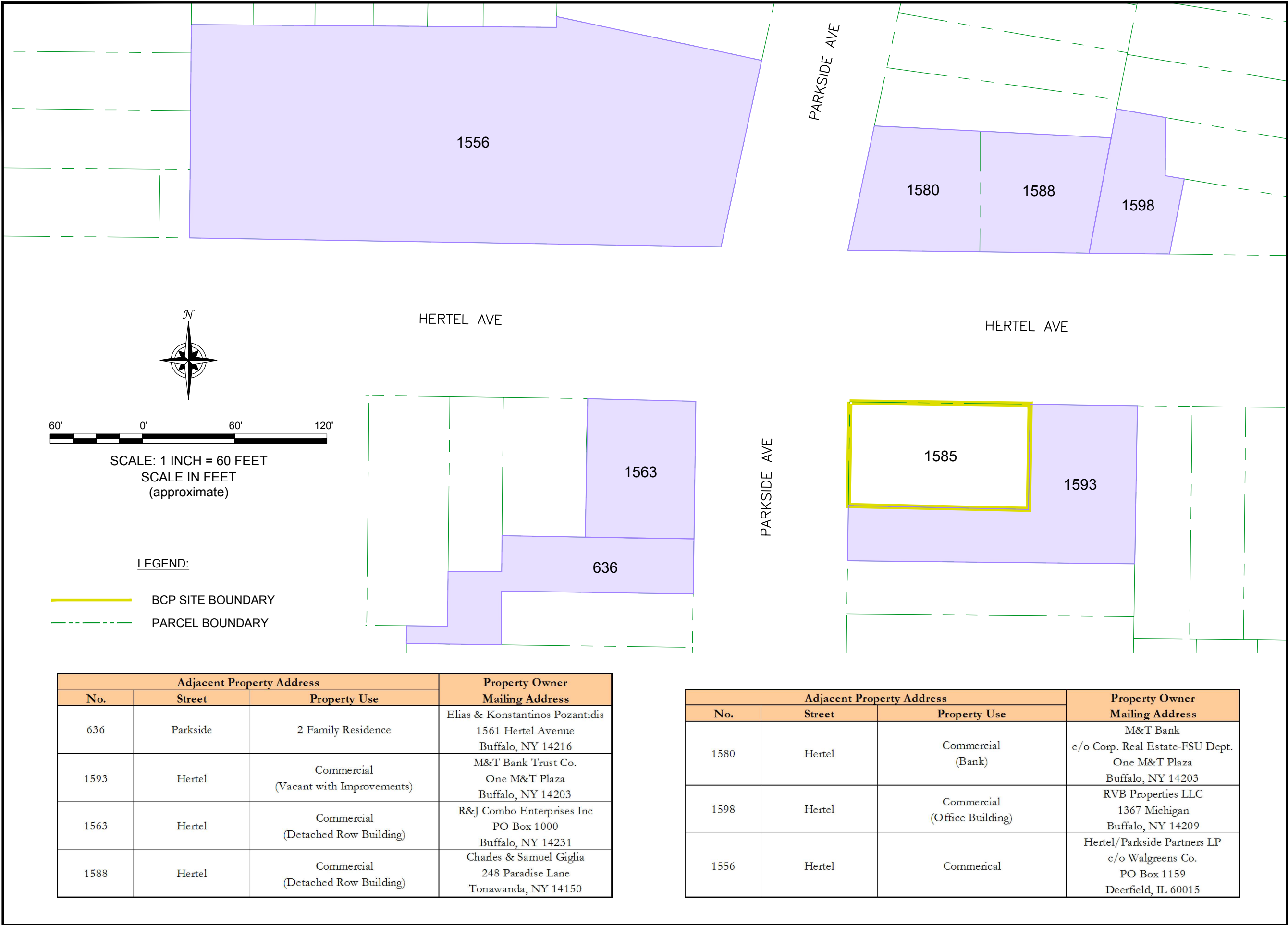
SS-1 ▣ LIMITED PHASE II SURFACE SAMPLE LOCATION

JOB NO.: 0437-017-001

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F:\CAD\Benchmark\1585 Hertel LL\BCP Application\Figure 8: Adjacent Property Owners.dwg

DATE: DECEMBER 2017
DRAFTED BY: CMC



ADJACENT PROPERTY OWNERS

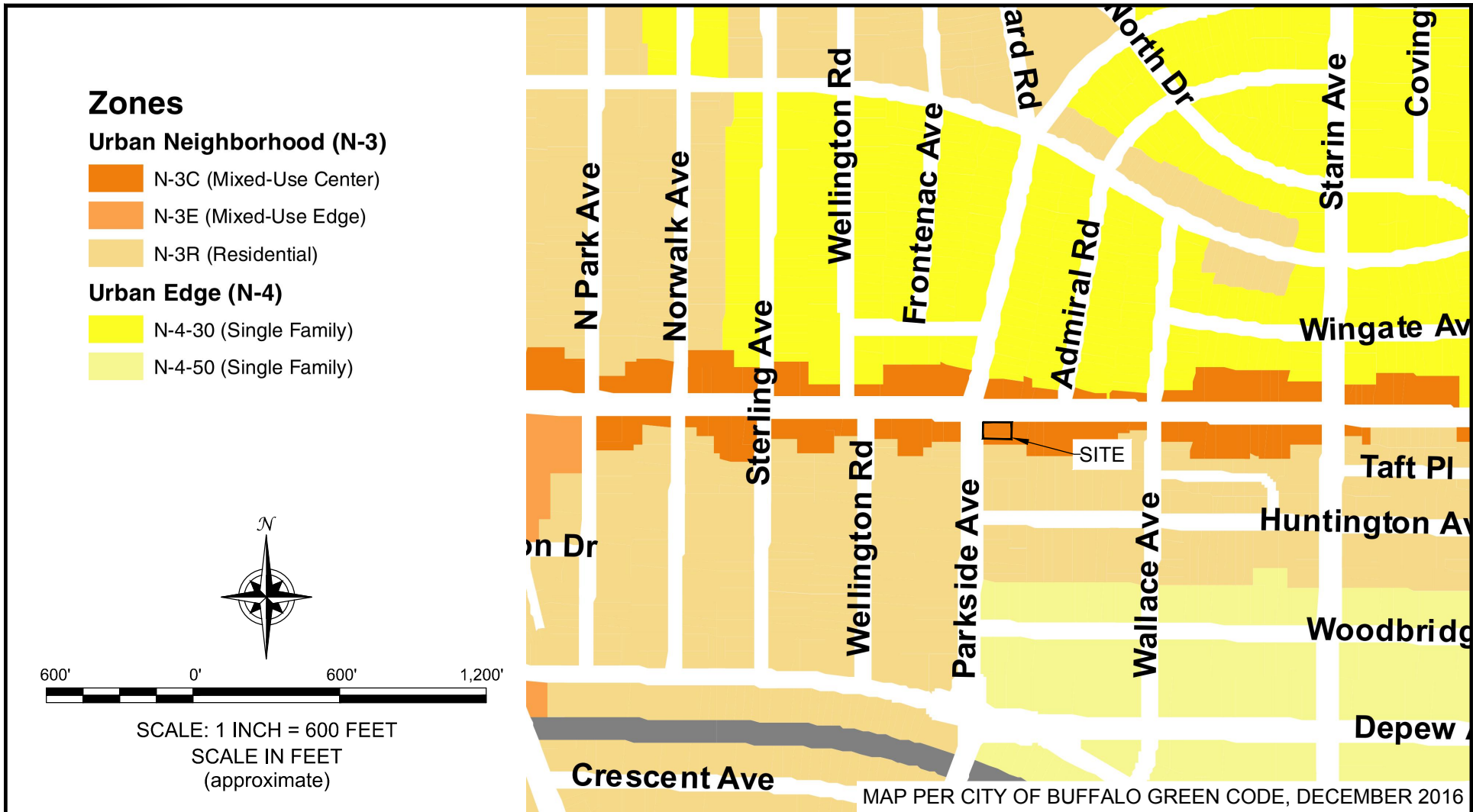
BROWNFIELD CLEANUP PROGRAM APPLICATION
1585 HERTEL AVENUE SITE
BUFFALO, NEW YORK
PREPARED FOR
1585 HERTEL LLC

BENCHMARK
ENVIRONMENTAL
ENGINEERING &
SCIENCE, PLLC
2558 HAMBURG TURNPIKE
SUITE 300
BUFFALO, NY 14218
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JOB NO.: 0437-017-001

FIGURE 8

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SUITE 300
BUFFALO, NY 14218
(716) 856-0599

PROJECT NO.: 0437-017-001

DATE: DECEMBER 2017

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ZONING MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

1585 HERTEL AVENUE SITE

BUFFALO, NEW YORK

PREPARED FOR

1585 HERTEL LLC

FIGURE 9

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LEGEND:

— PROPERTY BOUNDARY

Map Unit Symbol	Map Unit Name
Uh	Urban land-Churchville complex



SCALE: 1 INCH = 100 FEET
SCALE IN FEET
(approximate)



**Natural Resources
Conservation Service**

Web Soil Survey
National Cooperative Soil Survey



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SUITE 300
BUFFALO, NY 14218
(716) 856-0599

PROJECT NO.: 0437-017-001

DATE: DECEMBER 2017

DRAFTED BY: CCB

USDA SOIL TYPE MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

1585 HERTEL AVENUE SITE

BUFFALO, NEW YORK

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1585 HERTEL LLC

FIGURE 10

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LIST OF APPLICATION ATTACHMENTS

NYSDEC Brownfield Cleanup Program Application
1585 Hertel Avenue Site
Buffalo, New York

BCP Application Section No.	Attachment No.	Description
I	1	Requestor Information
II	2	Project Description
III	3	Property's Environmental History
IV	4	Property Information
VI	5	Previous/ Current Property Owners/ Operators
VII & VIII	6	Requestor Eligibility Information
IX	7	Contact List Information
X	8	Land Use Factors
--	9	Electronic Copy of BCP Application, Attachments, and Previous Studies

ATTACHMENT 1

BCP APPLICATION – SECTION I

REQUESTER INFORMATION

NYS DEPARTMENT OF STATE CORPORATION & BUSINESS ENTITY DATABASE

SIGNATURE RESOLUTION

RIGHT OF ACCESS LETTER

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through December 4, 2017.

Selected Entity Name: 1585 HERTEL LLC

Selected Entity Status Information

Current Entity Name: 1585 HERTEL LLC

DOS ID #: 5203692

Initial DOS Filing Date: SEPTEMBER 18, 2017

County: ERIE

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

JOHN F. DALY
330 DEPEW AVENUE
BUFFALO, NEW YORK, 14214

Registered Agent

JOHN F. DALY
330 DEPEW AVENUE
BUFFALO, NEW YORK, 14214

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address

(es) of the original members, however this information is not recorded and only available by [viewing the certificate.](#)

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
SEP 18, 2017	Actual	1585 HERTEL LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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1585 HERTEL LLC

UNANIMOUS WRITTEN CONSENT OF MEMBERS

December 21, 2017

The undersigned being holders of all of the membership interest of **1585 HERTEL LLC**, a New York limited liability company (the “**Company**”), hereby jointly consent to the adoption of the following resolutions without a meeting and direct that this Consent be filed with the minutes of the Company:

RESOLVED, that John F. Daly (an “**Authorized Person**”) be, and hereby is, authorized, directed, and empowered, acting alone, in the name or on behalf of the Corporation, to execute the Brownfield Cleanup Program (“**BCP**”) Application, the BCP Agreement, or any other documents or agreements necessary to enter and participate in the New York State Department of Environmental Conservation’s Brownfield Cleanup Program (Environmental Conservation Law Article 27, Title 14) for property located at 1585 Hertel Avenue, Buffalo, New York; and be it further

RESOLVED, that the Authorized Person is hereby authorized, empowered and directed to take all such action on behalf of the Corporation as they may deem necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions; and be it further

RESOLVED, that any acts of any officer of the Corporation and of any persons designated and authorized to act by any such officer of the Corporation, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Corporation.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the date first set forth above.


John F. Daly, Member


Ruthanne Daly, Member

State of New York)
County of Erie) ss.:

On the 22 day of December in the year 2017, before me, the undersigned, a Notary Public in and for the said state, personally appeared John F. Daly, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

KARA RAE DEFRANCO
No. 01DE6343834
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 06/20/2020

December 5, 2017

Ms. Bernadette Anderson
NYSDEC – DER/BTS
625 Broadway, 11th Floor
Albany, NY 12233-7020

Re: 1585 Hertel Avenue Site
Buffalo, New York

Dear Ms. Anderson:

Please be advised that the property located at 1585 Hertel Avenue, in Buffalo, New York is currently owned by O'Dalaigh Real Estate LLC. As such, O'Dalaigh Real Estate LLC is granting full right of access to the property to undertake investigation, remediation and redevelopment of the property under the New York Brownfield Cleanup Program to 1585 Hertel LLC and its agents.

If you have any questions whatsoever, please do not hesitate to contact me.

Regards,



John F. Daly
Owner
O'Dalaigh Real Estate LLC

ATTACHMENT 2

BCP APPLICATION – SECTION II

PROJECT DESCRIPTION

ATTACHMENT 2
BCP Application - Section II
Project Description
1585 Hertel Avenue Site

SECTION II – PROJECT DESCRIPTION

1585 Hertel LLC, acting as a Volunteer, is willing to complete additional investigation and remediate the Site (see Figures 1-4) under the Brownfield Cleanup Program (BCP) and is submitting this BCP application for eligibility into the Program. 1585 Hertel LLC, has prepared a Remedial Investigation/Interim Remedial Measures Work Plan for concurrent submittal with the BCP application and plans to complete a Remedial Investigation, the necessary Interim Remedial Measures, and prepare a Remedial Investigation/Interim Remedial Measures/Alternatives Analysis Report (RI/IRM/AAR) upon acceptance into the BCP.

A preliminary project schedule is shown on Figure 5.

The Volunteer plans to redevelop the entire ± 0.18 -acre BCP Site, with the construction of a 5-story residential (34-unit apartment) complex with retail stores on the first floor. The redevelopment will occupy the entire 0.18 acre Site. The Site Redevelopment Plan estimates capital investment of approximately \$5,500,000 to \$6,000,000 to investigate, remediate, and redevelop the Site.

A preliminary project rendering of the building is included as Figure 6A and the basement floor layout is included as Figure 6B.

The Project will result in the remediation and redevelopment of an environmentally-impacted Site within a Neighborhood Center¹ area of Hertel Avenue in the City of Buffalo, New York.

¹ According to the Land Use Plan of the Buffalo Green Code a Neighborhood Center is defined as mixed-use commercial areas at neighborhood scale and have a zoning codes of N-2C, N-2E, N-3C or N-3E.

ATTACHMENT 3

BCP APPLICATION – SECTION III

PROPERTY'S ENVIRONMENTAL HISTORY

ATTACHMENT 3
BCP Application – Section III
Property’s Environmental History
1585 Hertel Avenue Site

PREVIOUS ENVIRONMENTAL INVESTIGATIONS

A summary of the previous environmental investigation findings completed for the 1585 Hertel Avenue Site (hereinafter, the “Project Site” or the “Site”) are provided below.

Phase I Environmental Investigation Report

Benchmark Environmental Engineering and Science, PLLC (Benchmark) completed a Phase I Environmental Site Assessment (ESA) on the Site in October 2017. The 0.18 acre Site was identified as being a vacant former gasoline and service station used by a portable food cart operation at the time of this assessment.

Benchmark’s ESA revealed the following recognized environmental conditions (RECs) in connection with the Site:

- The historic use of the Site as a petroleum retail operation and automotive repair facility from at least 1938 until operations ceased in 2016 are considered RECs as subsurface conditions are unknown. Note that prior to construction of the existing gasoline service station in 1963, the Site included a previous gasoline service station in current asphalt paved and pump island areas;
- The Site has an extensive tank history with existing inactive underground storage tanks (USTs), previous generations of USTs, and current/former pump island areas. Evidence indicative of former USTs (i.e., cut suspect vent pipes) was observed during the site reconnaissance. Existing and former USTs and pump islands are considered RECs due to the potential for subsurface impacts;
- In-ground lift systems were observed within the building and are considered RECs due to the potential for impacts;
- The staining noted at the Site is considered a REC as visible impacts were noted to earthen ground surfaces proximate to an aboveground storage tank (AST) and 55-gallon drum on the eastern exterior portion of the Site. Further, additional black staining was noted within the building, including a black

ATTACHMENT 3
BCP Application – Section III
Property's Environmental History
1585 Hertel Avenue Site

liquid/sludge within the floor drain system. The exact discharge point and integrity of the floor drain system is unknown thus considered a REC; and,

- The remaining materials noted at the Site, especially the exterior 55-gallon drum with an unknown liquid, are considered RECs as such will require proper handling and off-site disposal. Similarly, electronic wastes such as light ballasts potentially containing PCBs will require proper handling and off-site disposal.

Locations of the RECs described above are illustrated in Figure 7. Due to the RECs identified for the Site, Benchmark recommended completion of a Phase II Environmental Site Investigation (Phase II) to assess the RECs identified.

Phase II Environmental Investigation Report

Benchmark completed a Phase II on the Site in November 2017. The Site is located at the southeast corner of Hertel Avenue and Parkside Avenue in a mixed-use area of the North Park area in the City of Buffalo. The Site is a vacant former gas station and automotive repair facility. The gasoline and waste oil USTs and gasoline pump islands are still present at the Site.

Findings of the Phase II are detailed below:

- Based on the field observations during the Phase II, it was evident that petroleum impacts were present at the Site, and, as required by law, the NYSDEC was notified and Spill No. 1706962 was assigned to the Site.
- Petroleum volatile organic compounds (pVOCs) were detected at concentrations exceeding CP-51 Soil Cleanup Levels (SCLs), 6NYCRR Part 375 Restricted Residential Soil Cleanup Objectives (RRSCOs) and/or Commercial Soil Cleanup Objectives (CSCOs) in soil samples SB-6 (2-4 fbg), SB-7 (1.5-3.5 fbg), which were completed in the vicinity of the pump island and existing USTs, respectively (see

ATTACHMENT 3
BCP Application – Section III
Property's Environmental History
1585 Hertel Avenue Site

Figure 7). Stained soil, petroleum odors, and the highest photoionization detector (PID) measurements were also noted at these two (2) locations.

- Metals were detected in the four (4) samples analyzed soil samples. Cadmium was detected at SB-2 (0.5-2 fbgs) at concentrations above its respective CSCO. Arsenic, cadmium, and lead were detected at surface soil sample, SS-1, at concentrations above their respective CSCOs. Based on the high concentrations of arsenic (164 milligrams per kilogram (mg/kg)) and lead (1,030 mg/kg) detected in the surface soil, additional analysis may be warranted to determine if the soil present in this area is a characteristic hazardous waste.
- A brief description of the field observations during the boring investigation is presented below:

Investigation Location ID	Environmental Concern Assessed	Highest PID reading (parts per million, ppm) and depth (fbgs)	Other Observations
SB-1	Pump Island - north	429 ppm, 7.5 fbgs.	Petroleum odors 4 to 8 fbgs
SB-2	Pump Island – east	62 ppm, 1.5 fbgs.	Petroleum odors 1 to 3.5 fbgs
SB-3	Waste Oil Tank	38 ppm, 2 fbgs.	Petroleum odors at 2 fbgs
SB-4	Pump Island - south	0.0 ppm throughout boring.	None
SB-5	USTs - south	1 ppm, 3.5 fbgs.	Petroleum odors 3 to 6 fbgs
SB-6	Pump Island - west	898 ppm, 3.5 fbgs.	Staining and strong petroleum odors 3 to 6 fbgs
SB-7	USTs - northwest	791 ppm; 3 fbgs.	Staining and petroleum odors 1 to 4 fbgs
SB-8	North of Building/Hydraulic Lifts	0.0 ppm throughout boring.	None
SS-1	AST, drum, staining on ground surface	Not measured	Surface soil is stained.

Areas of impacts described above are shown on Figure 7. It is estimated that at least 1,000 tons of petroleum and metals impacted soil will need to be removed as part of the remedial action.

Historic documents, previous investigation laboratory reports are provided as separate PDF files, enclosed electronically on an attached CD.

ATTACHMENT 4

BCP APPLICATION – SECTION IV

PROPERTY INFORMATION

PARCEL DESCRIPTION

EASEMENTS & PERMITS

PROPERTY DESCRIPTION & ENVIRONMENTAL ASSESSMENT NARRATIVE

WARRANTY DEED WITH LIEN COVENANT

ATTACHMENT 4
BCP Application – Section IV
Property Information
1585 Hertel Avenue Site

SECTION IV - QUESTIONS 1-4

Parcel Description

The 1585 Hertel Avenue Site, subject to this BCP application, consists of one (1) tax parcel totaling approximately ± 0.18 acres, located in a highly developed commercial and residential use area in the City of Buffalo, Erie County, New York (see Figures 1 and 2). A drawing of the tax map parcel is provided as Figure 3. The boundaries of the proposed BCP Site correspond with the tax boundaries. A copy of the Warranty Deed with Lien Covenant for the 1585 Hertel Avenue parcel is provided in this Attachment 4.

SECTION IV – QUESTIONS 8 AND 9

Easements and Permits

Neither Benchmark nor 1585 Hertel LLC are aware of any formal enforcement action, civil judicial or administrative enforcement cases in connection with the subject property. In addition, based on information gathered to date, there are no institutional controls recorded for the Site. Utilities are located in the right-of-way along Hertel and Parkside Avenues. The Site is supplied with municipal sanitary sewer, electric, natural-gas, and public water. Neither Benchmark nor 1585 Hertel LLC are not aware of any easements on Site.

The Site was identified in the New York State Department of Environmental Conservation (NYSDEC) Petroleum Bulk Storage (9-387177) and Spills (No. 1706962) databases but was not identified on the Environmental Site Remediation database, nor the United States Environmental Protection Agency (USEPA) Enforcement and Compliance History Online (ECHO).

ATTACHMENT 4
BCP Application – Section IV
Property Information
1585 Hertel Avenue Site

SECTION IV - QUESTION 10

Property Description Narrative

Location

The Site is located on the southeast corner of Hertel and Parkside Avenues in a highly developed mixed use (residential and commercial) area of the City of Buffalo, Erie County, New York. The Site is bordered by Hertel Avenue to the north, Parkside Avenue to the west, and a customer parking lot for a M&T Bank to the south and east (see Figures 2 and 4). Adjacent property owners are identified on Figure 8.

Site Features

The Site is currently improved with one (1), vacant single-story commercial building formerly used as a retail gasoline station and automobile repair shop, with asphalt and concrete driveways. The gasoline (10,000-gallons) and waste oil (550-gallon) USTs are apparently still present in the ground as well and the piping to the former pump island which is present at grade. The Site is currently used by a portable food cart vendor for food sales during lunch times.

Zoning and Land Use

According to the Buffalo Green Code, Land Use Plan (September 2016), the project area is planned as a mixed use commercial area consistent with the zoning assigned to the Site (see Figure 9). The current zoning for the Site is N-3C which is defined as Neighborhood Center: mixed use commercial areas at a neighborhood scale

The current use of the Site is a vacant but used seasonally and during the afternoons by a portable food cart vendor.

ATTACHMENT 4
BCP Application – Section IV
Property Information
1585 Hertel Avenue Site

The surrounding parcels are as follows:

- north – commercial and residential;
- south – commercial and residential;
- east – commercial and residential; and
- west - commercial and residential.

Planned reuse of the Site as a mixed-use primarily residential 5-story building with 1st floor retail consistent with the Land Use Plan zoning.

Past Use of the Site

Based on a review of the historical Sanborn Maps and aerial photographs included within the Phase I ESA Report, the Site has had a similar configuration and use since the early 1960s, as a retail gasoline sale and automobile service station. According to a 1950 Sanborn map, the northeastern portion of the Site was developed with a former gasoline station with four (4) gasoline tanks on the north-central portion of the Site. A former building identified as a furniture store was located on the southern portion of the Site. According to a 1935 Sanborn map the Site was developed with two (2) former residences and a private automobile garage.

Historic city directories included within the Phase I ESA Report, dated between 1925 and 2014, were reviewed generally in five-year intervals. The Site was identified as a filling station/gasoline service station from at least 1946 through at least 2001 with historic occupants including Anthony Pepe's Filling Station, Tronolone Sunoco, Jesse's Sunoco/Arco and Jesse's Atlantic Station. Hewitt International Auto, a presumed automotive repair operation, occupied the Site from at least 2008 through at least 2010. The Site has a history of residential use prior to the 1946 and a variety of commercial uses including a dentist, a dental lab, a pharmacy, a self-defense school, manicuring, a florist, a food store and a furniture store.

ATTACHMENT 4
BCP Application – Section IV
Property Information
1585 Hertel Avenue Site

The City Directories include the full list of occupants for the Site and is included in Appendix D of the Phase I ESA report included in the electronic documentation provided.

The following pertinent City of Buffalo municipal records were reviewed for the Site.

- 1938 – Construct service station and place gasoline USTs (totaling 4,400-gallons).
- 1945 – Place one steel 2,000-gallon gasoline UST. An Installation Form identifies three 2,000-gallon gasoline USTs northwest of a presumed former services station on the southeastern portion of the Site. The tanks are shown around a former pump island area with four pumps on the west-central portion of the Site. A Survey document identifies the presence of two 1,000-gallon USTs and two 550-gallon USTs. A hand-drawn sketch depicts three apparent fill ports on the southern portion of the Site and pumps on the northern portion of the Site. An office/station building, suspected to be a former building, with a hydraulic grease rack and four vents off the east building wall is identified on the eastern portion of the Site. An additional document identifies two 550-gallon tanks to be filled with sand, one 550-gallon UST to be removed and two 1,000-gallon USTs to be removed; such were apparently replaced with the three 2,000-gallon USTs.
- 1952 – Enlarge concrete block filling station.
- 1963 – Construct one-story service station and install steel tanks and pumps. Tanks identified as two 3,000-gallon gasoline USTs, two 4,000-gallon gasoline USTs, one 550-gallon fuel oil UST and two 550-gallon waste oil USTs. A hand-drawn sketch depicts two 3,000-gallon USTs and one 4,000-gallon UST northwest of the presumed existing building. The 550-gallon fuel oil UST is depicted west of the existing building and the 550-gallon waste oil UST is depicted north of the existing building. Four vent pipes are depicted along the south exterior wall of the building and an additional vent pipe is depicted off the east exterior wall. A pump island is depicted on the north-central portion of the Site. [Benchmark is aware of discrepancies associated with the construction date of the existing building and suspects that this permit is associated with development of the existing building in 1963.]

ATTACHMENT 4
BCP Application – Section IV
Property Information
1585 Hertel Avenue Site

- 1976 – Repair defective 4,000-gallon UST.
- 1994 – Install one 10,000-gallon compartmentalized (4,000-gallons and 6,000-gallons) gasoline UST on the southwestern portion of the Site.

The historic use of the Site for retail gasoline sales and automobile repair has impacted the Site as evidenced by petroleum contamination that has been detected during a Phase II Environmental Investigation. The subsurface soils contain elevated VOCs exceeding the Part 375 Restricted-Residential Use and Commercial Use Soil Cleanup Objectives. Additionally, metals (arsenic, barium and lead) were detected in surface soils and barium in subsurface soil exceeding their respective Part 375 Commercial Use Soil Cleanup Objectives.

Site Geology and Hydrogeology

The property is located within the Lake Erie-Niagara River major drainage basin, which is typified by little topographic relief, except in the immediate vicinity of major drainage ways. According to the United States Department of Agriculture (USDA) Web soil survey, Site soils are generally characterized as Urban Land-Churchville complex (Uh). This complex consists of nearly level areas of urban land and deep somewhat poorly drained Churchville soils, formed in clayey deposits underlain by glacial till (see Figure 10). This complex is located in urban areas in the City of Buffalo, ranging from 5 to 600 acres, and are irregular in shape.

The Phase II investigation identified the subsurface conditions as fill, ranging in thickness from 1 foot to 7 feet below ground surface (fbgs) overlying clay with varying and lesser amounts of silt, sand and gravel. Petroleum impacts were observed in the subsurface in the vicinity of the pump islands and USTs present. Surface soil staining was also observed on the east side of the building in the vicinity of an AST and 55-gallon drum.

Groundwater flow is likely in a westerly direction towards the Niagara River located approximately 3.3 miles west of the Site and in the flow direction of Scajaquada Creek

ATTACHMENT 4
BCP Application – Section IV
Property Information
1585 Hertel Avenue Site

located approximately 1.5 miles to the southwest. Local groundwater flow, however, may be influenced by subsurface features, such as excavations, utilities, and localized fill-conditions.

Additional work is required to investigate groundwater flow direction and quality at the Site. Monitoring wells to assess and characterize groundwater flow patterns and quality are planned to be installed during the Remedial Investigation.

Environmental Assessment

Benchmark completed a Phase I ESA and Limited Phase II investigation at the Site. Numerous RECs were identified the Phase I ESA as discussed in Attachment 3. To assess the REC, a Phase II investigation was completed. The gasoline and waste oil USTs and pump islands are still present at the Site. Based on the field observations during the Phase II, it was evident that petroleum impacts were present at the Site, and, as required by law, the NYSDEC was notified and Spill No. 1706962 was assigned to the Site.

Petroleum volatile organic compounds (pVOCs) were detected at concentrations exceeding CP-51 Soil Cleanup Levels (SCLs), 6NYCRR Part 375 Restricted Residential Soil Cleanup Objectives (RRSCOs), and/or Commercial Soil Cleanup Objectives (CSCOs) in soil samples SB-6 (2-4 fbgs) and SB-7 (1.5-3.5 fbgs), which were completed in the vicinity of the pump island and existing USTs, respectively. Stained soil, petroleum odors, and the highest photoionization detector (PID) measurements were also noted at these two (2) locations.

Metals were detected in the four (4) samples analyzed soil samples. Barium was detected at SB-2 (0.5-2 fbgs) at concentrations above its respective CSCO. Arsenic, barium, and lead were detected at surface soil sample, SS-1, at concentrations above their respective CSCOs. This sample was collected from stained surface soil present on the eastern portion of the Site. Based on the high concentrations of arsenic (164 milligrams per kilogram (mg/kg)) and lead (1,030 mg/kg) detected in the surface soil, additional analysis may be warranted to determine if the soil present in this area is a characteristic hazardous waste.

ATTACHMENT 4
BCP Application – Section IV
Property Information
1585 Hertel Avenue Site

A Site Plan with Phase I RECs, Limited Phase II boring locations and areas of impacts is provided as Figure 7.

Historic documents, previous investigation laboratory reports are provided as separate PDF files, enclosed electronically in Attachment 9, on an attached CD.

COPY

This Indenture

FILED

FEB 15 2017

**ERIE COUNTY
CLERK'S OFFICE**

Made the 14th day of February, in the year Two Thousand and Seventeen

Between

Dale E. Rugg, 7031 Campbell Boulevard, Pendleton, NY 14120
Robert P. McDonald, 14099 Mill Street, Springville, NY 14141

Grantors, and

O'Dalaigh Real Estate LLC
330 Depew Avenue, Buffalo, NY 14214

Grantee

Witnesseth, that the said Grantor, in consideration of ONE & MORE (\$1.00 & More) Dollars lawful money of the United States, paid by the Grantee, does hereby grant and release unto the Grantee, his/her/their heirs and assigns forever,

See attached "Schedule A" for Legal Description

TOGETHER with the appurtenances and all the estate and rights of the Grantors in and to the said premises.

TO HAVE AND TO HOLD, the above granted premises unto the said Grantee.

AND the said Grantors do covenant with said Grantee as follows:

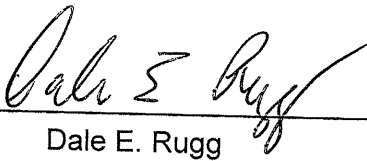
FIRST. -- That the Grantee shall quietly enjoy the said premises.

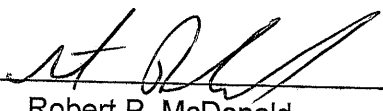
SECOND. -- That the Grantors will forever **WARRANT** the title to said premises.

THIRD. -- Subject to the trust fund provisions of section thirteen of the lien law.

IN WITNESS WHEREOF, The said Grantors have hereunto set his/her/their hand and seal the day and year first above written.

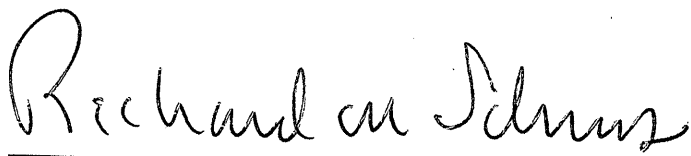
IN PRESENCE OF


_____(L.S.)
Dale E. Rugg


_____(L.S.)
Robert P. McDonald

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

On this 14th day of February, Two Thousand and Seventeen, before me, the undersigned, a Notary Public in and for said State, personally appeared Dale E. Rugg & Robert P. McDonald, to me personally known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) 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.



Notary Public

RICHARD M. SCHAUS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires January 31, 2018

SCHEDULE A

PARCEL A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 69, Township 11, Range 8 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the point of intersection of the easterly line of Parkside Avenue with the southerly line of Hertel Avenue (as a street 100 feet wide); running thence southerly along the easterly line of Parkside Avenue 30.82 feet; thence easterly parallel with Hertel Avenue, 115.75 feet; thence northerly parallel with Parkside Avenue, 30.82 feet to the southerly line of Hertel Avenue and thence westerly along the southerly line of Hertel Avenue, 115.75 feet to the easterly line of Parkside Avenue at the point or place of beginning.

PARCEL B

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Sublots Nos. 246 and 247, Block "G", as shown on a map filed in Erie County Clerk's Office under Cover No. 613 and being part of Lot No. 69, Township 11, Range 8 of the Holland Land Company's Survey and more particularly described in accordance with a survey prepared by Herthe and Sonnenberger, Engineers and Surveyors, Buffalo, New York, dated November 9 1951 as follows:

BEGINNING at a point in the easterly line of Parkside Avenue (100 feet wide) distant South $00^{\circ} 44'$ West 30.82 feet from the intersection of the said easterly line of Parkside Avenue and the southerly line of Hertel Avenue (100 feet wide); extending thence (1) South $89^{\circ} 21'$ East along a line parallel with Hertel Avenue 115.75 feet to a point; thence (2) South $00^{\circ} 44'$ West along lands now or late of Gertrude Rose, 35 feet to an iron pipe; thence (3) North $89^{\circ} 21'$ West along lands now or late of Myrtle A. Conrad, 115.75 feet to an iron pipe in the said easterly line of Parkside Avenue; thence (4) North $00^{\circ} 44'$ East along said easterly side of Parkside Avenue 35 feet to the place of beginning.

ATTACHMENT 5

BCP APPLICATION – SECTION VI

PREVIOUS/CURRENT PROPERTY OWNERS/OPERATORS

ATTACHMENT 5
BCP Application – Section VI
Previous/ Current Property Owners/ Operators
1111 Elmwood Avenue Site

PREVIOUS/CURRENT PROPERTY OWNERS/OPERATORS

Reasonable attempts were made to attain complete information regarding current and previous site owners and operators. Based on available on-line property records, the previous studies, and historic maps, contact information for the previous and current owners/operators has been provided in the table below, as available.

Parcel Address		Approx. Date(s)	Relationship to Applicant
1585 Hertel Avenue			
Current Owner/Operator			
O'Dalaigh Real Estate LLC 330 Depew Avenue Buffalo, NY 14214 Phone # 716-833-4400	Vacant Commercial	February 2017 to Current	Applicant owned Entity
Previous Owners/Operators			
Dale Rugg/Robert McDonald 690 Englewood Avenue Buffalo, New York 14223	Commercial Gas & Service Station	2004 ~ 2017	None – no relationship
Jesse & Patricia Tronolone 1585 Hertel Avenue Buffalo, New York 14216	Commercial Gas & Service Station	2004 ~ 1983	None - No relationship
Atlantic Refining Co. 1585 Hertel Avenue Buffalo, New York 14216	Commercial Gas & Service Station	1938 ~ 1983	None - No relationship

ATTACHMENT 6

BCP APPLICATION – SECTION VII & VIII

REQUESTOR ELIGIBILITY INFORMATION

THE REQUESTOR AS A VOLUNTEER

THE CONTAMINATION ELEMENT

THE COMPLICATION ELEMENT

BCP ELIGIBILITY STATEMENT

ATTACHMENT 6
BCP Application - Sections VII & VIII
Requestor Eligibility Information
1585 Hertel Avenue Site

SECTION VII – REQUESTOR ELIGIBILITY INFORMATION

The Requestor as a Volunteer

A BCP applicant may be either a “Participant” or a “Volunteer.”

A “Participant” is an applicant who either (i) was the owner of the site at the time of the disposal or discharge of contaminants; or (ii) is otherwise responsible according to applicable principles of statutory or common law liability, unless such person’s liability arises solely as a result of such person’s ownership or operation of or involvement with the site subsequent to the disposal or discharge. NY ECL 27-1405(1)(a). This definition is repeated verbatim at 6 NYCRR 375-3.2(b)(1).

A “Volunteer” is an applicant other than a participant, including a person whose liability arises solely as a result of such person’s ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants provided that such person exercises appropriate care with respect to the contamination. NY ECL 27-1405(1)(b). This definition is repeated verbatim at 6 NYCRR 375-3.2(b)(2) and is paraphrased in the Brownfield Cleanup Program Guide at Section 2.4(1)(B).

Since the Applicant became involved with the property after the disposal or discharge of contaminants, and has no relationship with the previous owners/operators of the Site, 1585 Hertel LLC is entitled to Volunteer status under NY ECL27-1405(1)(b).

Regarding Section VII, Question 11 –The Site is listed on the NYSDEC Bulk Storage Database (9-387177). The known USTs at the Site are registered. If unknown bulk storage tanks are discovered during the project, the tanks will be properly handled, in accordance with NYSDEC requirements.

ATTACHMENT 6
BCP Application - Sections VII & VIII
Requestor Eligibility Information
1585 Hertel Avenue Site

SECTION VIII – PROPERTY ELIGIBILITY INFORMATION

Property Eligibility Information

The Site meets the definition of a “Brownfield site” as set forth in New York State Environmental Conservation Law (the “ECL”). The ECL Section 27-1405(2) defines a “Brownfield site” as “any real property, where a contaminant is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by the department that are applicable based on the reasonably anticipated use of the property in accordance with applicable regulations.”

The Site meets the BCP eligibility criteria based on the following (see Figure 7):

- (A) Contamination is present on-site exceeding the anticipated use of the property, which Restricted–Residential Use. Soil contaminated with VOCs, and metals are present on-Site exceeding Restricted-Residential and Commercial Use Soil Cleanup Objectives.
- (B) The Site contains contamination that will require remediation and need to be managed in accordance with local, state and federal laws during the redevelopment.

BCP Eligibility Statement

Based on the foregoing and as further set forth in this BCP application, the Site qualifies as a Brownfield Site eligible for participation in the BCP, with the Applicant as a Volunteer, because there is confirmed contamination at the Site, which is complicating the redevelopment and re-use of the Site.

ATTACHMENT 7

BCP APPLICATION – SECTION IX

CONTACT LIST INFORMATION

SITE CONTACT LIST

DOCUMENT REPOSITORY LETTER

ATTACHMENT 7
BCP Application Section IX
Contact List Information
1585 Hertel Avenue Site

Erie County Contacts:

Honorable Mark Poloncarz
Erie County Executive
95 Franklin Street
Buffalo, NY 14202

Mr. Peter J. Savage, III
District 3 Erie County Legislator
790 East Delavan
Buffalo, NY 14215

Commissioner Thomas R. Hershey, Jr.
Erie Co. Environment & Plan.
95 Franklin Street
Buffalo, NY 14202

Mr. Paul Kranz
Erie Co. Environment & Plan.
95 Franklin Street
Buffalo, NY 14202

Karen M. McCarthy
Erie County Legislature Clerk
25 Delaware Avenue
Buffalo, NY 14202

Mr. Steve Weathers
ECIDA
95 Perry Street
Buffalo, NY 14203

Commissioner Gale Burstein
Erie Co. Health Dept.
95 Franklin Street, Room 931
Buffalo, NY 14202

Commissioner Daniel Neaverth, Jr.
Erie County Local Emergency
45 Elm Street
Buffalo, NY 14203

City of Buffalo Contacts:

Byron Brown, Mayor
City of Buffalo
65 Niagara Square
Buffalo, NY 14219

Joel P. Feroletto
Niagara District Councilmember
1504 City Hall
Buffalo, NY 14202

James A. Morrell, Chairman
City of Buffalo
Planning Board
901 City Hall
Buffalo, NY 14219

Supplier of Potable Water:

Buffalo Water Authority
281 Exchange Street
Buffalo, NY 14204

Other Interested Parties:

WNY Director
Citizens Env. Coalition
543 Franklin Street
Buffalo, NY 14202-1109

Document Repository:

North Park Branch Director
Buffalo & Erie County Public Library
975 Hertel Avenue
Buffalo, NY 14216

ATTACHMENT 7
BCP Application Section IX
Contact List Information
1585 Hertel Avenue Site

Local News Media:

Buffalo News
ATTN: Mr. Aaron Besecker
1 News Plaza
Buffalo, NY 14240

WGRZ TV - Ch. 2
ATTN: Environmental News Desk
259 Delaware Avenue
Buffalo, NY 14202

WIVB - Ch. 4
ATTN: Environmental News Desk
2077 Elmwood Avenue
Buffalo, NY 14207

WKBW News Channel 7
ATTN: Mr. Rob Heverling
7 Broadcast Plaza
Buffalo, NY 14202

WJYE
ATTN: Environmental News Desk
1700 Rand Building
Buffalo, NY 14203

Business First
ATTN: Tracey Drury
465 Main Street
Buffalo, NY 14203-1793

WBEN News Radio 930
Entercom Radio of Buffalo
500 Corporate Pkwy, Ste 200
Buffalo, NY 14226

WNED, Environmental News Desk
ATTN: Mr. Michael Desmond
P.O. Box 1263, Horizons Plaza
Buffalo, NY 14240

Nearby Schools:

Director
EduKids Early Childhood Education Center
1350 Hertel Avenue
Buffalo, NY 14216

Director
North Park Community Preschool
310 Starin Avenue
Buffalo, NY 14216

Principal
Nichols High School
1250 Amherst Street
Buffalo NY 14216

Principal
PS 66 North Park Middle Academy
780 Parkside Avenue
Buffalo, NY 14216

Principal
St. Mark Elementary
399 Woodward Avenue
Buffalo, NY 14214



ATTACHMENT 7
BCP Application Section IX
Adjacent Property Contact List Information
1585 Hertel Avenue Site

Adjacent Property Address			Property Owner/Occupant
No.	Street	Property Use	Mailing Address
636	Parkside	2 Family Residence	Elias & Konstantinos Pozantidis 1561 Hertel Avenue Buffalo, NY 14216
			Occupants 636 Parkside Avenue Buffalo, NY 14216
1593	Hertel	Commercial (Vacant with Improvements)	M&T Bank Trust Co. One M&T Plaza Buffalo, NY 14203
1563	Hertel	Commercial (Detached Row Building)	R&J Combo Enterprises Inc PO Box 1000 Buffalo, NY 14231
			Occupant 1563 Hertel Avenue Buffalo, NY 14216
1588	Hertel	Commercial (Detached Row Building)	Charles & Samuel Giglia 248 Paradise Lane Tonawanda, NY 14150
			Occupant 1588 Hertel Avenue Buffalo, NY 14216
1580	Hertel	Commercial (Bank)	M&T Bank c/o Corp. Real Estate-FSU Dept. One M&T Plaza Buffalo, NY 14203
			Occupant 1580 Hertel Avenue Buffalo, NY 14216
1598	Hertel	Commercial (Office Building)	RVB Properties LLC 1367 Michigan Buffalo, NY 14209
			Occupant 1598 Hertel Avenue Buffalo, NY 14216
1556	Hertel	Commerical	Hertel/Parkside Partners LP c/o Walgreens Co. PO Box 1159 Deerfield, IL 60015
1556	Hertel	Commerical	Occupant 1556 Hertel Avenue Buffalo, NY 14216



December 11, 2017

Ms. Carol Ann Batt
Chief Operating Officer
Buffalo & Erie County Public Library
1 Lafayette Square
Buffalo, NY 14203

Re: Document Repository for Brownfield Cleanup Program
1585 Hertel Avenue Site
Buffalo, New York

Dear Ms. Batt:

On behalf of our client, Benchmark Environmental Engineering & Science, PLLC would like to request the Buffalo & Erie County Public Library – North Park Branch to act as the document repository for the above-referenced Site. In the future, we will be sending various documents relating to the Site that should be made available for public review upon request.

Please contact me if you have questions or require additional information.

Sincerely,
Benchmark Environmental Engineering & Science, PLLC
TurnKey Environmental Restoration, LLC

A handwritten signature in blue ink that reads 'Heidi M. Higgins'.

Heidi M. Higgins
Senior Technician

File: 0369-016-001

www.benchmarkturnkey.com

2558 Hamburg Turnpike, Suite 300 | Buffalo, NY 14218
phone: (716) 856-0599 | fax: (716) 856-0583

Chris Z. Boron

From: April Tompkins <tompkinsa@buffalolib.org>
Sent: Tuesday, December 12, 2017 5:02 PM
To: Chris Z. Boron
Subject: RE: Permission Request for North Park Branch Public Library as Document Repository for 1585 Hertel Avenue Site

Good afternoon Christopher,

Per your request, this is to inform you that the Buffalo and Erie County Public Library will be the repository for document(s) submitted by your company for the Brownfield Cleanup Program pertaining to **"1585 Hertel Avenue Site - City of Buffalo, County of Erie, New York."** Document(s) will be made available for public review at the Niagara Branch Library. ***Also, this serves as permission to submit any additional updates pertaining to the above document and all other future documents.*** We will be the repository for all documents your company needs to be made available to the public. You/your company are free to bring or send your documents to the Central Library without additional permission for each individual document.

We prefer that you do not take documents to individual libraries. Please bring or send your document(s) to the Central Library and we will process according to our procedure and distribute to the location of your choice.

Please keep the following in mind:

- Documents (including updates) for public review should be sent or brought in person to the Central Library to my attention (Carol Batt has since retired as of the last correspondence). Documents sent via e-mail will not be accepted. The mailing address is:

Attention: April Tompkins
Re: Repository Documents
Buffalo and Erie County Public Library
1 Lafayette Square
Buffalo, NY 14203

- Documents for the Central/Downtown library are made available on the first floor in the Information Services Department within a day or so after receipt. If received Friday afternoon, they go out the following Monday.
- If you would like the document(s) distributed at libraries other than Central, you will need to send or give us the appropriate quantity of copies with labels regarding their destinations. We will distribution accordingly. We do not make copies for distribution.
- You have the choice regarding the format (hard copy and / or disk) you wish to submit. If the document is very large, part in hard copy and part on disk is acceptable. If submitting in both formats, please be sure that they are titled/labeled accordingly. Although CD-ROMs cannot be used on public library computers, if someone brings in their personal laptop, the disc can be viewed in-house. If optional, an alternative is the availability to go online using a provided link for patrons to read/review/print. Patrons are not allowed to take repository documents out of the Library.

If you still have any questions/concerns, please feel free to contact me by replying to this e-mail or by phone at 716-858-7129. Thank you.

ATTACHMENT 8

BCP APPLICATION – SECTION X

LAND-USE FACTORS

SITE SUMMARY

ADJACENT LAND USE, DEVELOPMENT PATTERNS, & ZONING

CURRENT USE OF SITE

PROJECT DESCRIPTION AND PLANNED REDEVELOPMENT

CITY OF BUFFALO, CITY PLANNING BOARD APPROVAL LETTER

ATTACHMENT 8
BCP Application – Section X
Land Use Factors
1585 Hertel Avenue Site

SECTION X – LAND-USE FACTORS

Site Summary

The following provides a brief summary of the Site:

- The Site is located in a highly developed mixed use commercial and residential area of Buffalo, Erie County, New York.
- The Site is comprised of one (1) tax parcel.
- The Site is currently improved with one (1) building that was used for automobile repair and retail petroleum sales. Past owner/operators of the Site are provided in Attachment 5.
- Contamination identified at the Site includes petroleum-related VOCs and metals that require remediation, in addition to the removal of the existing gasoline UST, waste oil UST, pump island and associated piping, and in-ground hydraulic lifts inside the building. Due to the petroleum contamination identified, NYSDEC Spill No. 1706962 was assigned to the Site
- The Site is currently zoned N-3C (Neighborhood Center) with commercial and residential land use surrounding the Site (see Figures 2 and 9).
- In accordance with §27-1415(3)(p), there are no environmental justice concerns associated with this project. The Site is not located within a NYSDEC Potential Environmental Justice (EJ) Area.
- The Site redevelopment plan is for the construction of a mixed use building consisting of 32 residential apartment and some commercial retail.
- The Site has access to municipal utilities including: natural-gas, municipal sewer, electric, and public water.

Adjacent Land Use, Development Patterns, & Zoning

The Site is located in a highly developed mixed-use commercial and residential area of the City of Buffalo, Erie County, New York. Land use surrounding the subject property generally includes commercial and residential to the north, south, east and west. The Site is immediately bordered by Hertel Avenue to the north and Parkside Avenue to the west.

ATTACHMENT 8
BCP Application – Section X
Land Use Factors
1585 Hertel Avenue Site

The current zoning for the Site is N-3C (Neighborhood center - mixed use commercial areas at a neighborhood scale) as shown on Figure 9. The planned redevelopment of the Site is a 5-story residential building with first floor retail consistent with the Buffalo Green Code Unified Development Ordinance. The project has received City of Buffalo Planning Board approval (see November 22, 2017 letter in Attachment 8).

Current Use of the Site

The Site is a vacant retail gasoline station and automobile repair shop which is utilized by a portable food cart vendor for food sales during the day. The contamination identified at the Site (VOCs and metals) is associated with the historic use of the Site as a gasoline station and automobile repair shop. Petroleum contamination has been identified in the subsurface soils in the vicinity of the pump islands and USTs present. Metals contamination has been identified in the vicinity of an AST and 55-gallon drum on the eastern exterior side of the building. Retail gasoline sales and automobile repair ceased at the Site in 2016.

Project Description and Planned Redevelopment

The Site subject to the BCP application is one (1) parcel totaling approximately 0.18 acres, located in a highly developed residential, commercial, and institutional area of the City of Buffalo, Erie County, New York (see Figures 1 and 2).

The Applicant plans to redevelop the Site as a 5-story residential, 34-unit apartment complex with retail stores on the first floor. The proposed residential development will occupy the entire 0.18 acre Site. The value of the completed project will be approximately \$5.5 to \$6.0 million and create approximately 50-60 temporary construction and 36 permanent jobs. The applicant, upon acceptance into the BCP, is willing to complete the required investigation and remediation, and redevelop the contaminated parcel.

ATTACHMENT 8
BCP Application – Section X
Land Use Factors
1585 Hertel Avenue Site

Based on the current zoning for the Site, N-3C (Neighborhood Center¹), the proposed redevelopment is consistent with current zoning and City of Buffalo Land Use Plan dated September 2016 (comprehensive plan (Buffalo Green Code). As mentioned above, the project has received City of Buffalo Planning Board approval.

¹ According to the Land Use Plan of the Buffalo Green Code a Neighborhood Center is defined as mixed-use commercial areas at neighborhood scale and have a zoning codes of N-2C, N-2E, N-3C or N-3E.



CITY OF BUFFALO

City Planning Board
65 Niagara Square, Room 901 City Hall
Buffalo, NY 14202-3394



BYRON W. BROWN
Mayor

BRENDAN MEHAFFY, ESQ.
Executive Director

November 22, 2017

John Daly
Trautman Associates
470 Franklin Street
Buffalo, NY 14202

RE: 1585 Hertel Ave

Dear Mr. Daly

The City of Buffalo Planning Board at a meeting held November 20, 2017 considered the matter captioned above pursuant to Section 496-11 of the Buffalo Code-City Wide Plan Review. The Planning Board has determined that the site plan meets the criteria for approval contained therein.

The City of Buffalo Planning Board voted to approve the site plan and elevations for the construction of a mixed use building with a condition that the east and south walls be a living wall.

This approval is valid for one year from the date of approval.

This letter is NOT a building permit. It is the responsibility of the owner to see that all required permits are issued prior to the commencement of the actual work.

If you should have any further questions regarding the above, please feel free to contact the office at any time at 716-851-5029.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nadine Marrero".

Nadine Marrero, AICP
Director of Planning

Cc: Gerald Chwalinski, City Clerk
Building Code Review
Planning Board File

ATTACHMENT 9

ELECTRONIC COPY OF BCP APPLICATION

ATTACHMENTS

PREVIOUS STUDIES (INCLUDED AS SEPARATE PDF FILES)