



Brownfield Cleanup Program Application

Bailey & Kensington Site
3079 Bailey Avenue; and 1096, 1098,
and 1102 Kensington Avenue
Buffalo, New York

Revised November 16, 2023

Prepared for:

**The Evergreen Foundation of Western New York,
Inc.**

206 South Elmwood Avenue
Buffalo, New York 14201

Prepared by:

**Roux Environmental Engineering
and Geology, D.P.C.**

2558 Hamburg Turnpike, Suite 300
Buffalo, New York 14218

Brownfield Cleanup Program Application

Bailey & Kensington Site

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SUBMITTAL INSTRUCTIONS:

1. Compile the application package in the following manner:
 - a. one file in non-fillable PDF of the application form plus supplemental information, excluding the previous environmental reports and work plans, if applicable;
 - b. one individual file (PDF) of each previous environmental report; and,
 - c. one file (PDF) of each work plan being submitted with the application, if applicable.
2. Compress all files (PDFs) into one zipped/compressed folder.
3. Submit the application to the Site Control Section either via email or ground mail, as described below.

Please select only ONE submittal method – do NOT submit both email and ground mail.

a. VIA EMAIL:

- Upload the compressed folder to the NYSDEC File Transfer Service. (<http://fts.dec.state.ny.us/fts>) or another file-sharing service.
- Copy the download link into the body of an email with any other pertinent information or cover letter attached to the email.
- Subject line of the email: “*BCP Application NEW - *Proposed Site Name**”
- Email your submission to DESiteControl@dec.ny.gov – do NOT copy Site Control staff.

b. VIA GROUND MAIL:

- Save the application file(s) and cover letter to an external storage device (e.g., thumb drive, flash drive). Do NOT include paper copies of the application or attachments.
- Mail the external storage device to the following address:
Chief, Site Control Section
Division of Environmental Remediation
625 Broadway, 11th Floor
Albany, NY 12233-7020

PROPOSED SITE NAME: Bailey & Kensington

Is this an application to amend an existing BCA with a major modification? Please refer to the application instructions for further guidance related to BCA amendments.

If yes, provide existing site number: _____

☐

Yes

☒

No

Is this a revised submission of an incomplete application?

If yes, provide existing site number: C915402

☒

Yes

☐

No



BCP App Rev 15 – May 2023

SECTION I: Property Information

PROPOSED SITE NAME **Bailey & Kensington**

ADDRESS/LOCATION **3074 Bailey Avenue, 1096, 1098, and 1102 Kensington Avenue**

CITY/TOWN **Buffalo**

ZIP CODE **14215**

MUNICIPALITY (LIST ALL IF MORE THAN ONE) **City of Buffalo, Erie County**

COUNTY **Erie**

SITE SIZE (ACRES) **0.71**

LATITUDE

LONGITUDE

42° 56' 17.68" -78° 48' 50.67"

Provide tax map information for all tax parcels included within the proposed site boundary below. If a portion of any lot is to be included, please indicate as such by inserting "p/o" in front of the lot number in the appropriate box below, and only include the acreage for that portion of the tax parcel in the corresponding acreage column.

ATTACH REQUIRED TAX MAPS PER THE APPLICATION INSTRUCTIONS.

Parcel Address	Section	Block	Lot	Acreage
See Appendix A, Section 1				

1. Do the proposed site boundaries correspond to tax map metes and bounds? If no, please attach an accurate map of the proposed site including a metes and bounds description.	Y	N
2. Is the required property map included with the application? (Application will not be processed without a map) See Figures 1 through 3	<input checked="" type="radio"/>	<input type="radio"/>
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) See Figure 4 If yes, identify census tract: <u>census Tract 42</u> Percentage of property in En-zone (check one): 0% <input type="radio"/> 1-49% <input type="radio"/> 50-99% <input type="radio"/> 100% <input checked="" type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
4. Is the project located within a disadvantaged community? See application instructions for additional information. See Figure 5	<input checked="" type="radio"/>	<input type="radio"/>
5. Is the project located within a NYS Department of State (NYS DOS) Brownfield Opportunity Area (BOA)? See application instructions for additional information.	<input type="radio"/>	<input checked="" type="radio"/>
6. Is this application one of multiple applications for a large development project, where the development spans more than 25 acres (see additional criteria in application instructions)? If yes, identify names of properties and site numbers, if available, in related BCP applications: _____	<input type="radio"/>	<input checked="" type="radio"/>

SECTION I: Property Information (CONTINUED)		Y	N
7. Is the contamination from groundwater or soil vapor solely emanating from property other than the site subject to the present application?		<input type="radio"/>	<input checked="" type="radio"/>
8. 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? If yes, attach relevant supporting documentation.		<input type="radio"/>	<input checked="" type="radio"/>
9. Are there any lands under water? If yes, these lands should be clearly delineated on the site map.		<input type="radio"/>	<input checked="" type="radio"/>
10. Has the property been the subject of or included in a previous BCP application? If yes, please provide the DEC site number: _____		<input type="radio"/>	<input checked="" type="radio"/>
11. Is the site currently listed on the Registry of Inactive Hazardous Waste Disposal Sites (Class 2, 3, or 4) or identified as a Potential Site (Class P)? If yes, please provide the DEC site number: _____ Class: _____		<input type="radio"/>	<input checked="" type="radio"/>
12. Are there any easements or existing rights-of-way that would preclude remediation in these areas? If yes, identify each here and attach appropriate information. <div style="display: flex; justify-content: space-between;"> <div><u>Easement/Right-of-Way Holder</u></div> <div><u>Description</u></div> </div>		<input type="radio"/>	<input checked="" type="radio"/>
13. List of permits issued by the DEC or USEPA relating to the proposed site (describe below or attach appropriate information): <div style="display: flex; justify-content: space-between;"> <div><u>Type</u></div> <div><u>Issuing Agency</u></div> <div><u>Description</u></div> </div>		<input type="radio"/>	<input checked="" type="radio"/>
14. Property Description and Environmental Assessment – please refer to the application instructions for the proper format of each narrative requested. Are the Property Description and Environmental Assessment narratives included in the prescribed format?		<input checked="" type="radio"/>	<input type="radio"/>
Note: Questions 15 through 17 below pertain ONLY to proposed sites located within the five counties comprising New York City.			
15. Is the Requestor seeking a determination that the site is eligible for tangible property tax credits? If yes, Requestor must answer the Supplemental Questions for Sites Seeking Tangible Property Credits Located in New York City ONLY on pages 11-13 of this form.		<input type="radio"/>	<input type="radio"/>
16. Is the Requestor now, or will the Requestor in the future, seek a determination that the property is Upside Down?		<input type="radio"/>	<input type="radio"/>
17. If you have answered YES to Question 16 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?		<input type="radio"/>	<input type="radio"/>
NOTE: If a tangible property tax credit determination is not being requested at the time of application, 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 I are required prior to application approval, a new page, initialed by each Requestor, must be submitted with the application revisions. Initials of each Requestor: <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div>_____</div> <div>_____</div> <div>_____</div> <div>_____</div> <div>_____</div> <div>_____</div> </div>			

SECTION II: Project Description

1. The project will be starting at: ☒ Investigation ☐ Remediation

NOTE: If the project is proposed to start at the remediation stage, at a minimum, a Remedial Investigation Report (RIR) must be included, resulting in a 30-day public comment period. If an Alternatives Analysis and Remedial Action Work Plan (RAWP) are also included (see [DER-10, Technical Guidance for Site Investigation and Remediation](#) for further guidance), then a 45-day public comment period is required.

2. If a final RIR is included, does it meet the requirements in ECL Article 27-1415(2)?

☐ Yes ☐ No ☒ N/A

3. Have any draft work plans been submitted with the application (select all that apply)?

☐ RIWP ☐ RAWP ☐ IRM ☒ No

4. Please provide a short description of the overall project development, including the date that the remedial program is to begin, and the date by which a Certificate of Completion is expected to be issued.

Is this information attached?

☒ Yes ☐ No

See Figure 10

SECTION III: Land Use Factors

1. What is the property's current municipal zoning designation? N-3C (Mixed-Use Center)

2. What uses are allowed by the property's current zoning (select all that apply)?

Residential ☒ Commercial ☒ Industrial ☐

3. Current use (select all that apply):

Residential ☒ Commercial ☒ Industrial ☐ Recreational ☐ Vacant ☒

4. Please provide 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 by which the site became vacant.
Is this summary included with the application?

Y ☒ N ☐

5. Reasonably anticipated post-remediation use (check all that apply):

Residential ☐ Commercial ☒ Industrial ☐

If residential, does it qualify as single-family housing?

N/A ☒ ☐ ☐

6. Please provide a statement detailing the specific proposed post-remediation use.
Is this summary attached?

☒ ☐

7. Is the proposed post-remediation use a renewable energy facility?
See application instructions for additional information.

☐ ☒

8. Do current and/or recent development patterns support the proposed use?

☒ ☐

9. Is the proposed use consistent with applicable zoning laws/maps?
Please provide a brief explanation. Include additional documentation if necessary.

☒ ☐

10. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, or other adopted land use plans?
Please provide a brief explanation. Include additional documentation if necessary.

☒ ☐

SECTION IV: Property's Environmental History

All applications **must include** an Investigation Report (per ECL 27-1407(1)). The report must be sufficient to establish that contamination of environmental media exists on the site above applicable Standards, Criteria and Guidance (SCGs) based on the reasonably anticipated use of the site property and that the site requires remediation. To the extent that existing information/studies/reports are available to the requestor, please attach the following:

- 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](#)). **Please submit a separate electronic copy of each report in Portable Document Format (PDF). Please do NOT submit paper copies of ANY supporting documents.**
- 2. SAMPLING DATA: INDICATE (BY SELECTING THE OPTIONS BELOW) KNOWN CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN TO HAVE BEEN AFFECTED. DATA SUMMARY TABLES SHOULD BE INCLUDED AS AN ATTACHMENT, WITH LABORATORY REPORTS REFERENCED AND INCLUDED.**

CONTAMINANT CATEGORY	SOIL	GROUNDWATER	SOIL GAS
Petroleum	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chlorinated Solvents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other VOCs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SVOCs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Metals	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pesticides	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PCBs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PFAS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1,4-dioxane	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other – indicated below	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Please describe other known contaminants and the media affected:

3. For each impacted medium above, include a site drawing indicating:

- Sample location
- Date of sampling event
- Key contaminants and concentration detected
- For soil, highlight exceedances of reasonably anticipated use
- For groundwater, highlight exceedances of 6 NYCRR part 703.5
- For soil gas/soil vapor/indoor air, refer to the NYS Department of Health matrix and highlight exceedances that require mitigation

See Figure 9

These drawings are to be representative of all data being relied upon to determine if the site requires remediation under the BCP. Drawings should be no larger than 11"x17" and should only be provided electronically. These drawings should be prepared in accordance with any guidance provided.

Are the required drawings included with this 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 checked="" type="checkbox"/> Dry Cleaner
<input type="checkbox"/> Salvage Yard	<input type="checkbox"/> Bulk Plant	<input type="checkbox"/> Pipeline	<input type="checkbox"/> Service Station
<input type="checkbox"/> Landfill	<input type="checkbox"/> Tannery	<input type="checkbox"/> Electroplating	<input type="checkbox"/> Unknown

Other: Gas company, cleaning operations including dry cleaning, other commercial uses. Several former buildings have been demolished.

SECTION V: Requestor Information

NAME The Evergreen Foundation of Western New York, Inc.

ADDRESS 206 South Elmwood Avenue

CITY/TOWN Buffalo

STATE NY

ZIP CODE 14201

PHONE (716) 847-2441

EMAIL jazzarella@evergreenhs.org

	Y	N
1. Is the requestor authorized to conduct business in New York State (NYS)?	<input checked="" type="radio"/>	<input type="radio"/>
2. If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS DOS 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 with this application to document that the requestor is authorized to conduct business in NYS. Is this attached?	<input checked="" type="radio"/>	<input type="radio"/>
3. If the requestor is an LLC, a list of the names of the members/owners is required on a separate attachment. Is this attached? N/A	<input checked="" type="radio"/>	<input type="radio"/>
4. Individuals that will be certifying BCP documents, as well as their employers, must 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. Do all individuals that will be certifying documents meet these requirements? Documents that are not properly certified will not be approved under the BCP.	<input checked="" type="radio"/>	<input type="radio"/>

SECTION VI: Requestor Eligibility

If answering "yes" to any of the following questions, please provide appropriate explanation and/or documentation as an attachment.

	Y	N
1. Are any enforcement actions pending against the requestor regarding this site?	<input type="radio"/>	<input checked="" type="radio"/>
2. Is the requestor subject to an existing order for the investigation, removal or remediation of contamination at the site?	<input type="radio"/>	<input checked="" type="radio"/>
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="radio"/>	<input checked="" type="radio"/>
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 or regulation of the State or Federal government?	<input type="radio"/>	<input checked="" type="radio"/>
5. Has the requestor previously been denied entry to the BCP? If so, please provide the site name, address, assigned DEC site number, the reason for denial, and any other relevant information regarding the denied application.	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>

SECTION VI: Requestor Eligibility (CONTINUED)

7. Has the requestor been convicted of a criminal offense (i) involving the handling, storing, treating, disposing or transporting or contaminants; or (ii) that involved 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?	<input type="radio"/> Y	<input checked="" type="radio"/> N
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 a false statement in connection with any document or application submitted to DEC?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
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?	<input type="radio"/>	<input checked="" type="radio"/>
11. Are there any unregistered bulk storage tanks on-site which require registration?	<input type="radio"/>	<input checked="" type="radio"/>
12. 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 <input type="checkbox"/> <p>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.</p>	VOLUNTEER <input checked="" type="checkbox"/> <p>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.</p> <p>NOTE: By selecting this option, 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; and, (iii) prevent or limit human, environmental or natural resource exposure to any previously released hazardous waste.</p> <p>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.</p>	
13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached?		
Yes <input checked="" type="radio"/>	No <input type="radio"/>	N/A <input type="radio"/> See Section VI in Appendix A

SECTION VI: Requestor Eligibility (CONTINUED)

14. Requestor relationship to the property (check one; if multiple applicants, check all that apply):

☐ Previous Owner ☒ Current Owner ☐ Potential/Future Purchaser ☐ Other: _____

If the requestor is not the current owner, **proof of site access sufficient to complete remediation must be provided.** 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 environmental easement on the site.

Is this proof attached?



Yes



No



N/A

Note: A purchase contract or lease agreement does not suffice as proof of site access.**SECTION VII: Requestor Contact Information**

REQUESTOR'S REPRESENTATIVE Justin Azzarella

ADDRESS 206 South Elmwood Avenue

CITY Buffalo

STATE NY

ZIP CODE 14201

PHONE (716) 847-2441

EMAIL jazzarella@evergreenhs.org

REQUESTOR'S CONSULTANT (CONTACT NAME) Christopher Boron, P.G.

COMPANY Roux Environmental Engineering and Geology, D.P.C.

ADDRESS 2558 Hamburg Turnpike, Suite 300

CITY Buffalo

STATE NY

ZIP CODE 14218

PHONE (716) 856-0599

EMAIL cboron@rouxinc.com

REQUESTOR'S ATTORNEY (CONTACT NAME) Jessica M. Baker, Esq.

COMPANY EHS, Inc.

ADDRESS 206 South Elmwood Avneue

CITY Buffalo

STATE NY

ZIP CODE 14201

PHONE (716) 847-2441

EMAIL jbaker@evergreenhs.org

SECTION VIII: Program Fee

Upon submission of an executed Brownfield Cleanup Agreement to the Department, the requestor is required to pay a non-refundable program fee of \$50,000. Requestors may apply for a fee waiver based on demonstration of financial hardship.

	Y	N
1. Is the requestor applying for a fee waiver based on demonstration of financial hardship?	<input checked="" type="radio"/>	<input type="radio"/>
2. If yes, appropriate documentation to demonstrate financial hardship must be provided with the application. See application instructions for additional information.		
Is the appropriate documentation included with this application? N/A	<input type="radio"/>	<input checked="" type="radio"/>

SECTION IX: Current Property Owner and Operator Information

CURRENT OWNER Same as Requestor

CONTACT NAME

ADDRESS

CITY

STATE

ZIP CODE

PHONE

EMAIL

OWNERSHIP START DATE February 23, 2023

CURRENT OPERATOR Same as Requestor

CONTACT NAME

ADDRESS

CITY

STATE

ZIP CODE

PHONE

EMAIL

OPERATION START DATE February 23, 2023

SECTION X: Property Eligibility Information

	Y	N
1. Is/was the property, or any portion of the property, listed on the National Priorities List? If yes, please provide additional information as an attachment.	<input type="radio"/>	<input checked="" type="radio"/>
2. Is/was the property, or any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Site pursuant to ECL 27-1305? If yes, please provide the DEC site number: _____ Class: _____	<input type="radio"/>	<input checked="" type="radio"/>

SECTION X: Property Eligibility Information (continued)

	Y	N
<p>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: _____</p>	<input type="radio"/>	<input checked="" type="radio"/>
<p>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? If yes, attach any available information related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filings and corporate dissolution documents.</p> <p style="text-align: right;">N/A <input checked="" type="radio"/></p>	<input type="radio"/>	<input type="radio"/>
<p>5. Is the property subject to a cleanup order under Navigation Law Article 12 or ECL Article 17 Title 10? If yes, please provide the order number: _____</p>	<input type="radio"/>	<input checked="" type="radio"/>
<p>6. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum? If yes, please provide additional information as an attachment.</p>	<input type="radio"/>	<input checked="" type="radio"/>

SECTION XI: Site Contact List

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 mailing addresses of the following:

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

See Section XI of Appendix A and Figure 6

SECTION XII: Statement of Certification and Signatures

(By requestor who is an individual)

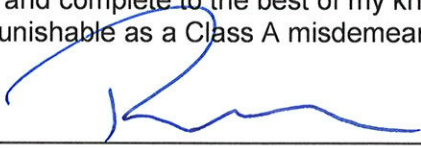
If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the [DER-32, Brownfield Cleanup Program Applications and Agreements](#); and (3)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

Date: _____ Signature: _____

Print Name: _____

(By a requestor other than an individual)

I hereby affirm that I am **President & CEO** (title) of The Evergreen Foundation of Western New York, Inc. (entity); that I am authorized by that entity to make this application and execute a Brownfield Cleanup Agreement (BCA) and all subsequent documents; that this application was prepared by me or under my supervision and direction. If this application is approved, I hereby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the [DER-32, Brownfield Cleanup Program Applications and Agreements](#); and (3) that in the event of a conflict between the general terms and conditions of participation and 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: 11/03/2023 Signature:  _____

Print Name: Ray Ganoe _____

PLEASE REFER TO THE APPLICATION COVER PAGE AND BCP APPLICATION INSTRUCTIONS FOR DETAILS OF PAPERLESS DIGITAL SUBMISSION REQUIREMENTS.

FOR SITES SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY**N/A**

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 15

Please respond to the questions below and provide additional information and/or documentation as required. <i>Please refer to the application instructions.</i>	Y	N
1. Is the property located in Bronx, Kings, New York, Queens or Richmond County?	<input type="radio"/>	<input type="radio"/>
2. Is the requestor seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit?	<input type="radio"/>	<input type="radio"/>
3. Is at least 50% of the site area located within an environmental zone pursuant to NYS Tax Law 21(b)(6)?	<input type="radio"/>	<input type="radio"/>
4. Is the property upside down or underutilized as defined below?		
Upside down	<input type="radio"/>	<input type="radio"/>
Underutilized	<input type="radio"/>	<input type="radio"/>
<p>From ECL 27-1405(31): “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): 375-3.2: (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 (1) the proposed use is at least 75 percent for industrial uses; or (2) at which: (i) the proposed use is at least 75 percent for commercial or commercial and industrial uses; (ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and (iii) one or more of the following conditions exists, as certified by the applicant: (a) property tax payments have been in arrears for at least five years immediately prior to the application; (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 (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>		

FOR SITES SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY (continued)

5. 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*
- *Selecting this option 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’ household’s 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 homeowners 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.

FOR SITES SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY (continued)

6. Is the site a planned renewable energy facility site as defined below?

☐ Yes – planned renewable energy facility site with documentation

☐ Pending – planned renewable energy facility awaiting documentation

*Selecting this option will result in a “pending” status. The appropriate documentation 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.

☐ No – not a planned renewable energy facility site

If yes, please provide any documentation available to demonstrate that the property is planned to be developed as a renewable energy facility site.

From ECL 27-1405(33) as of April 9, 2022:

“Renewable energy facility site” shall mean real property (a) this is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.

From Public Service Law Article 4 Section 66-p as of April 23, 2021:

(b) "renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.

7. Is the site located within a disadvantaged community, within a designated Brownfield Opportunity Area, and plans to meet the conformance determinations pursuant to subdivision ten of section nine-hundred-seventy-r of the general municipal law?

☐ Yes - *Selecting this option will result in a “pending” status, as a BOA conformance determination has not yet been made. Proof of conformance 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.

☐ No

From ECL 75-0111 as of April 9, 2022:

(5) "Disadvantaged communities" means communities that bear the burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.

Appendix A - BCP Application Supporting Information

Section I – Property Information

Parcel Description

Bailey and Kensington (hereinafter, the “Site”), subject to this Brownfield Cleanup Program (BCP) application, is located in a highly developed commercial and residential use area in the City of Buffalo, Erie County, New York and consists of four (4) tax parcels totaling approximately ± 0.71-acres (see Figures 1 and 2), as summarized below:

- 3074 Bailey Avenue: SBL No. 90.32-6-26, ±0.06 acres
- 1096 Kensington Avenue: SBL No. 90.32-6-30, ±0.07 acres
- 1098 Kensington Avenue: SBL No. 90.32-6-29, ±0.08 acres
- 1102 Kensington Avenue: SBL No. 90.32-6-24.1, ±0.50 acres

A drawing of the tax map for the subject parcels is provided as Figure 3. The boundaries of the proposed BCP Site correspond with the tax boundaries. The Erie County parcel detail reports for the Site are attached as Exhibit 1 for reference.

The Evergreen Foundation of Western New York, Inc. (Evergreen) acquired the four (4) parcels that make up the Site on February 23, 2023. Deed information is provided as Exhibit 2 of the BCP application package.

According to NYSDEC Environmental Zone (EN-Zone) mapping, the Site is located within EN-Zone type AB (census tract 42, see Figure 4).

According to The NYS Climate Leadership and Community Protection Act Disadvantaged Communities Map, the Site is located within a Disadvantaged Communities census tract (tract GEOID: 36029004200, see Figure 5).

According to The NYS Department of State (DOS) Brownfield Redevelopment, the Site is not located within a Brownfield Opportunity Area (BOA).

The Site is not listed on the Registry of Inactive Hazardous Waste Disposal Sites and is not currently the subject of investigation as a Potential Site.

Easements and Permits

Evergreen is not 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 Kensington Avenue, Bailey Avenue, Hutchinson Avenue, and Midway Avenue. The Site has access to municipal sanitary sewer, electric, natural-gas, and public water.

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Location

The Site is located at the northwest corner of the intersection of Kensington Avenue and Bailey Avenue in the City of Buffalo, New York. The Site is located in a highly developed mixed use residential and commercial area of the City of Buffalo, Erie County, New York. The Site is bordered by a commercial property and Midway Avenue to the north; Kensington Avenue to the south; Bailey Avenue to the east; and commercial and residential properties and Hutchinson Avenue to the west. Adjacent property owners are identified on Figure 6.

Site Features

The 1096 Kensington parcel is improved with one (1) vacant commercial structure formerly utilized as a convenience store with an attached vacant residential structure. The remaining parcels are vacant (no structures). The northern portion of the 1102 Kensington parcel is covered with asphalt. The remaining areas of the Site are covered with grass, shrubs, and/or trees.

Zoning and Land Use

According to the Unified Development Ordinance (aka Buffalo Green Code), the project area, planned as an approximate 35,000 square foot commercial use healthcare and community services building with a mix of medical offices and support services, is consistent with the zoning assigned to the Site (see Figure 7). The current zoning for the Site is N-3C (mixed-use center) which is defined as mixed-use, walkable centers of Buffalo's moderately compact neighborhoods and permits both commercial and residential uses.

The Site is currently occupied with one (1) mixed commercial/residential structure on the 1096 Kensington Avenue parcel and the remaining area is vacant. The surrounding parcels are as follows:

- north – residential and commercial and Midway Avenue;
- south – commercial and Kensington Avenue;
- east – commercial and Bailey Avenue; and
- west – residential and commercial.

Figure 6 identifies the adjacent property owners.

Past Use of the Site

Based on historic records and Sanborn Fire Insurance Maps, the Site was previously used in a residential and commercial capacity. Previous commercial uses included but were not limited to a gas company, an auto supply store, and various cleaning operations including a dry cleaner.

The 1096 Kensington parcel has had various residential and commercial uses from at least 1916 to 2023 but are vacant at this time. The parcel was improved with one (1) residential structure in at least 1916. The original structure was demolished and a new building, with commercial storefronts and an attached residential structure behind, was constructed in at least 1935. Commercial uses included a barber, shoe

Appendix A - BCP Application Supporting Information

repair, offices, and storefronts. An addition was added to the building in 1986. The structure remains on the Site and is used as a deli/convenience store.

The 1098 Kensington parcel has had various commercial uses from at least 1930. The parcel was improved with one (1) commercial structure in at least 1935. Commercial uses included but were not limited to storefronts, a nursery, and restaurants. The building was demolished between 2009 and 2011 and the parcel remains vacant.

The 1102 Kensington parcel has had various commercial and residential uses from at least 1930. The parcel was improved with one (1) residential structure in the northern portion of the parcel and one (1) commercial structure in the southern portion of the parcel. Commercial operations included The Alden Aurora/Reserve Gas Company between at least 1950 and 1955 and cleaning operations including dry cleaners (Swan Cleaners Inc., Kensington Cleaners & Shoe Shine, and Tom Carlos Hat Cleaner) between at least 1935 and 1946. Other commercial operations included offices, storefronts, restaurants, a bank, and a drug store. The residential structure was demolished prior to 1986 and the northern portion of the parcel was turned into a parking lot. The commercial structure was demolished after a fire in the summer of 2019 and the parcel remains vacant.

The 3074 Bailey parcel has had various commercial uses from at least 1935. The parcel was improved with one (1) commercial structure in at least 1935. Commercial uses included cleaning operations including dry cleaners (Swan Cleaners Inc. and Lens One Hour Cleaners) from at least 1950 to at least 1955. Other commercial uses included storefronts and a drugstore. The structure was demolished in 2015 and the parcel remains vacant.

The historic use of the Site included commercial operations including but not limited to a gas company, an auto supply store, and cleaning operations including dry cleaning. Additionally, several structures have been built and demolished at the Site and backfilled with fill material. The past use and presence of fill material has impacted the Site as evidenced by SVOC and metals contamination detected during the previous investigations.

Site Geology and Hydrogeology

The Site is located within the Lake Erie-Niagara River major drainage basin, which is typified by little topographic relief that gently slopes westward towards the Niagara River, except in the immediate vicinity of major drainage ways. According to the United States Department of Agriculture (USDA) Web soil survey, Site soils are characterized as Urban land-Cayuga complex (Ug, see Figure 8). These soils are characterized as 60 percent urban land, 30 percent Cayuga and similar soils, and 10 percent minor components. Cayuga soils are moderately well drained and are made up of silt loam, silty clay, and gravelly loam formed from glacial deposits. Soils within the City of Buffalo with the majority of soil surface covered by asphalt, concrete, buildings, or other impervious structures, typical of an urban environment, are characterized as urban land.

The Site overburden generally includes topsoil or asphalt and gravel subbase overlying urban fill to between 0.5 fbgs and 8 feet below ground surface (fbgs). The fill at the Site consists of brown to black sand, silt, and

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clay with man-made materials including brick, concrete, coal, wood, metal, glass, and cinders. Clay with intermingled fill material was also identified at some locations between the native sandy clay and fill layers. Native sandy clay was identified below the fill material to depths exceeding 15 fbgs.

Regional groundwater flow is likely westerly towards the Niagara River. Locally, groundwater may be influenced by subsurface features, such as excavations, utilities, and localized fill conditions. Temporary microwells were installed at the Site to facilitate groundwater sample collection during a previous investigation, but groundwater elevations have not been collected. Additional work is required to investigate groundwater flow direction and quality at the Site. Monitoring wells will be installed during the Remedial Investigation to assess groundwater flow and quality.

Environmental Assessment

Past uses of the Site (gas company, cleaning operations including dry cleaner, auto repair) and the presence of fill material across the Site likely due to demolition and backfill of several former structures have resulted in impacts to the Site.

Soil – Fill material containing brick, concrete, wood, metal, glass, and cinders was identified Site-wide at varying depths up to 8 fbgs. Laboratory analytical results indicate 6NYCRR Part 375 (Part 375) Commercial Use Soil Cleanup Objectives (CSCOs) exceedances have been identified on the four (4) parcels that make up the Site, in addition to groundwater contaminants present in exceedance of their respective groundwater quality standards/guidance values (GWQS/GVs). Analytical results are presented on Figure 9.

Polycyclic aromatic hydrocarbons (PAHs) were detected exceeding CSCOs/ISCOs in soil/fill collected from the 1098 Kensington, 1102 Kensington, and 3074 Bailey parcels. Benzo(a)pyrene was detected exceeding its ISCO (1.1 mg/kg) in surface soil/fill at SS-3 (2.2 mg/kg) and SS-5 (2.2 mg/kg) and subsurface soil/fill at SB-8 at 6 fbgs (2.1 mg/kg), TT-1 from 0-2 fbgs (1.4 mg/kg), and TT-8 (3.4 mg/kg) from 0.25-0.75 fbgs. Metals were detected exceeding CSCOs/ISCOs in soil/fill collected from the 1096 Kensington and 1098 Kensington parcels. Arsenic was detected exceeding its ISCO (16 mg/kg) in surface soil at SS-5 (16.7 mg/kg) and in subsurface soil at TT-6 from 0-1 fbgs (35.2 mg/kg). Chromium was detected exceeding its CSCO (1,500 mg/kg) in surface soil at SS-5 (1,520 mg/kg). Manganese was also detected exceeding its ISCO (10,000 mg/kg) in surface soil at SS-5 (20,400 mg/kg).

Groundwater – Groundwater samples collected from three (3) temporary monitoring wells installed at the Site indicate elevated concentrations of metals above their respective GWQS/GVs at GWSB-3 (northern portion of 1102 Kensington), GWSB-8 (1098 Kensington) and GWSB-10 (southern portion of 1102 Kensington). These metals include antimony, arsenic, barium, beryllium, cadmium, chromium, copper, lead, magnesium, manganese, mercury, and selenium. The following Resource Conservation and Recovery Act (RCRA) 8 metals were identified above their respective GWQS/GVs at:

- GWSB-3: arsenic, chromium, lead, and mercury.
- GWQS: lead
- GWSB-10: arsenic, barium, cadmium, chromium, lead, mercury, and selenium

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These analytes have been detected in the soil/fill across the Site.

Total phenols were detected above their respective GWQS (1 ug/l) in the sample from GWSB-8 (25 ug/l).

Historic documents and the previous investigation reports (Phase I, Phase II, and Supplemental Phase II Reports) are provided electronically.

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Section II – Project Description

Evergreen, acting as a Volunteer, is willing to complete additional investigation and remediate the Site under the NYS Brownfield Cleanup Program (BCP), and is submitting this BCP Application for eligibility acceptance into the program, as a Volunteer.

Upon acceptance into the BCP, Evergreen is prepared to submit a Remedial Investigation (RI) Work Plan in January 2024. The Remedial Investigation would be completed in spring/summer 2024 and remedial and redevelopment activities would be completed in the summer/fall of 2024 in anticipation of the Certificate of Completion in 2025.

The Volunteer plans to redevelop the entire ±0.71-acre Site, with the construction of a 35,000 square foot healthcare and community services building with a mix of medical offices and support services, along with new parking and greenspace.

The Project will result in the remediation and redevelopment of an environmentally impacted Site and provide needed services in this disadvantaged community within the City of Buffalo, New York.

A preliminary project schedule is shown on Figure 10.

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Section III – Land Use Factors

Current Zoning

According to the Unified Development Ordinance (aka Buffalo Green code, dated December 2016), the current zoning for the Site is N-3C (mixed-use center) which is defined as mixed-use, walkable centers of Buffalo's moderately compact neighborhoods and permits both commercial and residential uses. The Unified Development Ordinance was developed in accordance with the September 2016 Land Use Plan, which outlines community expectations and preferences regarding future development.

The City of Buffalo also issued a 2023-2027 Four-Year Strategic Plan: Building an Equitable City (dated January 1, 2023) which identifies an increase in health care as an action step to enhance and promote community, safety, and well-being.

Current Use

The Site is currently occupied with one (1) vacant mixed commercial/residential structure on the 1096 Kensington Avenue parcel; the remaining parcels are vacant. The 1098 Kensington parcel was previously improved with one (1) commercial structure, which was demolished between 2009 and 2011. The 1102 Kensington parcel was previously improved with one (1) residential structure in the northern portion of the parcel and one commercial structure in the southern portion of the parcel. The residential structure was demolished prior to 1986 and the northern portion of the parcel was turned into a parking lot. The commercial structure was demolished after a fire in the summer of 2019. The 3074 Bailey parcel was previously improved with one (1) commercial structure, which was demolished in 2015. Impacted surface soil, subsurface soil, and groundwater have been identified at the parcels that make up the Site.

Planned Future Use

The Volunteer plans to redevelop the entire ±0.71-acre Site, with the construction of a 42,000 square foot healthcare and community services building with a mix of medical offices and support services. Evergreen's mission is to foster healthy communities by providing medical, supportive, and behavioral services to individuals and families in WNY, especially those who are living with chronic illness or who are underserved by the healthcare system.

Although this new Site is projected to *lose money year over year*, the continuation and expansion of services in this disadvantaged community on the Eastside of Buffalo will fulfill a central goal of its mission. To advance its vision and mission, Evergreen will continue to deliver a holistic, patient-centered continuum of services grounded in the principles of harm reduction that fosters an environment of inclusion and excellence. The agency specializes in providing accessible, person-centered care that supports people in improving their well-being and health outcomes.

The Site is not planned to be a renewable energy facility as defined in Section 66-p of the Public Service Law.

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The proposed redevelopment is consistent with the City of Buffalo zoning and land use in accordance with the Unified Development Ordinance (Buffalo Green Code) and Land Use Plan and will obtain the necessary approvals from the City of Buffalo.

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Section IV – Property’s Environmental History

A summary of the previous environmental investigations findings at the Site are provided below. Investigation locations and associated analytical results are provided on Figure 9. A summary of soil analytical results exceeding CSCOs, which are applicable for the intended reuse of the Site, is provided as Table 1. A summary of groundwater analytical results exceeding GWQS/GV is provided as Table 2. Electronic copies of the previous investigation reports are provided.

Phase II Environmental Site Assessment (October 2022)

C&S Engineers, Inc. completed a Phase II Environmental Site Assessment at the Site in October 2022. Phase II activities included collection of five (5) surface soil/fill samples (SS-1 through SS-5), completion of 14 soil borings (SB-1 through SB-14) and collection of soil/fill samples, and installation of three (3) temporary groundwater monitoring wells (GWSB-3, GWSB-8, and GWSB-10) and collection of groundwater samples. The findings of the investigation are summarized below:

- Urban fill material consisting of brown to black sand, silt, and clay with manmade constituents including brick, concrete, and coal was identified to depths ranging from 1 to 4 fbgs.
- SVOCs and metals were detected in 4 of the 5 surface soil samples. Benzo(a)pyrene exceeded its ISCO at SS-3 and SS-5. Arsenic, chromium, and manganese exceeded their respective CSCOs and/or ISCOs at SS-5.
- SVOCs were detected in 2 of the 10 subsurface soil samples and metals were detected in 4 of the 10 subsurface soil samples. Benzo(a)pyrene exceeded its ISCO at SB-8 (6 ft).
- Total phenols were detected exceeding GWQS/GV at GWSB-8. Metals were detected in the three groundwater samples collected from the temporary monitoring wells. Metals including arsenic, barium, cadmium, chromium, lead, mercury, and/or selenium were detected exceeding GWQS/GV at GWSB-3, GWSB-8, and GWSB-10.

Supplemental Phase II Site Investigation Report (April 2023)

Benchmark Civil/Environmental Engineering & Geology, PLLC completed a Supplemental Phase II Site Investigation Report in April 2023. Supplemental Phase II activities included completion of nine test trenches (TT-1 through TT-9) and collection of subsurface soil/fill samples. The findings of the investigation are summarized below:

- Urban fill material consisting of brown to black sand and clay with man-made constituents including concrete, brick, wood, metal, glass, and cinders was identified to depths ranging from 0.5 to 8 fbgs.
- SVOCs were detected at 3 of the 8 subsurface soil/fill samples. Benzo(a)pyrene exceeded its ISCO at TT-1 (0-2 ft) and TT-8 (0.25-0.75 ft).
- Metals were detected at 5 of the 9 subsurface soil/fill samples. Arsenic exceeded its ISCO at TT-6 (0-1 ft).

Based on the existing data, the Site is a candidate for the BCP. The Site meets the definition of a BCP site per the current BCP law which states a “brownfield site or site shall mean any real property where a

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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.”

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Section V – Requestor Information

The New York State Department of State's (NYSDOS) Corporation & Business Entity Database print-out for Evergreen is attached as Exhibit 3.

Roux Environmental Engineering and Geology, D.P.C. (Roux), a registered NYS engineering firm, and licensed NYS Professional Engineer (PE) will be acting as the Engineer of Record for this BCP project. Ms. Jessica M. Baker, Esq. will be acting as the Volunteer's attorney.

Evergreen Incorporation and Resolution of the Board of Directors information, regarding the individual authorized to sign on behalf of Evergreen, is attached as Exhibit 4.

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Section VI – Requestor Eligibility Information

The Applicant, Evergreen, qualifies as a “Volunteer” in accordance with NY ECL 27-1405(1)(b) and 6 NYCRR 375-3.2(b)(2). Evergreen acquired the parcels in February 2023, as shown in the parcel history found in Section IX. The Applicant has exercised all due care with respect to the environmental conditions at the properties during its ownership.

The Applicant’s liability arises solely from having taken title to the property after the contaminants had already been present at the Site. 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.

As such, Evergreen is entitled to Volunteer status under NY ECL §27-1405(1)(b).

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Section VIII – Program Fee

Evergreen is a not-for-profit community-based healthcare organization. Evergreen is requesting a waiver of the recently imposed \$50,000 program fee should BCP application be approved, and a BCA be executed with NYSDEC. The Applicant may seek a waiver of this requirement on demonstration of "financial hardship." To demonstrate hardship, the applicant must demonstrate that "but for the program fee, remediation of the brownfield site would not be economically viable." A copy of the Program Fee Waiver Request has been included as Exhibit 5.

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Section IX – Current Property Owner/Operator Information

Reasonable attempts were made to attain complete information regarding current and previous site owners and operators. Information for the previous and current owners/operators is provided in the tables below, as available.

1096 Kensington Avenue

1096 Kensington Avenue – Owner Information			
Parcel Address	Use	Approx. Date(s)	Relationship to Applicant
Current Owner			
The Evergreen Foundation of Western New York, Inc. 206 South Elmwood Avenue Buffalo, New York 14201	Commercial/ Residential	February 23, 2023 – Present	Owner & Applicant
Previous Owners			
J-P Group LLC 295 Main Street, Suite 700 Buffalo, New York 14203	Commercial/ Residential	2017 – 2023	None
Karim Khondoker (Unknown Address)		2011 – 2017	
SMA Credit Solutions, LLC C/O Farah Agha 3060 North Bailey Avenue, Suite 5 Amherst, New York 14226		2010 – 2011	
FWH Corp (Unknown Address)		2009 – 2010	
City of Buffalo Ref 65 Niagara Square Buffalo, New York 14202		2008 – 2009	
2661 Main Street 2671 Main Street Buffalo, New York 14214		1997 – 2008	
James E. Barclay Jr. (Unknown Address)		1991 – 1997	

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Marc Joseffer (Unknown Address)		1983 – 1991	
Fannie R. Carrel (Unknown Address)		1978 – 1983	
Marvin A Block (Unknown Address)		1955 – 1978	
Unknown Residential Owner (Unknown Address)		At least 1916	

1096 Kensington Avenue – Operator Information			
Parcel Address	Use	Approx. Date(s)	Relationship to Applicant
Current Operator			
The Evergreen Foundation of Western New York, Inc. 206 South Elmwood Avenue Buffalo, New York 14201	Commercial/ Residential	February 23, 2023 – Present	Owner & Applicant
Previous Operators			
New Town Deli Inc. 1104 Kensington Street Buffalo, New York 14215	Commercial/ Residential	2016 – 2022	None
Liberty Loan Co. Inc. (Unknown Address)		1960 – 1980	
Various Commercial Operators (Unknown Address)		1930 – 2008	

1098 Kensington Avenue

1098 Kensington Avenue – Owner Information			
Parcel Address	Use	Approx. Date(s)	Relationship to Applicant
Current Owner			
The Evergreen Foundation of Western New York, Inc. 206 South Elmwood Avenue Buffalo, New York 14201	Vacant Residential/ Commercial	February 23, 2023 – Present	Owner & Applicant
Previous Owners			
J-P Group LLC	Commercial	2008 – 2023	None

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295 Main Street, Suite 700 Buffalo, New York 14203			
City of Buffalo Ref 65 Niagara Square Buffalo, New York 14202		2007 – 2008	
Kary Stefan (Owner) (Unknown Address)		1997 – 2007	
Kary and Walter Stefan (Unknown Address)		1989 – 1997	
Norstar Bank NA 1 East Avenue Rochester, New York 14604		1989	
Ronald Dubose (Unknown Address)		1986 – 1989	
Dominic C. Feroletto (Unknown Address)		1963 – 1989	

1098 Kensington Avenue – Operator Information			
Parcel Address	Use	Approx. Date(s)	Relationship to Applicant
Current Operator			
The Evergreen Foundation of Western New York, Inc. 206 South Elmwood Avenue Buffalo, New York 14201	Commercial/ Residential	February 23, 2023 – Present	Owner & Applicant
Previous Operators			
Various Commercial Tenants (Unknown Address)	Commercial	1930 – 2003	None

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1102 Kensington Avenue

1102 Kensington Avenue – Owner Information			
Historic Addresses: 1100 – 1110 Kensington Ave; 3058 – 3070 Bailey Ave; 253 Hutchinson Ave			
Parcel Address	Use	Approx. Date(s)	Relationship to Applicant
Current Owner			
The Evergreen Foundation of Western New York, Inc. 206 South Elmwood Avenue Buffalo, New York 14201	Vacant Commercial	February 23, 2023 – Present	Owner & Applicant
Previous Owners			
J-P Group LLC 295 Main Street, Suite 700 Buffalo, New York 14203	Commercial	1992 – 2023	None
Joseph Jacobi (Unknown Address)		1988 – 1992	
Unknown Residential Owner(s) (Unknown Addresses)	Residential	At least 1916 – at least 1950	None

1102 Kensington Avenue – Operator Information			
Historic Addresses: 1100 – 1110 Kensington Ave; 3058 – 3070 Bailey Ave; 253 Hutchinson Ave			
Parcel Address	Use	Approx. Date(s)	Relationship to Applicant
Current Operator			
The Evergreen Foundation of Western New York, Inc. 206 South Elmwood Avenue Buffalo, New York 14201	Commercial/ Residential	February 23, 2023 – Present	Owner & Applicant
Previous Operators			
H&R Block Inc. One H&R Block Way Kansas City, Missouri 64105	Commercial	1971 – 2020	None
Ken-Bailey Smoke/Variety Shop (Unknown Address)		1960-1965	
Slotkins Inc. Women's Clothing (Unknown Address)		1950 – 1960	
Alden Aurora Gas Co. Inc./		1940 – 1960	

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Reserve Gas Co. Inc. 13441 Railroad Street Alden, New York 14004			
Kensington Cleaners & Shoe Shine (Unknown Address)		1946	
Swiss Cleaners & Dyers Inc. (Unknown Address)		1940	
Swan Cleaners Inc. (Unknown Address)		1935 – 1946	
Thomas Carlos Hat Cleaner (Unknown Address)		1935 – 1940	
Portin & Solman auto supplies (Unknown Address)		1930	
Smith's Safe Pharmacy (Unknown Address)		1930 – 1985	
M&T Bank One M&T Plaza, 345 Main Street Buffalo, NY 14203		1930 – 1985	
Various Commercial Tenants (Unknown Addresses)		1930 – 2008	

3074 Bailey Avenue

3074 Bailey Avenue – Owner Information Historic Addresses: 3072 – 3074 Bailey Ave			
Parcel Address	Use	Approx. Date(s)	Relationship to Applicant
Current Owner			
The Evergreen Foundation of Western New York, Inc. 206 South Elmwood Avenue Buffalo, New York 14201	Vacant Commercial	February 23, 2023 – Present	Owner & Applicant
Previous Owners			
J-P Group LLC 295 Main Street, Suite 700 Buffalo, New York 14203	Commercial	2014 – 2023	None
City of Buffalo 65 Niagara Square		2007 – 2014	

Appendix A - BCP Application Supporting Information

Buffalo, New York 14202			
City of Buffalo Ref 65 Niagara Square Buffalo, New York 14202		2007	
Willie Mae Singletary (Unknown Address)		1994 – 2007	
Richard D. Granaas (Unknown Address)		1985 – 1994	
Steve K. & Savitri Saxena (Unknown Address)		1980 – 1985	
Irwin D. & W. Katz (Unknown Address)		1960 – 1980	

3074 Bailey Avenue – Operator Information Historic Addresses: 3072 – 3074 Bailey Avenue			
Parcel Address	Use	Approx. Date(s)	Relationship to Applicant
Current Operator			
The Evergreen Foundation of Western New York, Inc. 206 South Elmwood Avenue Buffalo, New York 14201	Commercial/ Residential	February 23, 2023 – Present	Owner & Applicant
Previous Operators			
Ka Choya Inc Gold and Sportswear (Unknown Address)	Commercial	1990 – 2016	None
Len's One Hour Cleaners (Unknown Address)		1955	
Kats Jewelers (Unknown Address)		1950 – 1980	
Swan Cleaners Inc. (Unknown Address)		1950	
Harvey and Carey Inc. Drugs (Unknown Address)		1935	
Various Commercial Tenants (Unknown Addresses)		1930 – 1980	

Appendix A - BCP Application Supporting Information

Section XI – Contact List Information

Site Contact List

The following is the contact list for the subject property. Each contact will be sent fact sheets throughout the project's duration.

Erie County Contacts:

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

Hon. April N.M. Baskin
Erie County Legislator – District 2
2495 Main Street, Suite 450
Buffalo, NY 14214

Mr. Daniel Castle, AICP
Commissioner
Erie County Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Mr. Thomas E. Baines, Esq.
Deputy Commissioner of Planning & Economic
Development
Erie County Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Mr. Mark Rountree
Chief Planner
Erie County Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Ms. Bonnie Lawrence
Deputy Commissioner
Erie County Environment & Planning
95 Franklin Street, 10th Floor
Buffalo, NY 14202

Mr. Robert M. Graber
Erie County Legislature Clerk
92 Franklin Street, 4th Floor
Buffalo, NY 14202

Mr. John Cappellino
President & CEO
Erie County Industrial Development Agency
95 Perry Street, Suite 403
Buffalo, NY 14203

Ms. Gale Burstein, MD, MPH, FAAP
Commissioner of Health
Erie County Department of Health
95 Franklin Street
Buffalo, NY 14202

Mr. Daniel J. Neaverth, Jr.
Commissioner
Erie County Department of Homeland Security &
Emergency Services
45 Elm Street
Buffalo, NY 14203

Appendix A - BCP Application Supporting Information

City of Buffalo Contacts:

Byron W. Brown
Mayor
65 Niagara Square, Room 201
Buffalo, NY 14202

Nkosi Alleyne
Senior Planner
City of Buffalo Planning Board
65 Niagara Square, Room 920
Buffalo, NY 14202

Ulysees O. Wingo, Sr.
Council Member, Masten District
65 Niagara Square, Room 1414
Buffalo, NY 14202

James Morrell
Chair
City of Buffalo Planning Board
65 Niagara Square, Room 920
Buffalo, NY 14202

Supplier of Potable Water:

Buffalo Water
281 Exchange Street
Buffalo, NY 14204

Local News Media:

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

WIVB - Ch. 4
ATTN: Mr. Joshua Roy
2077 Elmwood Avenue
Buffalo, NY 14207

Business First
ATTN: Donna Collins
465 Main Street, Suite 100
Buffalo, NY 14203

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

WGRZ TV - Ch. 2
ATTN: Mr. Jeremy Settle
259 Delaware Avenue
Buffalo, NY 14202

WKBW News Channel 7
ATTN: Mr. Aaron Mason
7 Broadcast Plaza
Buffalo, NY 14202

WNED
ATTN: Ms. Brigid Jaipaul-Valenza
P.O. Box 1263, Horizons Plaza
Buffalo, NY 14240

Appendix A - BCP Application Supporting Information

Nearby Schools and Daycares:

Ms. Teresa Gerchman, Principal
Westminster Community Charter School
24 Westminster Avenue
Buffalo, NY 14215

Ms. Giovanna Claudio-Cotto, Principal
PS 156 Frederick Law Olmsted
319 Suffolk Street
Buffalo, NY 14215

Ms. Gayle Irving-White, Principal
Highgate Heights Elementary
600 Highgate Avenue
Buffalo, NY 14215

Mr. Carlos Alvarez, Principal
Bennett High School
2885 Main Street
Buffalo, NY 14214

Mr. Eric Johnson
Burgard High School
400 Kensington Avenue
Buffalo, NY 14214

Ms. Mary Goodwill, Director
Mary's Little Lambs
377 Kensington Avenue
Buffalo, NY 14214

Mr. Christopher Pitek, Head of School
Nativity Miguel Middle School of Buffalo
24 Hastings Avenue
Buffalo, NY 14215

Mr. John Sheffield, Head of School
Charter School of Inquiry
404 Edison Avenue
Buffalo, NY 14215

Ms. Danelle Backe, Principal
Buffalo United Charter School
325 Manhattan Avenue
Buffalo, NY 14214

Ms. Tracie-Michele A. Lewis, Principal
PS 82 Early Childhood Center
230 Easton Avenue
Buffalo, NY 14215

My Precious Angels Childcare, Inc.
2946 Bailey Avenue
Buffalo, NY 14215

Time Well Spent Daycare
104 East Depew Avenue, Lower
Buffalo, NY 14214

Other Interested Parties:

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

Document Repository:

Ms. April Tompkins
Re: Document Repository
Buffalo & Erie County Public Library
1 Lafayette Square
Buffalo, NY 14203

Buffalo & Erie County Public Library
Leroy R. Coles, Jr. Branch
1187 Delavan Avenue
Buffalo, NY 14215

Appendix A - BCP Application Supporting Information

Adjacent Property Owners

Information for the residents, owners, and occupants of the properties adjacent to the Site is provided in the table below and also shown on Figure 6.

Adjacent Property Address			Property Owner Mailing Address
No.	Street	Property Use	
1088	Kensington Avenue	Downtown row type (detached)	Jason W. Maclin 4084 Johnson Road Lockport, NY 14094
0	Hutchinson Avenue	No Information Available	No Information Available
245	Hutchinson Avenue	Two family year-round residence	Ashrafuzz Aman Bhuiyan 223 Lisbon Avenue Buffalo, NY 14215
247	Hutchinson Avenue	Two family year-round residence	Zayan Corporation 107 Forman Street Buffalo, NY 14221
251	Hutchinson Avenue	Two family year-round residence	Debra Davis 251 Hutchinson Avenue Buffalo, NY 14215
72	Midway Avenue	One family year-round residence	Lawrence Arrington Jr. 72 Midway Avenue Buffalo, NY 14215
74	Midway Avenue	One family year-round residence	Robert F. Jackson 74 Midway Avenue Buffalo, NY 14215
78	Midway Avenue	Parking lot	City of Buffalo Division of Real Estate 65 Niagara Square, Room 905 Buffalo, NY 14202
80	Midway Avenue	Parking lot	City of Buffalo Division of Real Estate 65 Niagara Square, Room 905 Buffalo, NY 14202
86	Midway Avenue	Vacant commercial land	3084 Bailey Avenue LLC 3082 Bailey Avenue Buffalo, NY 14215
3038	Bailey Avenue	One story small structure – multi-occupant	Bailey-Kensington LLC 1105 Colvin Boulevard Buffalo, NY 14223

Appendix A - BCP Application Supporting Information

3045	Bailey Avenue	Neighborhood shopping center	Royal Crown LLC 3039 Bailey Avenue Buffalo, NY 14215
3065	Bailey Avenue	Downtown row type (detached)	Sakthy Realty 1 Corp. C/O Mithuun Kanapathipilla 145 Founders Lake Court Amherst, NY 14228
3076	Bailey Avenue	Downtown row type (detached)	The Good Life Sport Bar & Grill C/O Eric Humphrey 69 Pine Ridge Road, Lower Buffalo, NY 14211
3079	Bailey Avenue	Small retail outlet	Compton Square LLC 1234 E 17 th Street Santa Ana, CA 92701

Document Repository

The Buffalo and Erie County Library has agreed to act as the document repository for the proposed BCP Site. A letter of acknowledgement from the repository is included as Exhibit 6.

Brownfield Cleanup Application
Bailey & Kensington Site

TABLES

Table 1
Soil Data Summary
Brownfield Cleanup Program Application
Bailey and Kensington Site
Buffalo, New York

Analytes > CSCOs	Number of Detections > CSCOs	Maximum Detection (ppm)	CSCO (ppm)	Depth (ft bgs)
Benzo(a)pyrene	5	3.4	1	0-6
Arsenic	2	35.2	16	0-1
Chromium	1	1,520	1,500	0-0.2
Manganese	1	20,400	10,000	0-0.2

Definitions:

CSCO = Commercial Soil Cleanup Objectives

Table 2
Groundwater Data Summary
Brownfield Cleanup Program Application
Bailey and Kensington Site
Buffalo, New York

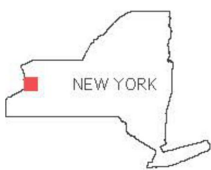
Analytes > GWQS/GV	Number of Detections > GWQS/GV	Maximum Detection (ppm)	GWQS/GV (ug/L)
Total Phenols	1	25	1
Antimony	1	16	3
Arsenic	2	110	25
Barium	1	2,000	1,000
Beryllium	1	12	3
Cadmium	1	6.5	5
Chromium	2	400	50
Copper	1	470	200
Iron	3	333,000	300
Lead	3	1400	25
Magnesium	3	209,000	35,000
Manganese	3	7,600	300
Mercury	2	2.5	0.7
Nickel	1	480	100
Selenium	1	17	10
Sodium	3	321,000	20,000

Definitions:

GWQS/GV = Groundwater Quality Standards/Guidance Values.

Brownfield Cleanup Application
Bailey & Kensington Site

FIGURES




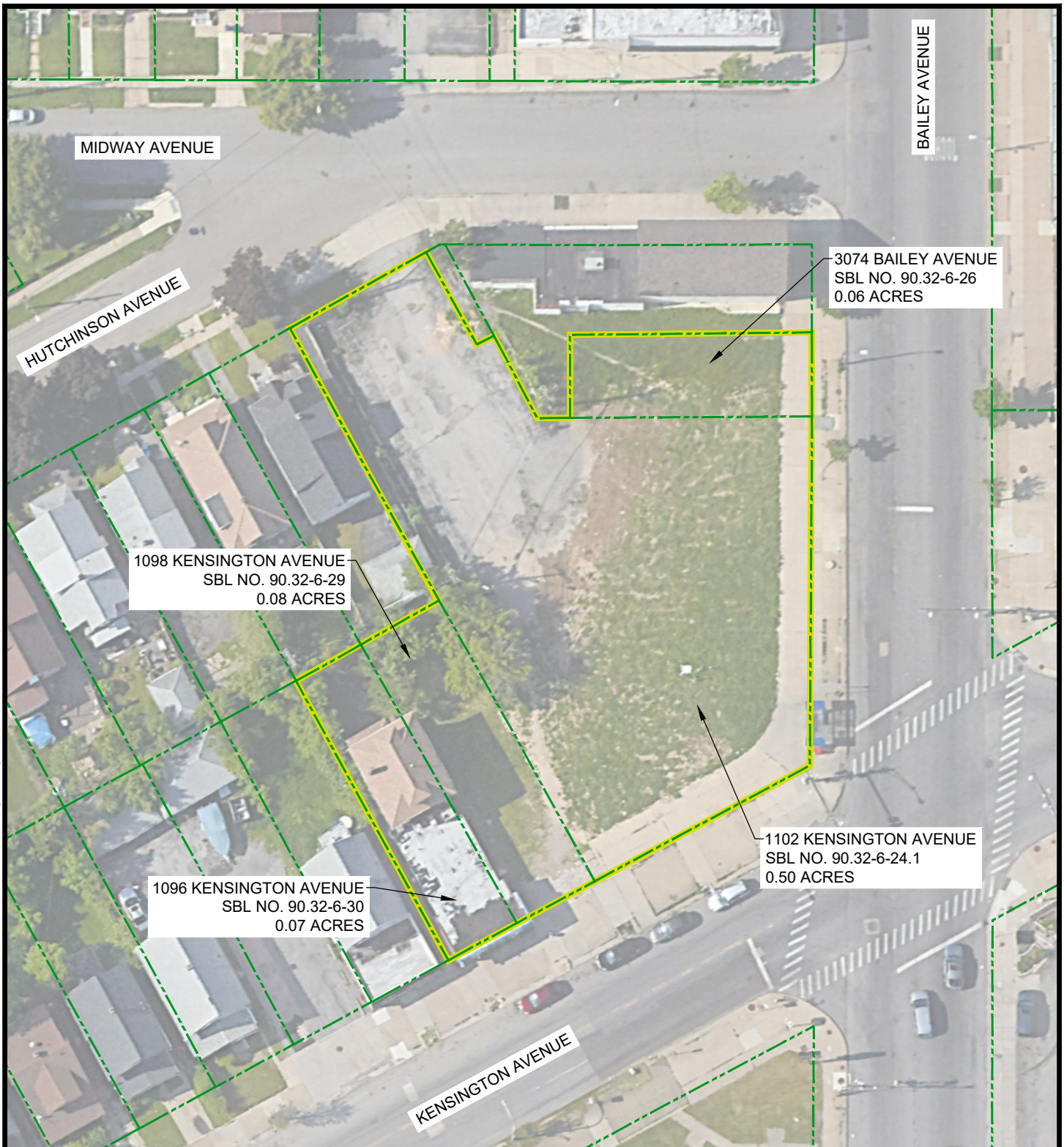
A horizontal scale bar with a central point labeled '0'. To the left of '0' is a segment labeled '2000'' containing three alternating black and white rectangular blocks. To the right of '0' is a solid black rectangular segment also labeled '2000''.

BROWNFIELD CLEANUP PROGRAM APPLICATION

Prepared for:

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

	Compiled by: CMS	Date: OCTOBER 2023	FIGURE 1
	Prepared by: CMS	Scale: AS SHOWN	
	Project Mgr: CZB	Project: B0665-023-002	
	File: FIGURE 1; SITE LOCATION AND VICINITY MAP.DWG		

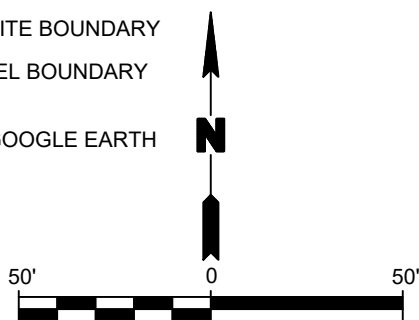


LEGEND:

- BCP SITE BOUNDARY
- - - - - PARCEL BOUNDARY

NOTE:

1. IMAGE TAKEN FROM GOOGLE EARTH 2022.



Title:

**SITE PLAN (AERIAL)
BAILEY & KENSINGTON
BUFFALO, NEW YORK**

BROWNFIELD CLEANUP PROGRAM APPLICATION

Prepared for:

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

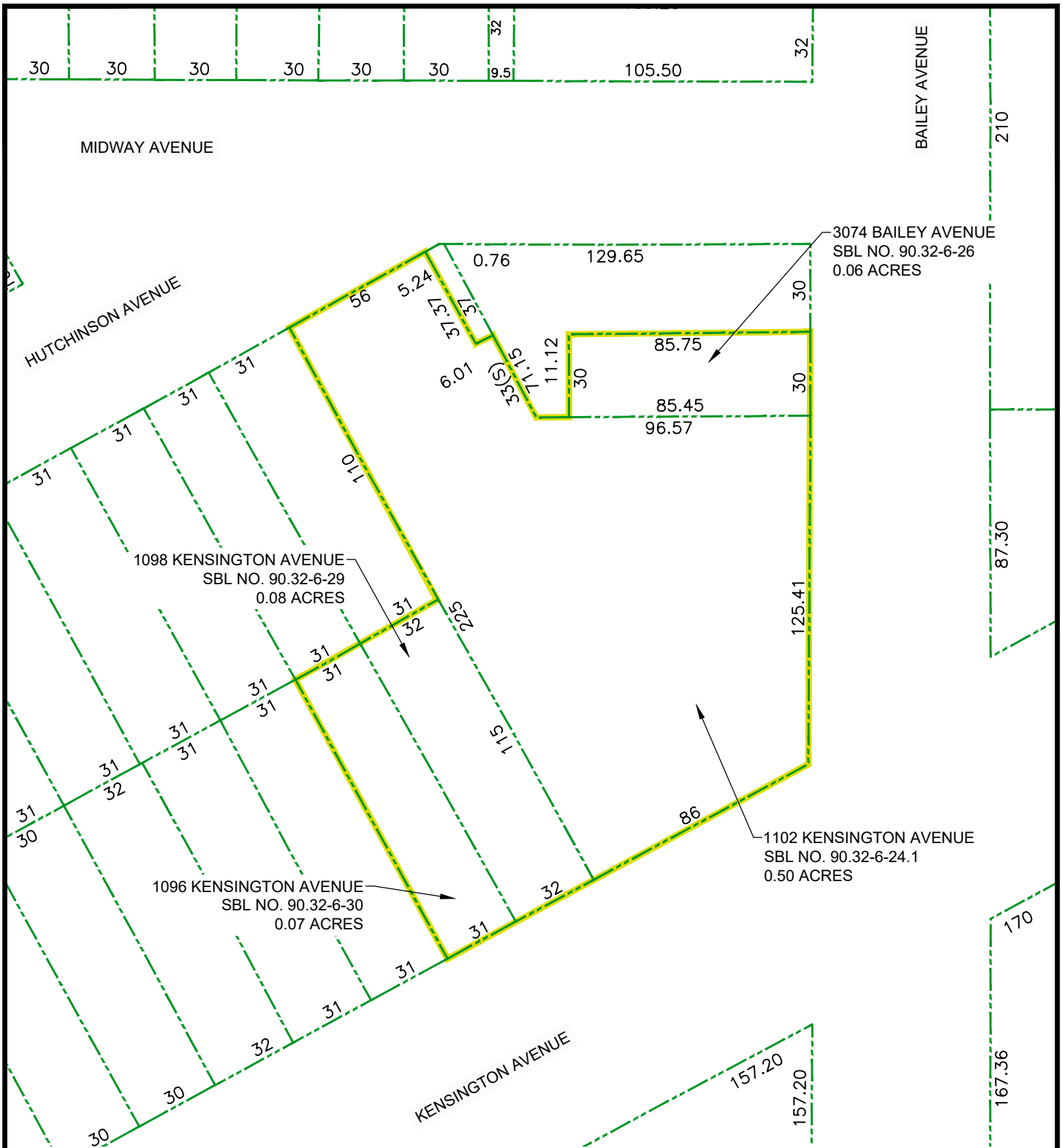


Compiled by: CMS	Date: OCTOBER 2023
Prepared by: CMS	Scale: AS SHOWN
Project Mgr: CZB	Project: B0665-023-002
File: FIGURE 2: SITE PLAN (AERIAL).DWG	

FIGURE

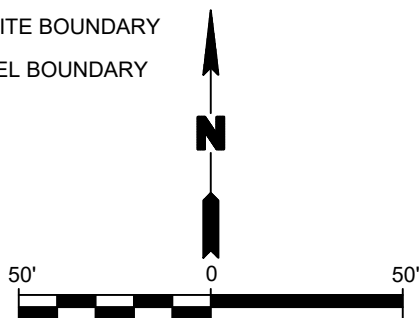
2

F:\CAD\BENCHMARK\LAND DEVELOPMENT COMPANY\BAILEY & KENSINGTON\BCP APPLICATION\FIGURE 3; TAX MAP.DWG



LEGEND:

- BCP SITE BOUNDARY
- PARCEL BOUNDARY



Title:

**TAX MAP
BAILEY & KENSINGTON
BUFFALO, NEW YORK**

BROWNFIELD CLEANUP PROGRAM APPLICATION

Prepared for:

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.






Compiled by: CMS	Date: OCTOBER 2023
Prepared by: CMS	Scale: AS SHOWN
Project Mgr: CZB	Project: B0665-023-002
File: FIGURE 3; TAX MAP.DWG	

FIGURE

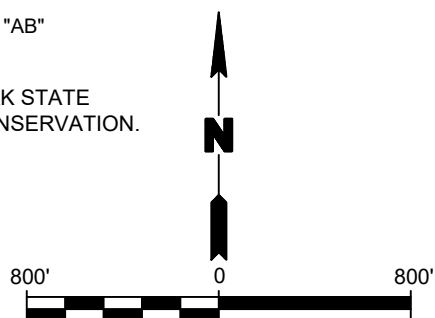
3



LEGEND:

-  BCP SITE BOUNDARY
-  TYPE "A"
-  TYPE "AB"

NOTE:
1. IMAGE PER NEW YORK STATE
DEPARTMENT OF CONSERVATION.



Title:

**NYS EN-ZONE MAP
BAILEY & KENSINGTON
BUFFALO, NEW YORK**

BROWNFIELD CLEANUP PROGRAM APPLICATION

Prepared for:

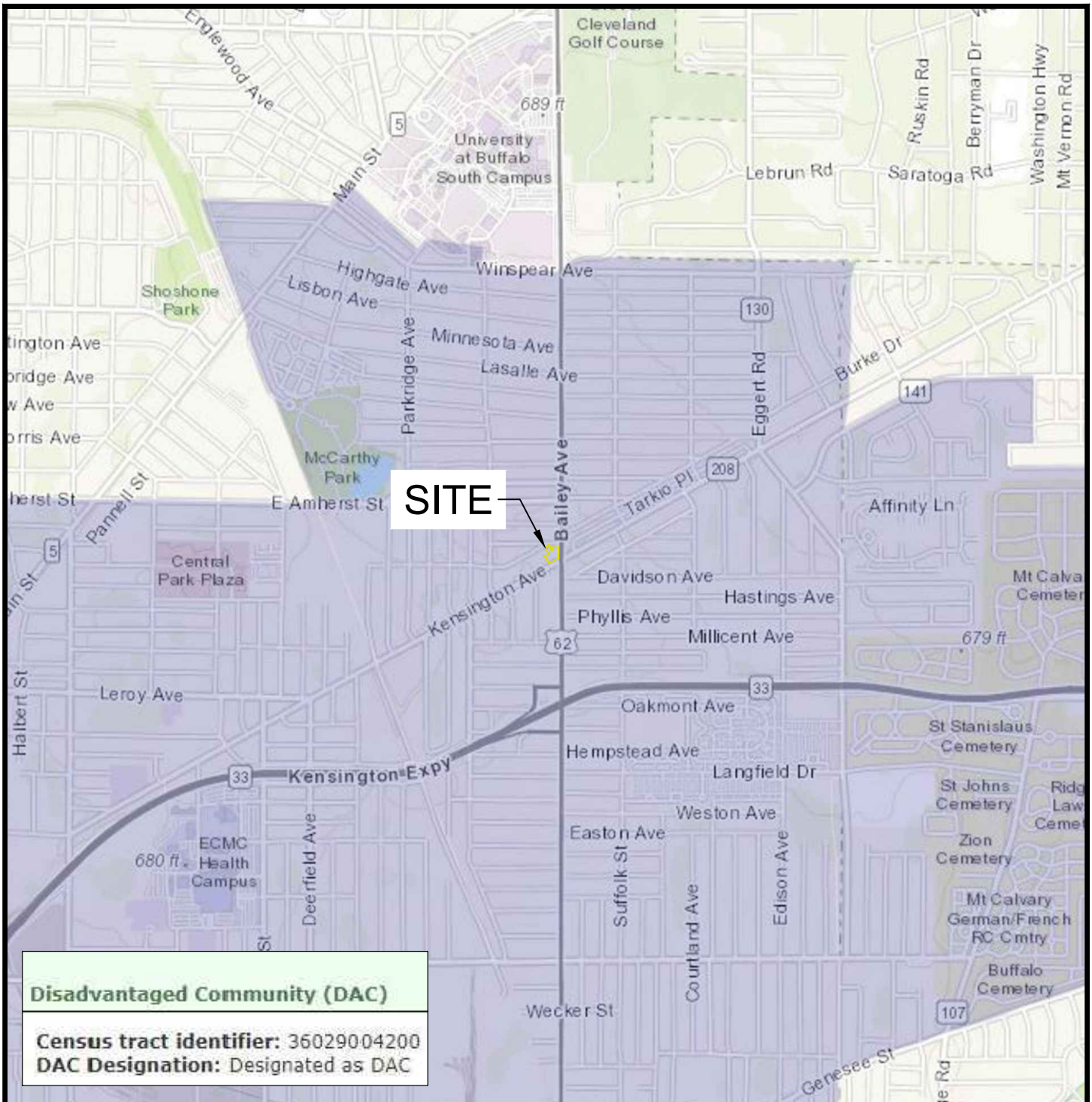
THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

ROUX

Compiled by: CMS	Date: OCTOBER 2023
Prepared by: CMS	Scale: AS SHOWN
Project Mgr: CZB	Project: B0665-023-002
File: FIGURE 4: NYS EN-ZONE MAP.DWG	

FIGURE

4

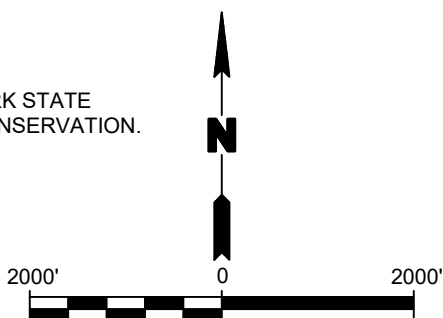


LEGEND:

- BCP SITE BOUNDARY
- DISADVANTAGED COMMUNITY

NOTE:

1. IMAGE PER NEW YORK STATE DEPARTMENT OF CONSERVATION.



**Title: DISADVANTAGED COMMUNITIES MAP
 BAILEY & KENSINGTON
 BUFFALO, NEW YORK**

BROWNFIELD CLEANUP PROGRAM APPLICATION

Prepared for:

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

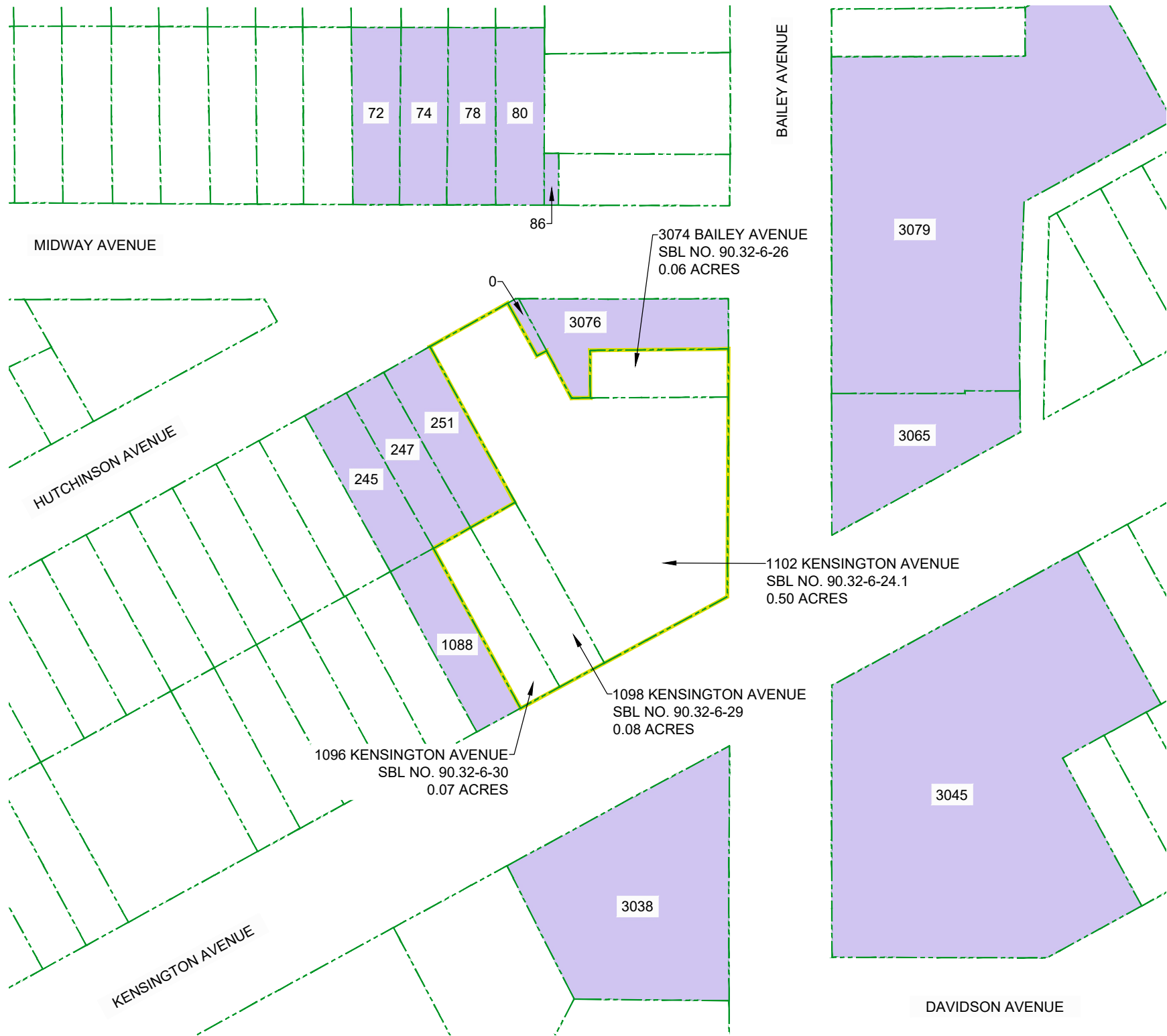


Compiled by: CMS	Date: OCTOBER 2023
Prepared by: CMS	Scale: AS SHOWN
Project Mgr: CZB	Project: B0665-023-002
File: FIGURE 5: DISADVANTAGED COMMUNITIES MAP.DWG	

FIGURE

5

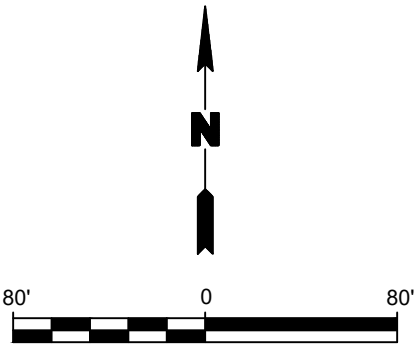
F:\CAD\BENCHMARK\UNILAND DEVELOPMENT COMPANY\BAILEY & KENSINGTON\BOP APPLICATION\FIGURE 6: ADJACENT PROPERTY OWNERS.DWG



LEGEND:

- SITE BOUNDARY
- - - - - PARCEL BOUNDARY

Adjacent Property Address			Property Owner Mailing Address
No.	Street	Property Use	
1088	Kensington Avenue	Downtown row type (detached)	Jason W. Maclin 4084 Johnson Road Lockport, NY 14094
0	Hutchinson Avenue	--	--
245	Hutchinson Avenue	Two family year-round residence	Ashrafuzz Aman Bhuiyan 223 Lisbon Avenue Buffalo, NY 14215
247	Hutchinson Avenue	Two family year-round residence	Zayan Corporation 107 Forman Street Buffalo, NY 14221
251	Hutchinson Avenue	Two family year-round residence	Debra Davis 251 Houtchinson Avenue Buffalo, NY 14215
72	Midway Avenue	One family year-round residence	Lawrence Arrington Jr. 72 Midway Avenue Buffalo, NY 14215
74	Midway Avenue	One family year-round residence	Robert F. Jackson 74 Midway Avenue Buffalo, NY 41215
78	Midway Avenue	Parking lot	City of Buffalo Division of Real Estate 65 Niagara Square, Room 905 Buffalo, NY 14202
80	Midway Avenue	Parking lot	City of Buffalo Division of Real Estate 65 Niagara Square, Room 905 Buffalo, NY 14202
86	Midway Avenue	Vacant commercial land	3084 Bailey Avenue LLC 3082 Bailey Avenue Buffalo, NY 14215
3038	Bailey Avenue	One story small structure – multi-occupant	Bailey-Kensington LLC 1105 Colvin Boulevard Buffalo, NY 14223
3045	Bailey Avenue	Neighborhood shopping center	Royal Crown LLC 3039 Bailey Avenue Buffalo, NY 14215
3065	Bailey Avenue	Downtown row type (detached)	Sakthy Realty 1 Corp. C/O Mithuun Kanapathipilla 145 Founders Lake Court Amherst, NY 14228
3076	Bailey Avenue	Downtown row type (detached)	The Good Life Sport Bar & Grill C/O Eric Humphrey 69 Pine Ridge Road, Lower Buffalo, NY 14211
3079	Bailey Avenue	Small retail outlet	Compton Square LLC 1234 E 17th Street Santa Ana, CA 92701



Title:

ADJACENT PROPERTY OWNERS
BAILEY & KENSINGTON
BUFFALO, NEW YORK

BROWNFIELD CLEANUP PROGRAM APPLICATION

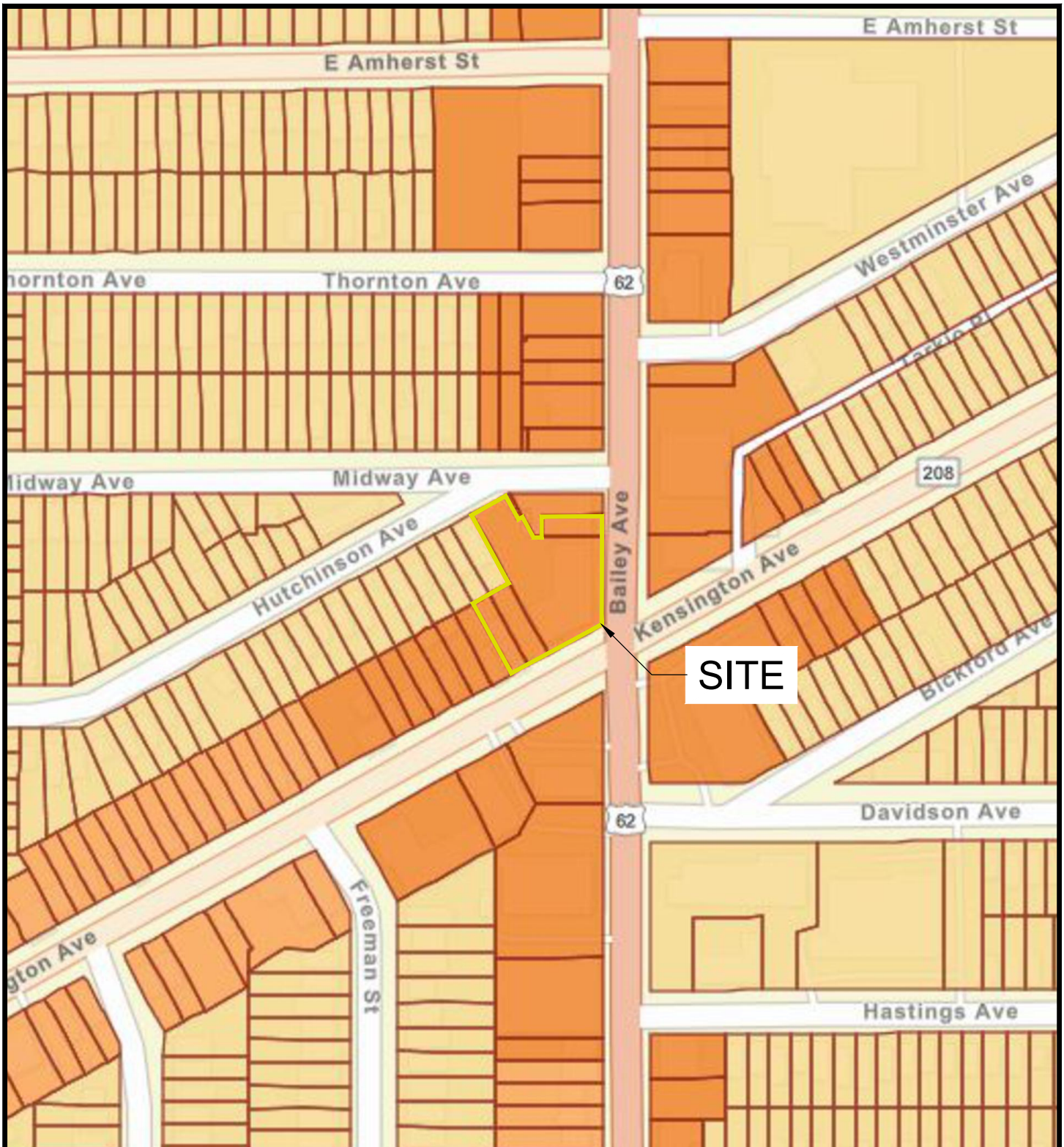
Prepared for:
THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

Compiled by: CMS
Prepared by: CMS
Project Mgr: CZB

Date: OCTOBER 2023
Scale: AS SHOWN
Project: B0665-023-002

FIGURE
6

File: FIGURE 6; ADJACENT PROPERTY OWNERS.DWG

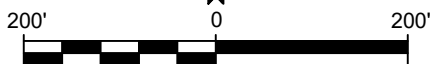


SITE

LEGEND:

- BCP SITE BOUNDARY
- ZONING**
- N-3C (Mixed-Use Center)
 - N-3E (Mixed-Use Edge)
 - N-3R (Residential)

MAP PER CITY OF BUFFALO
PROPERTY VIEWER



Title:

**ZONING MAP
BAILEY & KENSINGTON
BUFFALO, NEW YORK**

BROWNFIELD CLEANUP PROGRAM APPLICATION

Prepared for:

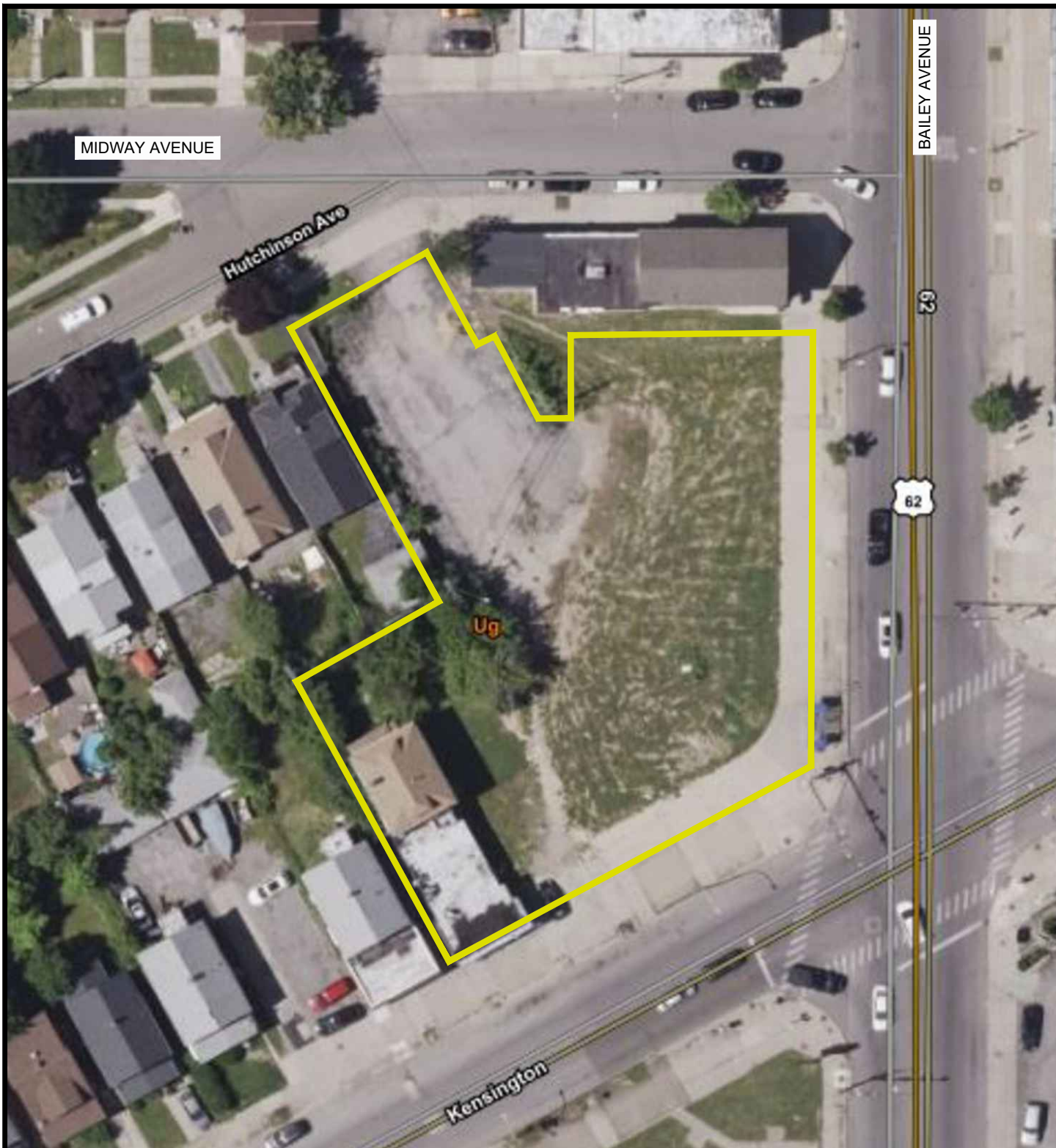
THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.



Compiled by: CMS	Date: OCTOBER 2023
Prepared by: CMS	Scale: AS SHOWN
Project Mgr: CZB	Project: B0665-023-002
File: FIGURE 7, ZONING MAP.DWG	

FIGURE

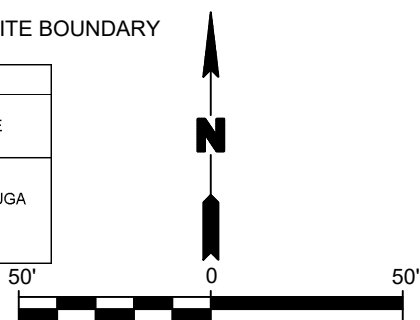
7



LEGEND:

 BCP SITE BOUNDARY

MAP UNIT LEGEND	
MAP UNIT SYMBOL	MAP UNIT NAME
Ug	URBAN LAND-CAYUGA COMPLEX



Title:

**USDA SOIL TYPE MAP
BAILEY & KENSINGTON
BUFFALO, NEW YORK**

BROWNFIELD CLEANUP PROGRAM APPLICATION

Prepared for:

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

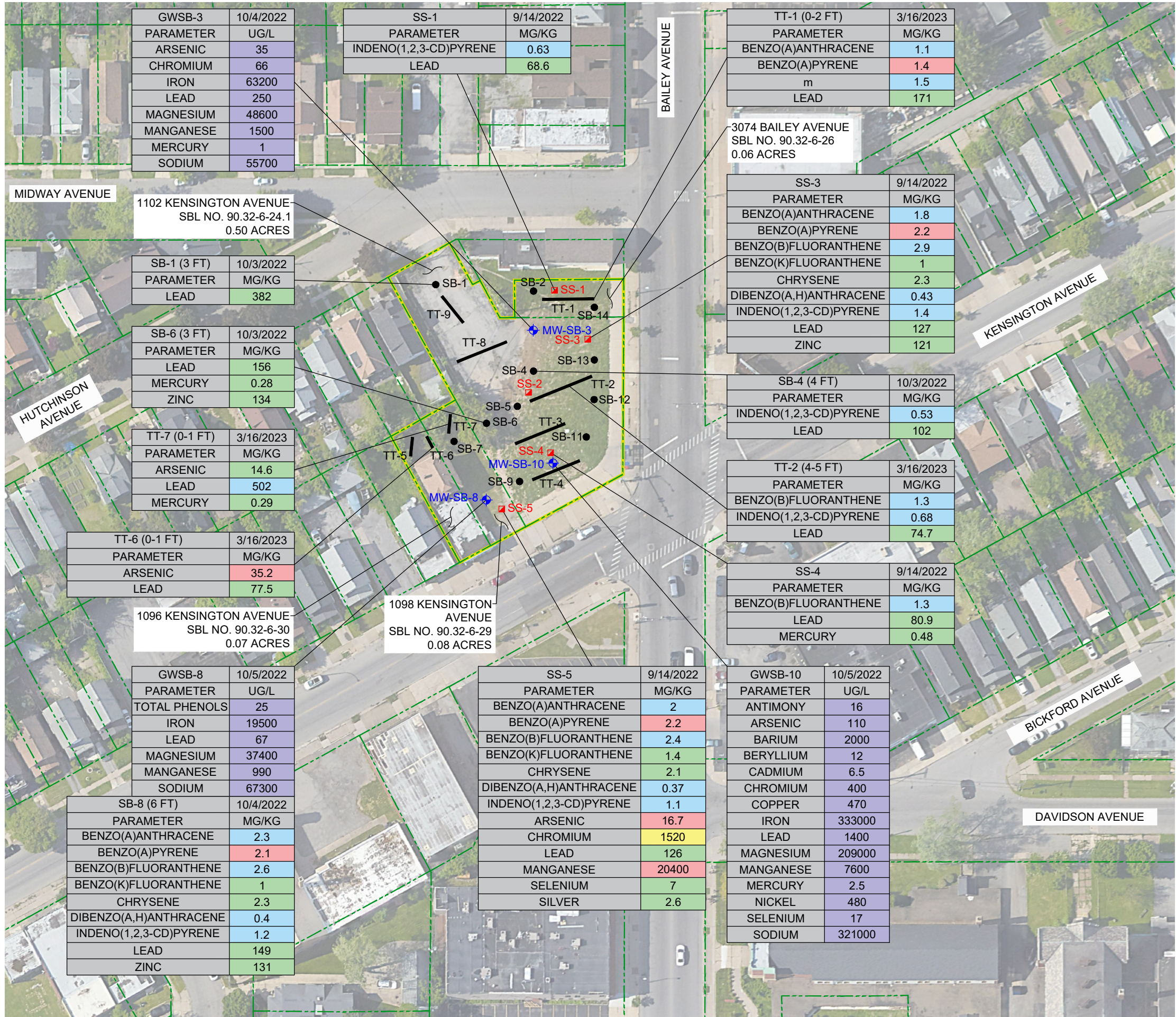


Compiled by: CMS	Date: OCTOBER 2023
Prepared by: CMS	Scale: AS SHOWN
Project Mgr: CZB	Project: B0665-023-002
File: FIGURE 8; USDA SOIL TYPE MAP.DWG	

FIGURE

8

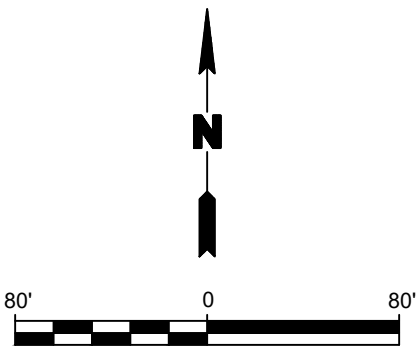
F:\CAD\BENCHMARK\UNILAND DEVELOPMENT COMPANY\BAILEY & KENSINGTON\BCP APPLICATION\FIGURE 9: HISTORIC INVESTIGATION LOCATIONS AND AREAS OF CONCERN.DWG



LEGEND:

- BCP SITE BOUNDARY
- PARCEL BOUNDARY
- SOIL BORING
- SURFACE SOIL SAMPLE
- TEMPORARY MONITORING WELL
- TEST TRENCH LOCATIONS
- EXCEEDS UNRESTRICTED SCOs
- EXCEEDS RESTRICTED-RESIDENTIAL SCOs
- EXCEEDS COMMERCIAL SCOs
- EXCEEDS INDUSTRIAL SCOs
- EXCEEDS GWQS/GVs

- NOTES:
- IMAGE TAKEN FROM GOOGLE EARTH 2022.
 - SOIL ANALYTICAL RESULTS COMPARED TO 6 NYCRR PART 375 SOIL CLEANUP OBJECTIVES (SCOs).
 - GROUNDWATER ANALYTICAL RESULTS COMPARED TO TOGS 1.1.1 GROUNDWATER QUALITY STANDARDS/GUIDANCE VALUES (GWQS/GV).
 - ANALYTICAL RESULTS WERE TAKEN FROM "PHASE II ENVIRONMENTAL SITE ASSESSMENT, KENSINGTON AND BAILEY PROPERTIES, 1096, 1098, 1102 KENSINGTON AVE; 3074 BAILEY AVENUE, BUFFALO, NEW YORK 14215" DATED OCTOBER 2022 PREPARED BY C&S COMPANIES.

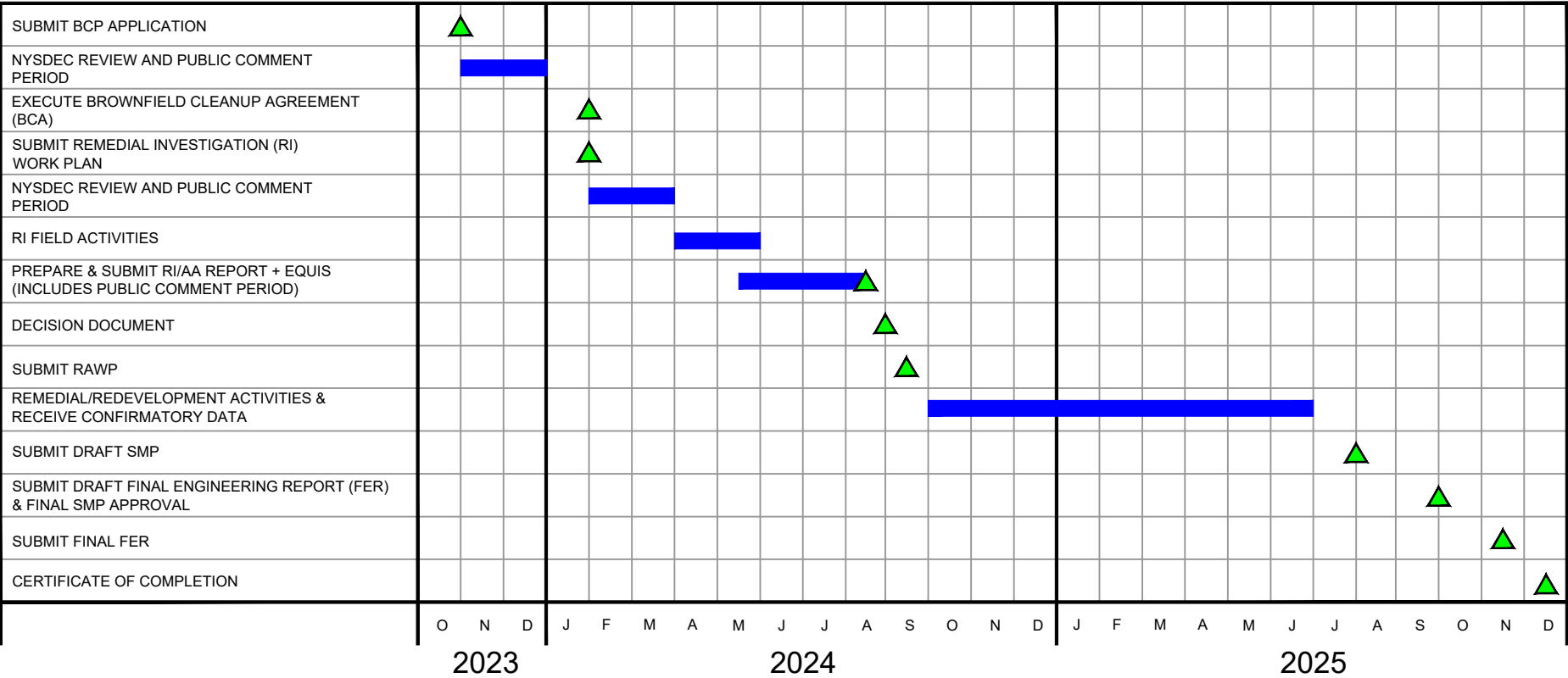


Title: **HISTORIC INVESTIGATION LOCATIONS AND AREAS OF CONCERN**
BAILEY & KENSINGTON
BUFFALO, NEW YORK
BROWNFIELD CLEANUP PROGRAM APPLICATION

Prepared for:
THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

ROUX	Compiled by: CMS	Date: OCTOBER 2023	FIGURE 9
	Prepared by: CMS	Scale: AS SHOWN	
	Project Mgr: CZB	Project: B0665-023-002	
	File: FIGURE 9: HISTORIC INVESTIGATION LOCATIONS AND AREAS OF CONCERN.DWG		

PROJECT TASKS:



Title:

PRELIMINARY PROJECT SCHEDULE

BAILEY & KENSINGTON

BUFFALO, NEW YORK

BROWNFIELD CLEANUP PROGRAM APPLICATION

Prepared for:

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

ROUX

Compiled by: CMS

Prepared by: CMS

Project Mgr: CZB

File: FIGURE 10; PRELIMINARY PROJECT SCHEDULE-ROUX.DWG

Date: OCTOBER 2023

Scale: AS SHOWN

Project: B0655-023-002

FIGURE

10

Brownfield Cleanup Application
Bailey & Kensington Site

EXHIBIT 1

Erie County On-Line Mapping System

Parcel Detail Report

Report generated:
10/16/2023 2:17:22 PM



Parcel Overview Map



Parcel Detail Map

PIN: 1402000903200006030000

SBL: 90.32-6-30

Address: 1096 KENSINGTON

Owner 1: THE EVERGREEN FOUNDATION OF

Owner 2: WNY INC

Mailing Address: 206 S ELMWOOD AVE

City/Zip: BUFFALO NY 14201

Municipality: City of Buffalo

Property Class: 482

Class Description: C - Det row bldg

Front: 31

Depth: 115

Deed Roll: 1

Deed Book: 11414

Deed Page: 3473

Deed Date:

Acreage: 0.07060551

Total Assessment: \$106,000

Land Assessment: \$3,700

County Taxes: \$106,000

Town Taxes: \$0

School Taxes: \$0

Village Taxes: \$0

School District: CITY OF BUFFALO

Year Built: 0

Sqft Living Area: 0

Condition: 0

Heating: 0

Basement: 0

Fireplace: 0

Beds: 0

Baths: 0

Erie County On-Line Mapping System

Parcel Detail Report

Report generated:
10/16/2023 2:11:32 PM



Parcel Overview Map



Parcel Detail Map

PIN: 1402000903200006029000

SBL: 90.32-6-29

Address: 1098 KENSINGTON

Owner 1: THE EVERGREEN FOUNDATION OF

Owner 2: WNY INC

Mailing Address: 206 S ELMWOOD AVE

City/Zip: BUFFALO NY 14201

Municipality: City of Buffalo

Property Class: 311

Class Description: R - Res vac land

Front: 32

Depth: 115

Deed Roll: 1

Deed Book: 11414

Deed Page: 3473

Deed Date:

Acreage: 0.08303965

Total Assessment: \$4,000

Land Assessment: \$4,000

County Taxes: \$4,000

Town Taxes: \$0

School Taxes: \$0

Village Taxes: \$0

School District: CITY OF BUFFALO

Year Built: 0

Sqft Living Area: 0

Condition: 0

Heating: 0

Basement: 0

Fireplace: 0

Beds: 0

Baths: 0

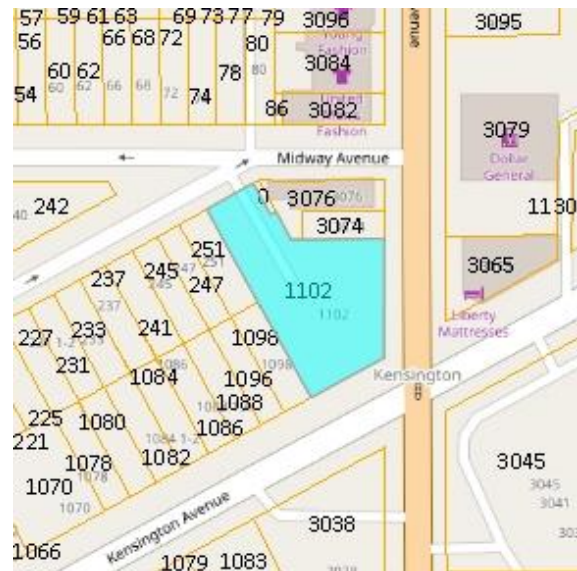
Erie County On-Line Mapping System

Parcel Detail Report

Report generated:
10/16/2023 2:16:01 PM



Parcel Overview Map



Parcel Detail Map

PIN: 1402000903200006024100

SBL: 90.32-6-24.1

Address: 1102 KENSINGTON

Owner 1: THE EVERGREEN FOUNDATION OF

Owner 2: WNY INC

Mailing Address: 206 S ELMWOOD AVE

City/Zip: BUFFALO NY 14201

Municipality: City of Buffalo

Property Class: 330

Class Description: B - Vacant comm

Front: 86

Depth: 125.41

Deed Roll: 1

Deed Book: 11414

Deed Page: 3473

Deed Date:

Acreage: 0.49754889

Total Assessment: \$22,900

Land Assessment: \$22,900

County Taxes: \$22,900

Town Taxes: \$0

School Taxes: \$0

Village Taxes: \$0

School District: CITY OF BUFFALO

Year Built: 0

Sqft Living Area: 0

Condition: 0

Heating: 0

Basement: 0

Fireplace: 0

Beds: 0

Baths: 0

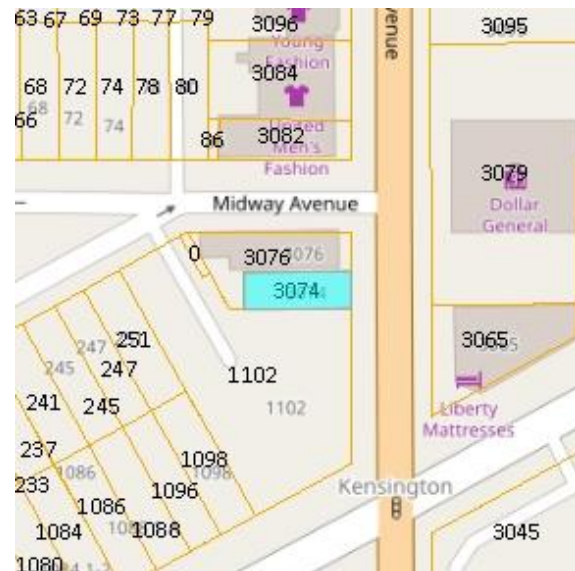
Erie County On-Line Mapping System

Parcel Detail Report

Report generated:
10/16/2023 2:14:32 PM



Parcel Overview Map



Parcel Detail Map

PIN: 1402000903200006026000

SBL: 90.32-6-26

Address: 3074 BAILEY

Owner 1: THE EVERGREEN FOUNDATION OF

Owner 2: WNY INC

Mailing Address: 206 S ELMWOOD AVE

City/Zip: BUFFALO NY 14201

Municipality: City of Buffalo

Property Class: 330

Class Description: B - Vacant comm

Front: 30

Depth: 85

Deed Roll: 1

Deed Book: 11414

Deed Page: 3473

Deed Date:

Acreage: 0.05859673

Total Assessment: \$3,000

Land Assessment: \$3,000

County Taxes: \$3,000

Town Taxes: \$0

School Taxes: \$0

Village Taxes: \$0

School District: CITY OF BUFFALO

Year Built: 0

Sqft Living Area: 0

Condition: 0

Heating: 0

Basement: 0

Fireplace: 0

Beds: 0

Baths: 0

Brownfield Cleanup Application
Bailey & Kensington Site

EXHIBIT 2

This Indenture

Made the 12th day of January, 2023

BETWEEN J-P GROUP, LLC, a New York limited liability, having an office at 295 Main Street, Suite 700, Buffalo, New York 14203, Grantor, and

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC., a New York not-for-profit corporation, having an office at 206 South Elmwood Avenue, Buffalo, New York 14201, Grantee.

WITNESSETH, that the said Grantor, in consideration of One & More Dollars (\$1.00 & more) lawful money of the United States, paid by the Grantee, does hereby grant and release unto the Grantee, its successors and assigns forever.

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being 2, 3, 4, 5, 6, 7, 8, 56 & 57 of the "Kinsey Estates Subdivision" recorded in the Erie County Clerk's Office in Map Cover 932, and as shown on a map entitled "Boundary Survey – Evergreen Health" prepared by Foit-Albert Associates Architecture, Engineering and Surveying, Environmental P.C., Buffalo, NY, dated September 8, 2022 and being more particularly bounded and described as follows:

Beginning at the intersection of the westerly bounds of Bailey Avenue (right of way 66 feet wide) and the northerly bounds of Kensington Avenue (right of way 82.5 feet wide);
Thence;

1. S 61° 13' 19" W, along the said northerly bounds of Kensington Avenue a distance of 149.00 feet to a point; Thence;
2. N 28° 46' 41" W, along the easterly bounds of lands now or formerly of Maclin a distance of 115.00 feet to a point: Thence;
3. N 61° 13' 19" E, along the southerly bounds of lands now or formerly of M&T Rainbow Realty Corp. and lands now or formerly of Davis a distance of 62.00 feet to a point: Thence;
4. N 28° 46' 39" W, along the easterly bounds of said lands of Davis of a distance of 110.00 feet to a point on the southerly bounds of Hutchinson Avenue: Thence;
5. N 61° 13' 19" E, along the said southerly bounds of Hutchinson Avenue a distance of 55.91 feet to a point: Thence;
6. S 28° 46' 39" E, along the westerly bounds of lands now or formerly of The Good Life Sport Bar & Grill Avenue a distance of 37.37 feet to a point; Thence;
7. N 61° 13' 19" E, along the southerly bounds of said lands of The Good Life Sport Bar & Grill Avenue a distance of 6.0 feet to a point: Thence;
8. S 28° 49' 27" E, along the westerly bounds of said lands of The Good Life Sport Bar & Grill a distance of 31.30 feet to a point; Thence;
9. S 89° 47' 26" W, along the southerly bounds of said lands of The Good Life Sport Bar & Grill a distance of 11.30 feet to a point; Thence;
10. N 01° 07' 34" W, along the easterly bounds of said lands of The Good Life Sport Bar & Grill Avenue a distance of 30.00 feet to a point: Thence;

11. N 89° 47' 26" E, along the southerly bounds of said lands of The Good Life Sport Bar & Grill Avenue a distance of 85.75 feet to a point on the said westerly bounds of Bailey Avenue: Thence;

12. S 00° 09' 49" E, along the said westerly bounds of Bailey Avenue a distance of 155.37 feet back to the POINT AND PLACE OF BEGINNING,

Containing 31,433 square feet or 0.722 acres of land, more or less.

Subject to all covenants, easements and restrictions of record, if any.

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

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

AND the said Grantor does covenant with said Grantee as follows:

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

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

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

FOURTH - That this conveyance is not of all or substantially all of the property of the Grantor and is made in the regular course of business.


IN WITNESS WHEREOF, the said Grantor has hereunto set its hand and seal the day and year first above written.

J-P GROUP, LLC

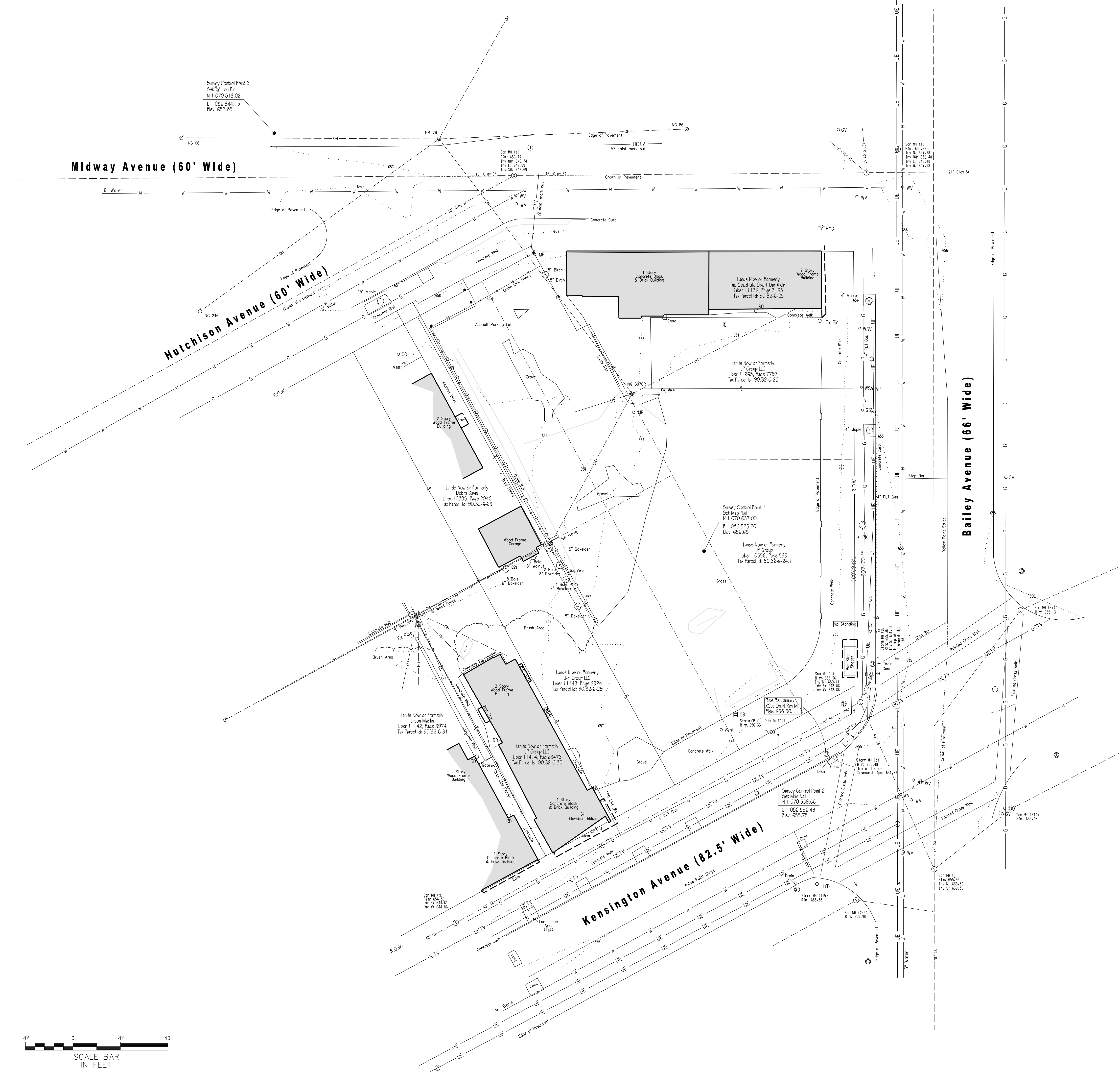
By: 
William A. Paladino, Manager

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

On the 12th day of January, in the year 2023, before me, the undersigned, a notary public in and for said state, personally appeared William A. Paladino, 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

KATHLEEN A. LINHARDT
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 25, 2024



Legend		
Abbreviations	Symbols	Line Styles
Ex - Existing HT - Height E - East N - North W - West S - South R.O.W. - Right of Way A.K.A. - also known as OHP - Overhead Piping EM - Electric Meter Well Monitoring Well ELHH - Electric Hand Hole Deciduous Tree Bush Coniferous Tree Electric Manhole Signal Pole Cable Manhole Water Manhole Traffic Manhole Large Rock Signal Pole	 	

Notes:

1) North as Shown on this Map is True North at 78°35' Meridian of West Longitude, as established by GPS Static Survey:

- Control Point 1 Set Nail N. 1070637.00, E. 1086525.20
- JAVAD GPS Receiver 944
- Static GPS Observations September 12, 2023
- New York State Plane Coordinates West Zone (3103)
- NAD_83 (2011)(EPOCH:2010.0000)

Base Stations used:

PID	DESIGNATION	LATITUDE	LONGITUDE	DISTANCE (m)
NONE	BFNY	N 42° 52' 39.17322" W 78° 53' 25.58440"		9185.318
NONE	NYBT	N 42° 59' 17.96015" W 78° 07' 20.37551"		56708.983
NONE	NYFD	N 42° 25' 41.78558" W 79° 20' 22.71960"		71168.426
NONE	NYHB	N 42° 43' 02.66341" W 78° 50' 47.27351"		24671.834
NONE	NYLP	N 43° 09' 54.85476" W 78° 45' 13.35708"		25696.899

Linear Unit - U.S. Survey Foot. Combined scale factor: 0.99991599. All dimensions shown are Ground.

2) Elevations as shown on this Map are based on NAVD88 Datum. Site Benchmark: as observed by static GPS observation on Nail 1 is 656.68 (NAVD88 (Computed using Geoid18)).

3) Utilities as shown on this map are plotted from field locations of visible structures and information provided by others. Niagara Boundary & Mapping Services, along with the undersigned Land Surveyor assumes no responsibility as to the accuracy of underground utilities. Contractor must call UFPO three working days prior to any excavation construction activities.

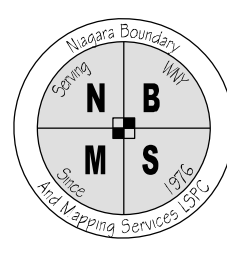
4) Contour interval is 1.0' Foot

5) Spot elevations present in CAD file are turned off for plotting clarity.

6) Boundary Lines as shown are referenced from map by Folt Albert Associates Project No. 22001.37 dated September 8, 2022. Niagara Boundary has not performed a boundary survey.

Niagara
Boundary
And Mapping Services

P.O. Box 1120
Lewiston, NY 14092
(716) 297-9584
E-Mail: lee@niagaraboundary.com



UNAUTHORIZED ALTERATION OR ADDITION TO THIS SURVEY MAP IS A VIOLATION OF SECTION 7209, PROVISION 2 OF THE NEW YORK STATE EVIDENCE LAW

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

Map
Showing Topographic Survey
of
**1096 Kensington
1098 Kensington
1102 Kensington
& 3074 Bailey
Buffalo, New York**

Tax IDs: 90.32-6-30, 90.32-6-29
90.32-6-24.1 & 90.32-6-26

LOT	SECTION	TOWNSHIP	RANGE
55	11	11	7
City	Buffalo		
COUNTY	Erie		
STATE	New York		
DATE	September 12, 2023		
SCALE	1" = 20'		
JOB NO.	11931-23		
RESURVEYED			
ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY MARKED WITH AN ORIGINAL OF THE LAND SURVEYOR'S UNRECORDED SEAL SHALL BE CONSIDERED TO BE VALID TRUE COPIES.			
THIS SURVEY WAS PREPARED FOR THE PARTIES AND PURPOSES INDICATED HEREIN. ANY EXTENSION OF THE USE BEYOND THE PARTIES OR PURPOSES INDICATED IS EXPRESSLY FORBIDDEN WITHOUT WRITTEN RELEASE OR PERMISSION OF THE UNDERSIGNED.			
USE OF THIS SURVEY IN CONNECTION WITH AN AFFIDAVIT OF NO CHANGE IS FORBIDDEN.			
Kenneth L. Slaughterpout Lic. No. 50349			

Brownfield Cleanup Application
Bailey & Kensington Site

EXHIBIT 3

Department of State

Division of Corporations

Entity Information

[Return to Results](#)[Return to Search](#)

Entity Details

ENTITY NAME: THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC. **DOS ID:** 1757403

FOREIGN LEGAL NAME: **FICTITIOUS NAME:**

ENTITY TYPE: DOMESTIC NOT-FOR-PROFIT CORPORATION **DURATION DATE/LATEST DATE OF DISSOLUTION:**

SECTION OF LAW: 402 NCL - NOT-FOR-PROFIT CORPORATION **ENTITY STATUS:** ACTIVE

DATE OF INITIAL DOS FILING: 09/16/1993 **REASON FOR STATUS:**

EFFECTIVE DATE INITIAL FILING: 09/16/1993 **INACTIVE DATE:**

FOREIGN FORMATION DATE: **STATEMENT STATUS:** NOT REQUIRED

COUNTY: ERIE **NEXT STATEMENT DUE DATE:**

JURISDICTION: NEW YORK, UNITED STATES **NFP CATEGORY:** CHARITABLE

[ENTITY DISPLAY](#) [NAME HISTORY](#) [FILING HISTORY](#) [MERGER HISTORY](#) [ASSUMED NAME HISTORY](#)

Service of Process on the Secretary of State as Agent

The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery:

Name: EHS, INC.

Address: 206. S. ELMWOOD AVE., BUFFALO, NY, UNITED STATES, 14201

Electronic Service of Process on the Secretary of State as agent: Not Permitted

Chief Executive Officer's Name and Address

Name:

Address:

Principal Executive Office Address

Address:

Registered Agent Name and Address

Name:

Address:

Entity Primary Location Name and Address

Name:

Address:

Farmcorpflag

Is The Entity A Farm Corporation: NO

Stock Information

Share Value	Number Of Shares	Value Per Share

Brownfield Cleanup Application
Bailey & Kensington Site

EXHIBIT 4

CERTIFICATE OF INCORPORATION

OF

980916000329

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

THE UNDERSIGNED, being eighteen (18) years of age or over, for the purpose of forming a corporation pursuant to Section 402 of the Not-For-Profit Corporation Law of New York, does hereby certify:

FIRST: The name of the corporation is:

The Evergreen Foundation of Western New York, Inc.

SECOND: The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.

THIRD: The corporation is organized, and at all times shall be operated exclusively for charitable, religious, scientific, or educational purposes. Consistent with the foregoing, the specific purpose of the corporation shall be to support the charitable, religious, scientific or educational purposes of AIDS Association of Western New York, Inc. or its successor, and any affiliated corporations or their successors including, but not limited to, AIDS Community Services of Western

New York, Inc., so long as they are organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 ("Code"), provided, however, that:

Nothing contained in this Certificate shall authorize the corporation to establish, operate, construct, lease or maintain a hospital, or to provide hospital service or health related service, or to operate a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by articles 28, 36, 40 and 44, respectively, of the Public Health Law, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital.

For this purpose, the Corporation shall seek, receive, hold, maintain, invest, and reinvest money and other real and personal property from time to time as the Board of Directors may deem prudent.

FOURTH: The following provisions are inserted for the regulation and conduct of the affairs of the corporation:

To have and exercise any and all powers, rights and privileges which a corporation organized under the Not-For-Profit Corporation Law of the State of New York may now or hereafter have or exercise by law; provided, however, that:

(A) No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation),

2

and no member, trustee, officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

(B) No part of the activities of the corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation; nor shall it in any manner participate or inter (including the publication or distribution of statements) in any political campaign on behalf of any candidate for public office; nor shall it engage in any transaction defined as "prohibited" under Section 503 of the Code.

(C) Notwithstanding any other provision of this Certificate, the corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific or education purposes, or for the prevention of cruelty to children or animals as specified in Section 501(c)(3) of the Code and shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(3) of the Code and by an organization, contributions to which are deductible under the Code.

(D) In the event of termination, dissolution, or winding up of the corporation, its remaining assets, if

any, shall be distributed only to one or more organizations described in Section 501(c)(3) of the Code. None of the income, property or assets of the corporation shall ever be distributed to or divided among any member, officer, director, trustee, creator, organizer of or contributor to the corporation, nor ever be used for or inure to the benefit of any private individual within the meaning of Section 501(c)(3) of the Code.

(E) Notwithstanding any other provision of this Certificate, if at any time or times the corporation is a private foundation within the meaning of Section 509 of the Code, then during such time or times:

(1) The corporation shall distribute its income for each taxable year at such time and in such manner as not to subject the corporation to tax under Section 4942 of the Code;

(2) The corporation shall not engage in any act of self-dealing, as defined in Section 4941(d) of the Code;

(3) The corporation shall not retain any excess business holdings, as defined in Section 4943(c) of the Code;

(4) The corporation shall not make any investments in such a manner as to subject the corporation to tax under Section 4944 of the Code; and

(5) The corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

(F) Any references herein to any provision of the Internal Revenue Code of 1986 shall be determined to mean such provision as now or hereafter existing, amended or superseded, as the case may be.

FIFTH: The management of the affairs of the corporation shall be vested in the board of directors, except as otherwise provided in this certificate of incorporation or in the by-laws of the corporation.

The number of directors constituting the board of directors shall be three (3) in number or such other number as may be fixed in the by-laws by action of the board, and each director must be at least eighteen (18) years of age. The Chairman of the Board of AIDS Association of Western New York, Inc. shall be a director by virtue of such office. One less than a majority of the Board of Directors of the Corporation shall be current members of the Board of Directors of AIDS Association of Western New York, Inc.

5

SIXTH: The corporation shall be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law.

SEVENTH: The office of the corporation is to be located in Erie County, New York.

EIGHTH: The names and addresses of the persons constituting the initial board of directors of the corporation are:

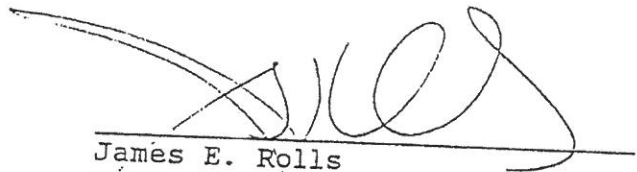
<u>Name</u>	<u>Address</u>
Suzanne Dwyer	163 College Street Buffalo, NY 14201
Ronald Silverio	121 W. Tupper Street Buffalo, NY 14201
James E. Rolls	5401 Old Lake Shore Road Lakeview, NY 14085

NINTH: If in the judgment of the Board of Directors the corporation should be dissolved, then the property constituting the principal of the endowment fund and any income shall be transferred to AIDS Association of Western New York, Inc. and its affiliated corporations or their successors, so long as they are organizations described in Sections 501(c)(3) of the Code. No provision contained herein shall be construed to authorize the payment or application of income of the corporation or distribution of the property constituting the principal of the endowment fund to or for the support of any organization or individual whose activities or purposes are not charitable in nature, as described in Sections 170 and 501(c)(3) of the Code.

TENTH: This Certificate of Incorporation shall be amended only be the unanimous vote of the entire Board of Directors of the Corporation.

ELEVENTH: The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against the corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any such process served upon him: c/o Rolls Tracy Scott Gioia & Schop, Twenty Court Street, Buffalo, New York 14202.

IN WITNESS WHEREOF, I have made and signed this certificate this 14th day of September, 1993, and I affirm the statements contained herein as true under the penalties of perjury.



James E. Rolls
Rolls Tracy Scott Gioia & Schop
Twenty Court Street
Buffalo, New York 14202

INFO.

R0032-034835

F 930916000329

CERTIFICATE OF INCORPORATION

OF

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

SEP 16 11 10 AM '93

SEP 16 10 13 AM '93
SEP 16 9 55 AM '93

[Handwritten signature]

1 CC
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 16 1993
TAX \$
BY: PSL
EK16

Filer: Rolls Tracy Scott Gioia & Schop
Twenty Court Street
Buffalo, New York 14202

8

930916000370

State of New York }
Department of State } ss:

I hereby certify that I have compared the annexed copy with the original document filed by the Department of State and that the same is a correct transcript of said original.

Witness my hand and seal of the Department of State on

SEP 16 1993

A handwritten signature in cursive script, appearing to read "Philip S. Shaffer".

Secretary of State

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

Under Section 803 of the
Not-for-Profit Corporation Law

The undersigned, being the President of THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC. (the "Corporation") hereby certifies that:

1. The name the Corporation was incorporated under is The Evergreen Foundation of Western New York, Inc.

2. The Corporation's Certificate of Incorporation was filed by the Department of State of the State of New York on September 16, 1993, pursuant to Section 402 of the Not-for-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

4. The Certificate of Incorporation is hereby amended by this Certificate of Amendment to effect a change to the Corporation's purposes as set out in Paragraph THIRD. To effect the foregoing, Paragraph THIRD is hereby amended to read in its entirety as follows:

"THIRD: The corporation is organized, and at all times shall be operated exclusively for charitable, religious, scientific, or educational purposes. Consistent with the foregoing, the specific purpose of the corporation shall be to support the charitable, religious, scientific or educational purposes of The Evergreen Association of Western New York, Inc. or its successor, and any affiliated corporations or their successors including, but not limited to EHS, Inc., so long as they are organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 ("Code"), provided however that:

Nothing contained in this Certificate shall authorize the corporation to establish, operate, construct, lease or maintain a hospital, or to provide hospital service or health related service, or to operate a certified home health agency, or hospice, or a health maintenance organization, or to provide a comprehensive health

services plan, as defined in and covered by articles 28, 36, 40, and 44, respectively, of the Public Health Law, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital.

For this purpose, the Corporation shall seek, receive, hold, maintain, invest, and reinvest money and other real and personal property from time to time as the Board of Directors may deem prudent. Without limiting the foregoing, for the charitable purpose of providing affordable housing to persons of low income, the Corporation shall own, organize, manage, maintain, develop and operate on a not-for-profit basis residential housing rental projects for persons of low income.

5. The Certificate of Incorporation is hereby amended by this Certificate of Amendment to effect a change to the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as set out in Paragraph ELEVENTH. To effect the foregoing, Paragraph ELEVENTH is hereby amended to read in its entirety as follows:

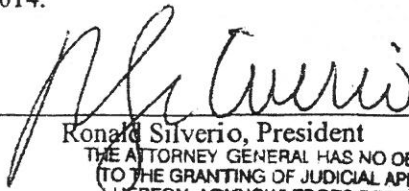
The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against the corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any such process served upon him is: c/o Feldman Kieffer LLP, 110 Pearl Street, Suite 400, Buffalo, New York 14202.


6. The foregoing Certificate of Amendment of the Certificate of Incorporation was duly authorized by written consent of the Sole Member of the Corporation. The sole member of the Corporation is The Evergreen Association of Western New York, Inc.

7. The Secretary of State shall continue to be designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is: c/o Feldman Kieffer LLP, 110 Pearl Street, Suite 400, Buffalo, New York 14202.

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate of Amendment of the Certificate of Incorporation and hereby affirms the statements herein as true under the penalties of perjury this 31st day of August, 2014.

1100757v2


Ronald Silverio, President
THE ATTORNEY GENERAL HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVAL
HEREON, ACKNOWLEDGES RECEIPT OF
STATUTORY NOTICE AND DEMANDS SERVICE
OF THE FILED CERTIFICATE. SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE
MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.


WILLIAM A. MILLER
ASSISTANT ATTORNEY GENERAL
1-14-15
DATE

2lc

ACR-41

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

Under Section 803 of the
Not-for-Profit Corporation Law

2015 FEB 10 AM 11:22

FILED

Filed by:
Lauren A. Suttell, Esq.
Jaekle Fleischmann & Mugal, LLP
200 Delaware Avenue, Suite 900
Buffalo, New York 14202

Drawdown

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED FEB 10 2015

TAX \$ _____
BY: _____ Q~v

2015 FEB -9 PM 3:48

RECEIVED

219

FILING RECEIPT

ENTITY NAME: THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PURPOSES PROCESS

COUNTY: ERIE

FILED:02/10/2015 DURATION:***** CASH#:150210000219 FILM #:150210000210

FILER:

LAUREN A SUTTELL, JAECKLE
FLEISCHMANN & MUGEL LLP, AVANT BLDG
SUITE 900, 200 DELAWARE AVENUE
BUFFALO, NY 14202

ADDRESS FOR PROCESS:

C/O FELDMAN KIEFFER LLP
110 PEARL STREET
BUFFALO, NY 14202

SUITE 400

REGISTERED AGENT:



SERVICE COMPANY: ALBANY CORPORATE RESEARCH LTD. - 41

SERVICE CODE: 41

FEEs	65.00
FILING	30.00
TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	25.00

PAYMENTS	65.00
CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	65.00
OPAL	0.00
REFUND	0.00

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on February 11, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

**RESOLUTIONS OF THE DIRECTORS OF
THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.**

THE UNDERSIGNED, being all of the Directors of the Evergreen Association of Western New York, Inc., a corporation formed under the laws of the State of New York (the "Corporation"), being the sole voting member of The Evergreen Foundation of Western New York, Inc. (the "Company"), acting for the Corporation in its capacity as sole voting member, do hereby take and consent to the following actions and adopt the following resolutions on behalf of the Company, to be effective on even date herewith:

WHEREAS, the Corporation is the sole voting member of the Company; and

WHEREAS, the Corporation has determined that it is appropriate, in the best interests of and in furtherance of its purposes to elect and replace certain officers of the Corporation and the Company, and to take such other actions as herein set forth.

NOW, THEREFORE, BE IT:

RESOLVED, that the following individuals be appointed effective immediately to the position written opposite his/her/their names, and said individual shall remain and continue in his/her/their respective offices until replaced by a subsequent resolution of this Board:

Ray Ganoe	President
Michael Lee	Secretary
Jesse Gasbarro	Treasurer

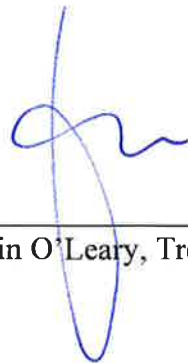
RESOLVED, that the undersigned hereby ratify, adopt, and approve all things done and actions taken by the officers of the Corporation on behalf of itself and the Company since the date of the last such ratification appearing in the minutes of the Corporation and through the date hereof, and it is further

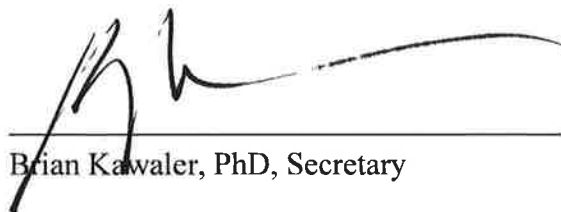
RESOLVED, that any officer of the Corporation be, and hereby is authorized and empowered to make, execute and deliver any and all agreements, certificates, consents, documents and instruments on behalf of the Company, in furtherance of these resolutions.

[SIGNATURE PAGE TO FOLLOW]

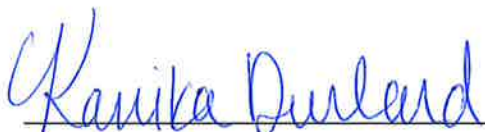
**By: BOARD OF DIRECTORS OF EVERGREEN ASSOCIATION OF WESTERN
NEW YORK, INC.**



Joy Feldman, Chair



Kevin O'Leary, Treasurer


Brian Kawaler, PhD, Secretary

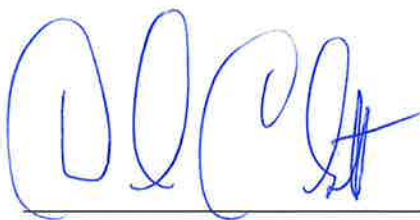

Janice Barrett


Kanika Durland


Nancy Hammond


Kirsten Moysich, PhD, MS


Thomas Owen


David Scott


Ray Ganoe, CEO

Dated: August 7, 2019

**RESOLUTIONS OF THE DIRECTORS OF
THE EVERGREEN FOUNDATION OF WESTERN NEW YORK, INC.**

THE UNDERSIGNED, being all of the Directors of the Evergreen Association of Western New York, Inc., a corporation formed under the laws of the State of New York (the "Corporation"), being the sole voting member of The Evergreen Foundation of Western New York, Inc. (the "Company"), acting for the Corporation in its capacity as sole voting member, do hereby take and consent to the following actions and adopt the following resolutions on behalf of the Company to be effective on even date herewith:

WHEREAS, the Corporation has evaluated the strategic benefits of pursuing a "look-alike" designation for its affiliate EHS, Inc., to be treated as a Federally Qualified Health Center ("FQHC"); and

WHEREAS, the Corporation resolved on November 8, 2018 to pursue the designation for EHS, Inc. as FQHC-lookalike by Q4 of 2022 and to take all necessary and appropriate actions for said purpose, having determined this action to be in the best interests of and in furtherance of its purposes; and

WHEREAS, the Corporation and its affiliates shall undergo organizational restructuring to enable EHS, Inc. to seek and obtain a designation of FQHC-lookalike; and

WHEREAS, the Company's Bylaws require amendment to conform the organizational structure mandated by FQHC-lookalike requirements to enable EHS, Inc. to seek and obtain a designation of FQHC-lookalike.

NOW, THEREFORE, BE IT:

RESOLVED, that the undersigned hereby ratify, adopt, and approve the amended Bylaws of The Evergreen Foundation of Western New York, Inc. to reflect that EHS, Inc. is its sole voting member; and it is

RESOLVED, that the undersigned hereby ratify, adopt, and approve all things done and actions taken by the officers of the Company since the date of the last such ratification appearing in the minutes of the Company and through the date hereof, and it is further

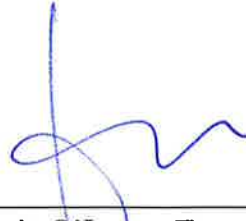
RESOLVED, that any officer of the Company be, and hereby is authorized and empowered to make, execute and deliver any and all agreements, certificates, consents, documents and instruments on behalf of the Company, in furtherance of these resolutions.

[SIGNATURE PAGE TO FOLLOW]

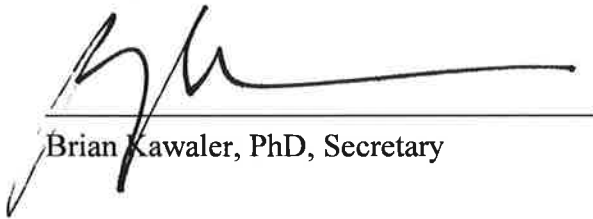
**By: BOARD OF DIRECTORS OF EVERGREEN ASSOCIATION OF WESTERN
NEW YORK, INC.**



Joy Feldman, Chair



Kevin O'Leary, Treasurer



Brian Kawaler, PhD, Secretary



Janice Barrett



Kanika Durland



Nancy Hammond



Kirsten Moysich, PhD, MS



Thomas Owen



David Scott



Ray Ganoe, CEO

Dated: August 7, 2019

BY-LAWS
Of
The Evergreen Foundation of Western New York, Inc.

(Adopted August 9, 1993)
(Amended June, 1995)
(Amended October 26, 2006)
(Amended September 25, 2013)
(Amended June 5, 2018)
(Amended August 7, 2019)
(Amended February 3, 2021)
(Amended April 4, 2023)

ARTICLE I

Name, Seal, Offices

Section 1. Name. The name of the Corporation, as organized under New York State law, is The Evergreen Foundation of Western New York, Inc. (hereinafter “the Corporation”).

Section 2. Seal. The Board of Trustees of the Corporation (hereinafter “the Board of Trustees” or “the Board”) may, at its pleasure, establish and obtain a seal for the Corporation, which may be in whatever form is desired by the Board. Nothing shall preclude the Corporation, however, from functioning without a seal.

Section 3. Offices. The principal office of the Corporation shall be located in Erie County, New York. The Corporation may have such other offices in such places as the Board may from time to time specify.

ARTICLE II

Purpose

Section 1. Purpose. The Evergreen Foundation of Western New York, Inc. is a not-for-profit corporation established to raise funds and manage properties which support the mission, services and programs of EHS, Inc. *dba* Evergreen Health.

ARTICLE III

Membership

Section 1. Members. There shall be two classes of membership of the Corporation.

- a) Voting Members. The sole voting member of the Corporation is EHS, Inc.
- b) Non-Voting Members. Non-Voting members shall be the Corporation's staff and volunteers who are appointed by EHS, Inc.

ARTICLE IV

Trustees

Section 1. Number and Qualifications. The Board of Trustees shall consist of no fewer than five (5) or more than fifteen (15) Trustees appointed by the Board of Trustees of EHS, Inc. Trustees shall be at least 18 years of age.

Section 2. Duties. Trustees shall assist the Corporation to support EHS, Inc. in its mission to assure the availability of comprehensive services and programs that contribute to the health and quality of life of individuals and families in Western New York, especially those in marginalized populations and/or challenged by chronic or life-threatening diseases, including HIV/AIDS by: 1) overseeing the management of property held by the Corporation; 2) expanding fundraising capabilities by developing, initiating, recommending and implementing appropriate methodologies; and 3) promoting a beneficial visibility of the Corporation and EHS, Inc. in the WNY community.

Section 3. Terms. Trustees shall be elected to three-year terms. The EHS, Inc. Board of Directors shall elect the Trustees for as many additional three-year terms as it chooses to. A Trustee shall hold office until the next election when their successor has been elected or until their death, resignation or removal.

Section 4. Resignation. Any Trustee of the Corporation may resign at any time by giving their resignation to any officer of the Board of Trustees. Unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

Section 5. Removal. Any or all of the Trustees may be removed, either with or without cause, by vote in person or by email of at least two-thirds of the EHS, Inc. Board of Trustees present at any meeting, provided that the proposed action was referred to in the notice for such meeting.

Section 6. Newly Created Trusteeships and Vacancies. Newly created Trusteeships

resulting from an increase in the number of Trustees, and vacancies occurring in the Board for any reason, maybe filled by vote of a majority of the EHS, Inc. Board of Trustees present at any meeting, although less than a quorum exists. Nominations to the Board may be considered any time the Board has fewer than 15 members. A Trustee elected to fill a vacancy shall be elected to hold office for the unexpired term of their predecessor.

Section 7. Compensation. No Trustee as such shall receive any compensation, either by way of salary, fees for attendance at meetings, or otherwise, or shall be reimbursed for their expenses, except pursuant to authorization of the Board of Trustees. This section shall not preclude any Trustee from serving the Corporation in any other capacity or from receiving compensation for such services and reimbursement for their related expenses.

Section 8. Board Meetings. Meetings of the Board of Trustees shall be those which have been established by a schedule adopted by the Board, or alternatively, by the fixing of a date for the next meeting at the next preceding meeting. The Board shall have at least one meeting each calendar year at times and places fixed by the Board. Special meetings may be held at such other times as may be determined by action of the Board of Trustees, .

Section 9. Notice of Meetings of Board of Trustees. Notice of the time and place of each meeting of the Board of Trustees shall be given not less than seven (7) days before the meeting by mailing the notice, postage prepaid, addressed, to each member of the Board at their residence or usual place of business, or by delivering the notice to each member of the Board personally, by telephone or e-mail. Notice of a meeting of the Board of Trustees or a committee thereof need not be given to any Trustee who submits a signed waiver of notice, whether before or after the meeting. The attendance of any Trustee at a meeting of the Board or a committee thereof without protesting prior thereto or at its commencement the lack of notice to them shall continue a waiver of notice by them. The meeting shall be duly called and held if notice is given to, or is waived by, all absent Trustees.

Section 10. Quorum. At all meetings of the Board of Trustees, except as otherwise provided by law, the Certificate of Incorporation or these bylaws, a quorum shall be required for the transaction of business, which may never be less than five (5) Trustees. A vote of a majority of the Trustees present shall decide any question that may come before the

meeting. A majority of the Trustees present at any meeting, although less than quorum, may adjourn the same from time to time, without notice other than announcement at the meeting.

Notwithstanding the foregoing or anything else contained herein, neither the Corporation nor the Board may take any of the following actions unless directed to do so by written resolution of the EHS, Inc. Board of Trustees:

- a. Any disbursement of funds, or sale, mortgage, or other disposition of any real property;
- b. Entering into any lease with respect to any real property;
- c. Waiving any default under any lease with respect to any real property; or
- d. The merger, consolidation, dissolution or winding up of the Corporation.

Section 11. Meetings by Telephone or Video Communication: Trustees may participate in a meeting by means of a conference telephone, electronic video screen, or similar communication equipment. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear or communicate with each other at the same time and each Trustee can participate in all matters before the Board, including without limitation, the ability to propose, object to, and vote upon specific actions to be taken by the Board. Participation by such means shall constitute presence in person at a meeting.

Section 12: Financial Reports to EHS, Inc.: At least annually, the Corporation shall submit to EHS, Inc. a report showing in appropriate detail the following:

- a) The assets and liabilities of the Corporation as of a date no more than six months prior to the meeting;
- b) The principal changes in assets and liabilities;
- c) The revenue and/or receipts of the Corporation, both restricted and unrestricted;
- d) The expenses or disbursements of the Corporation for both general and restricted purposes;
- e) Any recommended changes to the Corporation's investment policy(ies) and/or strategies; and

f) Any other financial information requested by EHS, Inc.

Section 13. Procedure. The order of business and all other matters of procedure at every meeting of Trustees may be determined by the presiding officer.

ARTICLE V

Officers of the Corporation

Section 1. Officers. Intentionally blank.

ARTICLE VI

Officers of the Board

Section 1. Officers. Intentionally blank.

ARTICLE VII

Contracts, Loans and Indemnification

Section 1. Contracts and other Writings. Except as otherwise provided by resolution of the EHS, Inc. Board, all contracts, deeds, leases, mortgages, grants and other agreements of the Corporation shall be executed on its behalf by the person to whom EHS, Inc. has delegated authority to execute such documents in accordance with resolutions approved by the Board of EHS, Inc.

Section 2. Loans. No loans shall be made by or to or on behalf of The Evergreen Foundation of Western New York, Inc., and no evidence of indebtedness shall be issued in the Corporation's name, unless authorized by resolution of the EHS, Inc. Board of Trustees. Such authority may be general or confined to specific instances.

Section 3. Indemnification. The Corporation, at the discretion and direction of the EHS Board, may indemnify each member of its Board, each of its corporate officers, any other employee designated for indemnification by the Board and each person serving at the request of the Corporation (hereinafter all referred to more generally as "Trustees and officers") for the defense of civil or criminal actions or proceedings as hereinafter provided in this Article and, notwithstanding any provision in these bylaws, in a manner and to the fullest extent now and hereafter permitted by the Not-for-Profit Corporation Law of the State of New York. However, any

such obligation undertaken by the Board shall be payable only out of assets of the Corporation, as they may from time to time exist, to the extent that the same do not constitute funds that have been restricted by any funding agency or, if previously so restricted, are no longer restricted.

a) Non-Derivative Action. In the case of an action, whether civil or criminal, other than one by or on the behalf of the Corporation to procure a judgment in its favor, the Corporation may indemnify each of its Trustees and officers, as aforesaid, from and against any and all judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees, actually and necessarily incurred as a result of such action or any appeal therefrom, where such costs and expenditures shall have been imposed or asserted against such Trustee or officer by reason of their being or having been a Trustee or officer, but only in the event that a determination shall have been made, either judicially or in the manner hereinafter provided, that such Trustee acted in good faith for a purpose which they reasonably believed to be in the best interests of the Corporation and, in the case of a criminal action, had no reasonable cause to believe that their conduct was unlawful. This indemnification shall be made only if the Corporation shall be advised by its Board that the Trustee or officer has met the aforesaid standard of conduct. In rendering such advice, the Board shall act either (1) by a quorum consisting of Trustees who are not parties to such action, or (2) if a quorum under "(1)" is not obtainable with due diligence, upon the opinion in writing of independent legal counsel. If the foregoing determination is to be made by the Board, it may rely, as to all questions of law, on the advice of independent counsel.

b) Derivative Action. In the case of an action, whether civil or criminal, by or on behalf of the Corporation to procure judgment in its favor, the Corporation may indemnify each of its Trustees and officers, as aforesaid, from and against the reasonable expenses, including attorney's fees, actually and necessarily incurred by any such Trustee or officer in connection with the defense of such action or in connection with an appeal therefrom, except with respect to matters as to which such Trustee or officer is adjudged, pursuant to the method described in Section 3 hereof, to have breached their duty to the Corporation by not discharging their obligations in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. However, in regard to an action described in this Section 3, no indemnification shall be made by the Corporation for amounts paid in settling or otherwise

disposing of a threatened or pending action or for expenses incurred in defending either a threatened action or a pending action which is settled or otherwise disposed of without court approval.

c) Applicability. Every reference in this Article VII to a Trustee or an officer of the Corporation shall include every Trustee and officer thereof and every former Trustee and officer thereof. This indemnification provision, if activated, shall apply to all the judgments, fines, amounts in settlement, and reasonable expenses, whenever arising, allowable as described above. The right of indemnification herein provided for shall be in addition to any and all rights to which any Trustee or officer of the Corporation otherwise might be entitled, and the provisions hereof shall neither impair nor adversely affect such rights.

The Corporation shall advance or promptly reimburse upon request any Trustee or officer seeking indemnification hereunder for all expenses, including attorney's fees, reasonably incurred in defending any action or proceeding in advance of the final disposition thereof upon receipt of an undertaking by or on behalf of such person to repay such amount if such person is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced or reimbursed exceed the amount to which such person is entitled.

This Article shall be given retroactive effect and the full benefits hereof shall be available in respect of any alleged or actual occurrences, acts, or failures to act prior to the date of the adoption of the Article. The right to indemnification or advancement of expenses under this Article shall be a contract right.

ARTICLE VIII

Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Corporation shall be established time to time by resolution of the EHS. Inc. Board of Trustees.

Section 2. Bylaws Amendment. These bylaws may be added to, amended, repealed or restated by an affirmative vote of at least a majority of the EHS, Inc. Board of Trustees or at any meeting, if at least seven (7) days written notice is given of intention to add to, amend, alter or repeal at such meeting provided, however,

- a) that no amendment shall be made to these bylaws which would cause the Corporation to cease to qualify as an exempt corporation under Section 501(c)(3) of the Internal Revenue Code, and that an amendment does not affect the voting rights of the EHS, Inc. Board of Trustees. An amendment that does affect the voting rights of Trustees further requires ratification by a two-thirds vote of a quorum at a EHS, Inc. Board meeting; and
- b) that all amendments be consistent with the Articles of Incorporation.

Section 3. Amendment to Articles of Incorporation. Any amendment to the Articles of Incorporation for The Evergreen Foundation of Western New York, Inc. shall be adopted by approval of two-thirds of the EHS, Inc. Board of Trustees.

Brownfield Cleanup Application
Bailey & Kensington Site

EXHIBIT 5

August 31, 2023

NYS Department of Environmental Conservation
Brownfield Cleanup Program (BCP)

RE: Program Fee Waiver Request

EHS, Inc. (Evergreen Health) is submitting a request for waiver of the recently imposed \$50,000 program fee including fiscal documentation. Our financial statements from 2022 do not demonstrate the full picture of the described fiscal situation for the agency nor for this necessary project. These financials demonstrate the full income received through 340b pharmacy revenue.

Our current year (2023) financials demonstrate that the agency received the NYS Medicaid portion of the pharmacy income as negotiated with DOH. These funds will be disbursed on a year to year basis and are not within the control of the agency, unlike pharmacy income. Evergreen has not received the federal portion for 2023 and there is no guarantee or timeframe for those funds to arrive this year or in the years to come.

Further, funds for this project will be used to enhance the services available in the disadvantaged area of the East side of Buffalo, and not to ensure profit for these community health services.

Please feel free to reach out with any further questions on this request.

Thank you,



Jesse Gasbarro
Chief Financial Officer

Evergreen Health is a designated 501(c)(3) not-for-profit charitable entity. This project focuses on the new construction of a 42,000 square foot building with a full cost estimate underway. Evergreen currently leases space on Bailey Avenue but that lease ends in 2025. With no long-term lease options available, Evergreen must construct a new site to continue providing its current patient services and expand care to this disadvantaged community. The agency's initial investment plans for this project included revenue generated by pharmacy revenue Evergreen generated through a previously existing federal prescription drug pricing program. Evergreen relied on this critical funding stream to the tune of \$14.1

million. Government agencies are developing a plan to replace these funds; however, they have not yet received required federal approvals. And, there is currently no guarantee that Evergreen will receive all of the eliminated funds or that it will be made whole in any future years, either.

Evergreen's loss of pharmacy revenue resulted in immediate fiscal instability and cost-cutting efforts including elimination of dozens of positions and cancellation of non-essential contracts. The impact has been devastating for organizations that operate on razor thin margins or, many times, at losses based on the Medicaid and Medicare reimbursement rates for patient services that do not compensate the true costs of care. This funding crisis occurred well-into the planning of this new site and nearly four months after the property was purchased and plans for the construction were publicly announced. In addition to the lack of pharmacy revenue available to use toward this project, many of Evergreen's supportive services are wholly supported by grants or other restricted funds making them inaccessible for discretionary use to support this BCP fee, for instance. And those programs that do not have a dedicated funding source were, in part, funded by the now lost pharmacy revenue.

A \$50,000 fee would consume a large portion of originally budgeted predevelopment costs on a project that is seeing rapid and continued escalation in cost estimates since initially conceived. Any further delay or additional fees to be incurred at this stage will jeopardize the overall project and potentially impact the scope and scale of the facility that is designed to serve some of the neediest and most vulnerable residents in the region. Included in this attachment are the 1) most recently completed audited financial statements, 2) interim fiscal position and balance sheet, and 3) a letter from the organization's CFO related to revenue/cash flow uncertainties, as well as a statement as to the funds already pulled from agency reserves to meet fiscal challenges this year.

(5) Other factors deemed relevant.

Evergreen's mission is to "foster healthy communities by providing medical, supportive, and behavioral services to individuals and families in WNY – especially those who are living with chronic illness or who are underserved by the healthcare system." Evergreen Health is working to eradicate health inequity so that all Western New Yorkers have access to affordable healthcare in an environment that is inclusive, compassionate, respectful, and judgement-free. Although this new site is projected to *lose money year over year*, the continuation and expansion of services in this disadvantaged community in East Buffalo will fulfill a central goal of its mission. To advance its vision and mission, Evergreen will continue to deliver a holistic, patient-centered continuum of services grounded in the principles of harm reduction that fosters an environment of inclusion and excellence. The agency specializes in providing accessible, person-centered care that supports people in improving their well-being and health outcomes.

Among Evergreen's effective strategies for engaging its priority populations is a longtime formal affiliation with Community Access Services of WNY (CAS), an organization that works to engage people in communities of color in health education, screening, and linkage to care. Since 2018, Evergreen and CAS have been co-located in leased space on Bailey Avenue. At this site Evergreen offers primary care, HIV-treatment and prevention (PrEP) and STI testing, counseling and treatment. CAS offers linkage and navigation assistance, a neighborhood food pantry, and critical wrap-around support services that encourage patient engagement, participation, and wellness. As a federally qualified health center look-alike (FQHCLAL) as designated by the federal Health Resources and Services Administration (HRSA), Evergreen is required to expand primary care services to serve individuals living with incomes below the poverty level. To meet this community need, Evergreen Health, in partnership with CAS, seeks to expand its service presence and footprint in the Bailey-Kensington neighborhood in East Buffalo. The Bailey-Kensington area and its surrounding neighborhoods on East Buffalo comprise some of the most inequitably served communities in the entire region with substantive disparities in health outcomes well documented in federal, state, and local public health data, as well as Evergreen's patient assessments and consumer feedback surveys. As Evergreen continues to expand services to patients, its facilities have not kept pace with community need and demand. Over a six-month period in 2022, nearly 900 unique individuals attended some type of medical appointment at the current Bailey Avenue site with the highest service categories for new-patient intake, sick visits, and HIV/STI testing and counseling. A significant proportion of these patients reside in the immediate surrounding zip codes. With Evergreen's lease for its current site ending in two years, it must expand its physical space to meet the basic needs of people living in these neighborhoods.

**AUDITED CONSOLIDATED
FINANCIAL STATEMENTS**

**EHS, INC.,
EVERGREEN FOUNDATION OF WNY, INC.,
COMMUNITY ACCESS SERVICES OF WNY, INC.,
and PRIDE CENTER OF WNY, INC.**

DECEMBER 31, 2022

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INDEPENDENT AUDITOR'S REPORT

The Board of Directors
EHS, Inc., Evergreen Foundation of WNY, Inc.,
Community Access Services of WNY, Inc.,
and Pride Center of WNY, Inc.

Report on the Audit of the Financial Statements

Opinion

We have audited the consolidated financial statements of EHS, Inc., Evergreen Foundation of WNY, Inc., Community Access Services of WNY, Inc., and Pride Center of WNY, Inc. (collectively, the Organization), which comprise the consolidated statements of financial position as of December 31, 2022 and 2021, and the related consolidated statements of activities and changes in net assets, functional expenses, and cash flows for the years then ended, and the related notes to the consolidated financial statements (collectively "the financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Organization as of December 31, 2022 and 2021, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States (GAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Organization and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Emphasis of Matter

As discussed in Note 1 to the financial statements the Organization adopted the new accounting guidance ASC 842, Leases. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Organization's ability to continue as a going concern within one year after the date that the financial statements are issued or available to be issued.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and GAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than

for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS and GAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Organization's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Organization's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control–related matters that we identified during the audit.

Supplementary Information

Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The consolidating information on pages 22-23 is presented for purposes of additional analysis rather than to present the financial position, results of operations and cash flows of the individual companies and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The consolidating information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

Other Reporting Required by Government Auditing Standards

In accordance with Government Auditing Standards, we have also issued our report dated May 31, 2023 on our consideration of the Organization's internal controls over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the Organization's internal control over financial reporting and compliance.

Freed Maxick CPAs, P.C.
Buffalo, New York
May 31, 2023

**EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.**

CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
December 31,

	2022	2021
ASSETS		
Current assets:		
Cash	\$ 8,314,085	\$ 8,198,033
Cash held in escrow	95,265	132,980
Patient fees receivable, net	1,870,360	2,401,893
Pharmacy receivables, net	4,226,411	4,086,695
Grant receivables, net	3,174,512	2,465,784
Other receivables	221,049	707,390
Prepaid expenses	1,369,430	1,147,885
Due from related parties	79,921	35,921
Pharmacy inventory	844,746	589,071
Total current assets	<u>20,195,779</u>	<u>19,765,652</u>
Investments	15,999,977	18,206,538
Deposits	20,461	20,461
Interest rate swaps asset	649,201	-
Note receivable	4,597,600	4,597,600
Interest in net assets of HHPWNY, LLC	-	507,944
Land, buildings and equipment, net	25,477,967	25,748,884
Operating lease right-of-use assets	<u>5,766,793</u>	<u>-</u>
Total assets	<u>\$ 72,707,778</u>	<u>\$ 68,847,079</u>
LIABILITIES AND NET ASSETS		
Current liabilities:		
Accounts payable	\$ 2,598,346	\$ 2,743,028
Accrued expenses	3,787,399	3,668,558
Current portion of long-term debt, net	421,817	403,500
Current portion of operating lease liabilities	720,306	-
Refundable advances	442,404	370,860
Deferred revenue	51,719	62,425
Total current liabilities	<u>8,021,991</u>	<u>7,248,371</u>
Long-term debt, net	13,427,689	13,854,774
Long-term portion of operating lease liabilities, net	5,099,961	-
Interest rate swaps liability	-	544,934
Due to third parties	800,000	1,224,288
Total liabilities	<u>27,349,641</u>	<u>22,872,367</u>
Net assets:		
Without donor restrictions	45,352,331	45,944,124
With donor restrictions	5,806	30,588
Total net assets	<u>45,358,137</u>	<u>45,974,712</u>
Total liabilities and net assets	<u>\$ 72,707,778</u>	<u>\$ 68,847,079</u>

See accompanying notes.

**EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.**

CONSOLIDATED STATEMENTS OF ACTIVITIES AND CHANGES IN NET ASSETS
Years Ended December 31,

	2022	2021
Public support and revenue:		
Pharmacy	\$ 79,557,378	\$ 73,883,171
Program service fees	15,899,967	10,468,850
Grants	11,126,326	9,261,160
Miscellaneous	806,245	3,658,529
Special events	188,329	313,581
Contributions	71,560	65,966
Interest	54,917	52,446
Rental income	54,143	52,904
Total public support and revenue	<u>107,758,865</u>	<u>97,756,607</u>
Operating expenses:		
Pharmacy	54,884,829	47,353,674
Management and general	14,053,037	12,129,437
Medical services	13,902,936	9,941,800
Grants	8,844,208	7,755,806
Care coordination	5,379,637	5,324,563
Behavioral health	4,969,344	3,905,968
Foundation property	1,665,147	1,634,399
Community Access Services	1,216,255	1,148,640
Supportive services	948,425	970,034
Pride Center Services	759,570	539,104
Foundation events	706,136	483,124
Total operating expenses	<u>107,329,524</u>	<u>91,186,549</u>
Excess of revenues over expenses from operations	429,341	6,570,058
Nonoperating (expenses) revenues:		
Forgiveness of long-term debt	-	5,169,100
Investment (loss) gain	(2,210,628)	2,151,200
Unrealized gain on interest rate swaps	1,194,135	493,502
Net (loss) income from equity investments	(94,673)	31,702
Total nonoperating (expenses) revenues	<u>(1,111,166)</u>	<u>7,845,504</u>
(Deficit) excess of revenues over expenses	(681,825)	14,415,562
Net assets without donor restrictions:		
(Deficit) excess of revenues over expenses	(681,825)	14,415,562
Net assets released from restrictions	90,032	-
(Decrease) increase in net assets without donor restrictions	<u>(591,793)</u>	<u>14,415,562</u>
Net assets with donor restrictions:		
Contributions with donor restrictions	65,250	30,588
Net assets released from restrictions	(90,032)	-
Decrease (increase) in net assets with donor restrictions	<u>(24,782)</u>	<u>30,588</u>
(Decrease) increase in net assets	(616,575)	14,446,150
Net assets - beginning of year	<u>45,974,712</u>	<u>31,528,562</u>
Net assets - end of year	<u><u>\$ 45,358,137</u></u>	<u><u>\$ 45,974,712</u></u>

See accompanying notes.

EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.

CONSOLIDATED STATEMENT OF FUNCTIONAL EXPENSES
For the Year Ended December 31, 2022

	Program Services										Management and General	2022 Total
	Behavioral Health	Care Coordination	Medical Services	Grants	Pharmacy	Foundation Events	Foundation Property	Supportive Services	Community Access Services	Pride Center Services		
Operating costs	\$ 696,609	\$ 2,071	\$ 1,347,412	\$ 493,445	\$ 49,874,681	\$ 146,682	\$ 203,174	\$ 164,846	\$ 85,344	\$ 68,024	\$ 314,031	\$ 53,396,319
Salaries	2,762,442	3,538,636	6,695,818	4,867,399	2,508,165	258,385	-	382,853	622,711	390,888	8,121,764	30,149,061
Employee benefits	734,623	941,036	1,800,731	1,304,225	675,330	68,712	-	101,675	165,595	103,954	2,252,856	8,148,737
Subcontract / consultants	106,536	23,876	1,152,319	23,319	9,527	144,342	6,883	71,258	835	1,925	476,316	2,017,136
Equipment expenses	13,044	3,736	55,735	77,434	21,582	192	26,464	3,198	144,533	86,718	318,709	751,345
Rent	266,124	201,549	925,364	236,903	72,444	-	-	55,865	-	-	309,092	2,067,341
Building repairs and maintenance	1,497	-	96,821	63,149	3,515	-	41,360	989	-	3,208	1,014,618	1,225,157
Rental assistance - long-term	-	-	-	1,103,246	-	-	-	-	-	-	-	1,103,246
Office supplies	17,240	17,673	648,136	84,523	61,579	2,346	-	5,604	4,201	4,831	60,082	906,215
Postage	1,615	3,072	4,506	3,985	879,020	155	-	257	607	353	10,186	903,756
Advertising	440	-	84	41,732	-	7,293	-	51	69,619	12,480	707,063	838,762
Software	26,880	54,494	163,437	4,933	62,828	-	1,609	5,604	752	2,706	436,026	759,269
Information technology	41,019	77,062	120,153	99,175	27,580	20,707	-	8,528	16,762	9,564	187,122	607,672
Insurance	73,495	39,226	124,255	62,085	126,543	5,859	500	3,302	10,255	5,262	63,370	514,152
Telecommunication	32,542	56,121	100,917	75,185	16,341	3,778	424	6,796	13,357	6,418	122,781	434,660
Client enrichment	4,353	296	-	12,659	383,785	-	-	-	-	20	756	401,869
Bank fees	1,322	237,543	11,153	-	14,728	-	-	-	12	601	129,023	394,382
Interest	-	-	-	-	-	-	373,628	-	-	-	-	373,628
Parking	26,791	54,740	81,428	78,094	14,329	2,363	-	-	11,176	6,368	87,689	362,978
Utilities	-	-	-	-	-	-	255,663	-	-	-	-	255,663
Training	17,945	1,043	4,791	3,183	239	156	-	1,004	45	2,545	215,486	246,437
Food and beverage	2,879	4,325	8,221	33,835	17,460	13,483	-	5,029	5,822	13,559	138,776	243,389
Conferences	8,368	90	33,636	48,820	5,281	5,451	-	60	37,272	27,601	52,976	219,555
Security	-	-	-	-	-	-	1,619	-	-	-	203,070	204,689
ADP expenses	14,253	29,149	43,365	41,819	7,711	1,405	-	-	5,782	3,348	49,008	195,840
Audit and legal fees	704	5,438	-	13,586	-	-	20	916	40	40	172,807	193,551
Staff travel	6,490	82,872	6,723	40,435	587	1,090	-	343	13,087	1,881	20,590	174,098
Rental assistance - short-term	-	-	-	165,607	-	-	-	-	-	-	-	165,607
Security deposit assistance	-	-	-	77,231	-	-	-	-	-	-	-	77,231
Lab costs	-	-	68,667	4,107	-	-	-	-	-	-	-	72,774
Miscellaneous	-	-	-	41,003	-	-	-	1	943	-	15,207	57,154
Printing	130	919	7,036	5,582	5,243	11,049	38	654	5,644	3,403	5,394	45,092
Mortgage expenses	-	-	-	-	-	12,688	17,628	-	-	-	11,897	42,213
Taxes	-	-	-	-	-	-	10,968	-	-	-	-	10,968
Eliminations	-	-	-	(262,491)	-	-	-	-	-	-	(1,642,394)	(1,904,885)
Total expenses before depreciation	4,857,341	5,374,967	13,500,708	8,844,208	54,788,498	706,136	939,978	818,833	1,214,394	755,697	13,854,301	105,655,061
Depreciation	112,003	4,670	402,228	-	96,331	-	725,169	129,592	1,861	3,873	198,736	1,674,463
Total functional expenses	<u>\$ 4,969,344</u>	<u>\$ 5,379,637</u>	<u>\$ 13,902,936</u>	<u>\$ 8,844,208</u>	<u>\$ 54,884,829</u>	<u>\$ 706,136</u>	<u>\$ 1,665,147</u>	<u>\$ 948,425</u>	<u>\$ 1,216,255</u>	<u>\$ 759,570</u>	<u>\$ 14,053,037</u>	<u>\$ 107,329,524</u>

See accompanying notes.

EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.

CONSOLIDATED STATEMENT OF FUNCTIONAL EXPENSES
For the Year Ended December 31, 2021

	Program Services										Management and General	2021 Total
	Behavioral Health	Care Coordination	Medical Services	Grants	Pharmacy	Foundation Events	Foundation Property	Supportive Services	Community Access Services	Pride Center Services		
Operating costs	\$ 25,366	\$ 33,094	\$ 225,648	\$ 422,513	\$ 43,310,159	\$ 64,400	\$ 13,000	\$ 166,034	\$ 59,929	\$ 31,486	\$ 188,034	\$ 44,539,663
Salaries	2,453,795	3,429,046	4,860,422	4,088,077	2,176,337	272,322	-	364,037	649,915	302,567	7,287,890	25,884,408
Employee benefits	667,707	933,084	1,347,462	1,083,543	618,495	72,101	-	99,063	176,851	82,332	2,126,070	7,206,708
Rent	261,361	194,874	536,080	228,537	70,595	-	179,705	55,611	131,020	49,347	303,015	2,010,145
Subcontract / consultants	106,692	19,723	804,794	36,539	13,522	-	-	61,149	-	3,950	336,351	1,382,720
Rental assistance - long-term	-	-	-	1,137,120	-	-	-	-	-	-	-	1,137,120
Building repairs and maintenance	-	-	56,052	43,437	-	65	44,069	-	-	-	907,443	1,051,066
Office supplies	14,058	13,321	747,244	90,290	38,495	900	-	1,863	4,985	3,479	50,976	965,611
Equipment expenses	10,861	99,835	134,602	39,721	8,210	1,734	-	8,632	39	3,590	298,389	605,613
Postage	1,498	3,169	3,263	3,831	552,546	394	-	258	704	334	14,219	580,216
Information technology	42,569	88,141	98,439	107,661	26,282	4,602	-	7,288	22,600	8,459	147,256	553,297
Software	21,972	49,641	160,891	9,522	64,350	-	-	5,405	43	1,894	237,353	551,071
Advertising	50	75	7,770	22,459	-	16,459	-	-	33,132	17,362	358,832	456,139
Lab costs	-	-	423,209	1,014	-	-	-	-	-	-	-	424,223
Parking	30,855	69,491	71,887	92,523	20,620	3,699	-	-	15,547	6,706	107,576	418,904
Telecommunication	32,500	61,456	80,788	82,084	18,948	4,595	1,627	5,881	16,790	7,387	98,251	410,307
Interest	-	-	-	-	-	-	391,444	-	-	-	-	391,444
Insurance	55,008	35,477	83,868	41,174	97,937	1,900	-	2,877	7,024	3,221	55,116	383,602
Security	-	-	-	-	-	-	-	-	-	-	359,372	359,372
Bank fees	-	177,211	6,849	412	13,154	1,134	-	-	10	347	111,614	310,731
Client enrichment	-	19,108	-	5,649	258,544	-	-	-	-	372	-	283,673
Utilities	-	-	-	-	-	-	221,574	-	-	1,937	-	223,511
Training	18,657	9,384	2,418	299	98	3,940	-	180	1,110	-	186,853	222,939
Audit and legal fees	-	-	-	17,098	-	-	-	-	1,244	545	190,160	209,047
ADP expenses	12,762	28,648	29,966	38,195	8,530	1,526	-	-	6,220	2,766	40,611	169,224
Food and beverage	1,230	3,416	5,238	9,902	14,312	3,487	-	5,100	5,894	5,780	96,991	151,350
Staff travel	1,197	56,302	7,879	25,850	309	505	-	86	7,003	535	8,948	108,614
Rental assistance - short-term	-	-	-	106,719	-	-	-	-	-	-	-	106,719
Security deposit assistance	-	-	-	67,355	-	-	-	-	-	-	-	67,355
Mortgage expenses	-	-	-	-	-	8,350	17,628	-	-	-	12,654	38,632
Conferences	-	-	2,088	5,057	-	1,277	-	175	3,563	127	21,250	33,537
Printing	32	67	430	2,545	308	19,734	-	4	1,373	628	1,830	26,951
Taxes	-	-	-	-	-	-	19,593	-	-	-	-	19,593
Miscellaneous	-	-	-	46,680	-	-	-	-	42	75	(35,468)	11,329
Eliminations	-	-	-	(100,000)	-	-	-	-	-	-	(1,541,260)	(1,641,260)
Total expenses before depreciation	3,758,170	5,324,563	9,697,287	7,755,806	47,311,751	483,124	888,640	783,643	1,145,038	535,226	11,970,326	89,653,574
Depreciation	147,798	-	244,513	-	41,923	-	745,759	186,391	3,602	3,878	159,111	1,532,975
Total functional expenses	\$ 3,905,968	\$ 5,324,563	\$ 9,941,800	\$ 7,755,806	\$ 47,353,674	\$ 483,124	\$ 1,634,399	\$ 970,034	\$ 1,148,640	\$ 539,104	\$ 12,129,437	\$ 91,186,549

See accompanying notes.

**EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.**

CONSOLIDATED STATEMENTS OF CASH FLOWS
Years Ended December 31,

	2022	2021
Cash flows from operating activities:		
(Decrease) increase in net assets	\$ (616,575)	\$ 14,446,150
Adjustments to reconcile (decrease) increase in net assets to net cash provided by operating activities:		
Depreciation	1,674,463	1,532,975
Amortization	29,525	29,526
Unrealized gain on interest rate swap	(1,194,135)	(493,502)
Investment loss (gain)	2,210,628	(2,151,200)
Net loss (income) from equity investment	94,673	(31,702)
Forgiveness of long-term debt	-	(5,169,100)
Decrease (increase) in assets:		
Patient fees receivable, net	531,533	(1,676,560)
Pharmacy receivables, net	(139,716)	304,160
Grants receivable, net	(708,728)	829,930
Other receivables	486,341	(253,710)
Prepaid expenses	(221,545)	(519,888)
Pharmacy inventory	(255,675)	(209,960)
Operating lease right-of-use assets	702,322	-
Increase (decrease) in liabilities:		
Accounts payable	(144,682)	173,954
Accrued expenses	118,841	6,669
Refundable advances	71,544	283,032
Deferred revenue	(10,706)	5,331
Operating lease liabilities	(648,848)	-
Due to third parties	(424,288)	424,288
Net cash provided by operating activities	1,554,972	7,530,393
Cash flows from investing activities:		
Purchases of land, buildings and equipment	(1,403,546)	(1,785,838)
Proceeds from dissolution of equity investment	413,271	-
Purchases of investments, net	(577,849)	(3,009,000)
Net cash used by investing activities	(1,568,124)	(4,794,838)
Cash flows from financing activities:		
Payments on long-term debt	(438,293)	(411,779)
Net cash used by financing activities	(438,293)	(411,779)
Net (decrease) increase in cash, cash equivalents and restricted cash	(451,445)	2,323,776
Cash, cash equivalents and restricted cash - beginning of year	9,667,178	7,343,402
Cash, cash equivalents and restricted cash - end of year	\$ 9,215,733	\$ 9,667,178

The following table provides a reconciliation of cash, cash equivalents and restricted cash to the amounts reported within the combined statements of financial position:

	2022	2021
Cash	\$ 8,314,085	\$ 8,198,033
Cash held in escrow	95,265	132,980
Investments	806,383	1,336,165
	\$ 9,215,733	\$ 9,667,178

See accompanying notes.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation: The consolidated financial statements include the accounts of EHS, Inc. (EHS), Evergreen Foundation of WNY, Inc. (the Foundation), Community Access Services of WNY, Inc. (CAS), and Pride Center of WNY, Inc. (Pride) (collectively, "EHS, Inc. and Affiliates" or "the Organization"). All significant intercompany balances and transactions have been eliminated in consolidation.

Organization: EHS is a non-profit community-based organization that fosters healthy communities by providing medical, supportive, and behavioral services to individuals and families in Western New York – especially those who are living with chronic illness or who are underserved by the healthcare system. EHS is an approved federally qualified health center look-alike, a designation that will provide additional funding and reimbursements to expand access to health care. The Foundation is a non-profit organization that leases medical and office space to related entities under operating leases. CAS is a non-profit organization committed to addressing the HIV/AIDS epidemic and other diseases that affect the health and welfare of urban communities in Western New York. Pride is a non-profit organization that specializes in lesbian, gay, bisexual, transgender, and queer health and HIV prevention.

Basis of Accounting: The accompanying consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP").

Use of Estimates: The accompanying consolidated financial statements have been prepared in accordance with U.S. GAAP, which requires management to make estimates and assumptions regarding amounts reported in the consolidated financial statements and accompanying notes. Accordingly, actual results could differ from those estimates.

Cash Held in Escrow: The Organization has amounts held in escrow from the proceeds of the New Market Tax Credit ("NMTC") funding (see Note 8). The amounts in the escrow were used to fund the construction of building and equipment.

Patient Fees Receivables and Pharmacy Receivables: The Organization carries its patient fees receivables and pharmacy receivables at net realizable value based upon gross charges for services provided, reduced by contractual adjustments provided to third-party payers, and implicit price concessions for services provided to private pay patients. This implicit price concession is the transaction price, representing the difference between amounts billed at established private pay rates and the amounts the Organization expects to collect based upon the patient's available resources and the Organization's historical collection experience with similar patients. The Organization's policy is not to accrue interest on its receivables. At December 31, 2022, management has recorded an allowance for doubtful accounts of approximately \$302,000 (\$867,000 – 2021) for patient fees receivables and approximately \$136,000 (\$84,000 – 2021) for pharmacy receivables.

Grant Receivables: The Organization has grant receivables from corporations and various governmental agencies. The Organization carries its grant receivables based upon vouchers submitted for reimbursement. The Organization records an allowance for doubtful accounts based on prior collection experience and an analysis of amounts outstanding. At December 31, 2022, management has recorded an allowance for doubtful accounts of \$354,000 (\$183,000 – 2021).

Investments: Investments are recorded at fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Investments are exposed to various risks, such as interest rate, market, and credit risk. Due to the level of risk associated with certain investments, it is at least reasonably possible that changes in the values of investments may occur in the near term and that such changes could materially affect the amounts reported in the accompanying consolidated financial statements. Investments in debt securities have maturity dates in 2023 are also presented in the financial statements at fair value.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Concentration of Risk: The Organization maintains funds in excess of amounts insured by the Federal Depository Insurance Corporation limits. The Organization has diversified its deposit amounts in a variety of institutions to reduce the level of concentration of credit risk.

Pharmacy Inventory: Inventory consists of pharmaceuticals and is stated at the lower of cost (first-in, first-out) or net realizable value.

Note Receivable: The Organization has a promissory note in the amount of \$4,597,600 from Evergreen Health Investment Fund, LLC as part of the Organization's New Market Tax Credit agreements (see Note 8). Quarterly principal payments will commence in March 2026 and the promissory note will be paid in full in 2052. The Organization receives monthly interest payments at a 1% annual rate.

Interest in Net Assets of HHPWNY, LLC: The Organization recognizes an interest in the net assets of Home Health Partners of WNY, LLC (HHPWNY). The investment in HHPWNY is accounted for using the equity method of accounting. The Organization has a 25% membership interest. Under the equity method, the Organization records any initial investment at cost and adjusts the carrying amount of the investment to recognize the Organization's share of the earnings or losses of the limited liability company after the date of acquisition. The amount of the adjustment is included in investment income in the consolidated statements of activities and changes in net assets. On August 5, 2020, HHPWNY's Governance Committee agreed to dissolve HHPWNY. HHPWNY has not been legally dissolved as December 31, 2022, however, the Organization received their final distribution of HHPWNY's net assets during the year ending December 31, 2022.

Land, Buildings and Equipment: Land, buildings and equipment are stated at cost, if purchased, or at fair value at the date of donation. Repairs and maintenance are charged to expense as incurred. Depreciation is provided using the straight-line method over the estimated useful lives of the assets, which range from three to forty years. Depreciation expense for the year ended December 31, 2022 amounted to \$1,674,463 (\$1,532,975 – 2021).

Impairment of Long-Lived Assets: The Organization reviews long-lived assets to be held and used for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. In determining whether there is an impairment of long-lived assets, the Organization compares the sum of the expected future net cash flows (undiscounted and without interest charges) to the carrying amount of the assets. At December 31, 2022 and 2021, no impairment in value has been recognized.

Debt Issuance Costs: Debt issuance costs are presented as a reduction of the carrying amount of debt rather than as an asset. Amortization of the debt issuance costs is reported as interest expense in the consolidated statements of activities and changes in net assets.

Net Assets: The consolidated financial statements report net assets and changes in net assets in two classes that are based upon the existence or absence of restrictions on use that are placed by its donors, as follows:

Net Assets Without Donor Restrictions: Net assets without donor restrictions are resources available to support operations. The only limits on the use of these net assets are the broad limits resulting for the nature of the Organization, the environment in which it operates, the purposes specified in its corporate documents and its application for tax-exempt status, and any limits resulting from contractual agreements with creditors and others that are entered into in the course of its operations. The Organization's Board of Trustees has not designated, from net assets without restrictions, any net assets as of December 31, 2022 or 2021.

Net Assets With Donor Restrictions: Net assets with donor restrictions are resources that are restricted by a donor for use for a particular purpose or in a particular future period. Some donor-imposed restrictions are temporary in nature, and the restriction will expire when the resources are used in accordance with the donor's instructions or when the stipulated time has passed. Other donor-imposed restrictions are perpetual in nature; the Organization must continue to use the resources in accordance with the donor's instructions. The Organization's unspent contributions are included in this class if the donor limited their use.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

When a donor's restriction is satisfied, either by using the resources in the manner specified by the donor or by the passage of time, the expiration of the restriction is reported in the consolidated financial statements by reclassifying the net assets from net assets with donor restrictions to net assets without donor restrictions. Net assets restricted for acquisition of buildings or equipment (or less commonly, the contribution of those assets directly) are reported as net assets with donor restrictions until the specified asset is placed in service by the Organization, unless the donor provides more specific directions about the period of its use. There were \$5,806 of net assets with donor restrictions as of December 31, 2022 (\$30,588 – 2021).

Classification of Transactions: All revenues and net gains are reported as increases in net assets without donor restrictions in the consolidated statements of activities and changes in net assets unless the donor specified the use of the related resources for a particular purpose or in a future period. All expenses and net losses are reported as decreases in net assets without donor restrictions.

Expense Recognition and Allocation: The consolidated financial statements report certain categories of expenses that are attributable to a program or supporting function. Expenses were allocated by function using a reasonable and consistent approach that is primarily based on estimates of time and effort.

Management and general expenses include those costs that are not directly identifiable with a program, but which provide for the overall support and direction of the Organization. Program services costs are expensed as incurred and include costs which provide for the overall support and direction of the Organization.

Program expenses for the year ended December 31, 2022 amounted to \$93,276,487 (\$79,057,112 – 2021). Management and general expenses amounted to \$14,053,037 for the year ended December 31, 2022 (\$12,129,437 – 2021).

Revenue Recognition:

Program Service Fees Revenues: The Organization provides service to patients under agreements with third-party payors (Medicaid, Medicare and HMO's) under provisions of their respective reimbursement formulas. If amounts received are less than the Organization's established billing rates, the difference is accounted for as a reduction of revenue. Final determination of the reimbursement rates is subject to review by appropriate third-party payors. Provisions are made in the consolidated financial statements for anticipated adjustments that may result from such reviews. Differences between the estimated amounts accrued and final settlements are reported in operations in the year of settlement. The Organization determines performance obligations based on the nature of the services provided and recognizes revenue for performance obligations satisfied over time based on actual charges incurred in relation to total expected charges.

Pharmacy Revenue: The Organization recognizes pharmacy revenue from product sales when obligations under the terms of a contract with the customer are satisfied; generally, this occurs with the transfer of control of the goods to customers. The Organization's payment terms are typically between 30 to 90 days.

Grants Revenue: Cost reimbursement grants are recorded as revenue when expenditures have been incurred in compliance with the grant restrictions. Amounts unspent at the end of the grant period and advances under the grant are recorded as a liability in the consolidated statements of financial position as refundable advances.

Income Taxes: The Organization is a not-for-profit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code (Code), and is appropriately exempt from Federal taxation under Section 501(a) of the Code. FASB ASC 740, *Accounting for Uncertainty in Income Taxes*, requires the recognition of income tax positions when it is more-likely than-not that the position will be sustained based on the merits of the position. Management has concluded that there are no material tax liabilities that require recognition as of December 31, 2022 and 2021.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Advertising: The Organization expenses advertising costs as incurred. Total advertising expense for the year ended December 31, 2022 totaled \$838,762 (\$456,139 – 2021).

Leases: In February 2016, the FASB issued ASC Topic 842, *Leases*, to increase transparency and comparability among organizations related to their leasing arrangements. The update requires lessees to recognize most leases on their statements of financial position as a right-of-use (ROU) asset representing the right to use an underlying asset and a lease liability representing the obligation to make lease payments over the lease term, measured on a discounted basis. Topic 842 also requires additional disclosure of key quantitative and qualitative information for leasing arrangements. Similar to the previous lease guidance, the update retains a distinction between finance leases (similar to capital leases in Topic 840, *Leases*) and operating leases, with classification affecting the pattern of expense recognition in the statements of activities and changes in net assets. The Organization adopted Topic 842 on January 1, 2022, using the optional transition method to the modified retrospective approach, which eliminates the requirement to restate the prior-period financial statements. Under this transition provision, the Organization has applied Topic 842 to reporting periods beginning on January 1, 2022, while prior periods continue to be reported and disclosed in accordance with the Organization's historical accounting treatment under ASC Topic 840, *Leases*.

The Organization elected the "package of practical expedients" under the transition guidance within Topic 842, in which the Organization does not reassess (1) the historical lease classification, (2) whether any existing contracts at transition are or contain leases, or (3) the initial direct costs for any existing leases. The Organization has not elected to adopt the "hindsight" practical expedient, and therefore will measure the ROU asset and lease liability using the remaining portion of the lease term upon adoption of ASC 842 on January 1, 2022.

The Organization determines if an arrangement is or contains a lease at inception, which is the date on which the terms of the contract are agreed to, and the agreement creates enforceable rights and obligations. A contract is or contains a lease when (i) explicitly or implicitly identified assets have been deployed in the contract and (ii) the Organization obtains substantially all of the economic benefits from the use of that underlying asset and directs how and for what purpose the asset is used during the term of the contract. The Organization also considers whether its service arrangements include the right to control the use of an asset.

The Organization made an accounting policy election under available Topic 842 not to recognize ROU assets and lease liabilities for leases with a term of 12 months or less. For all other leases, ROU assets and lease liabilities are measured based on the present value of future lease payments over the lease term at the commencement date of the lease (or January 1, 2022, for existing leases upon the adoption of Topic 842). The ROU assets also include any initial direct costs incurred and lease payments made at or before the commencement date and are reduced by any lease incentives. To determine the present value of lease payments, the Organization made an accounting policy election available to non-public companies to utilize a risk-free rate borrowing rate, which is aligned with the lease term at the lease commencement date (or remaining term for leases existing upon the adoption of Topic 842).

Future lease payments may include fixed rent escalation clauses or payments that depend on an index (such as the consumer price index), which is initially measured using the index or rate at lease commencement. Subsequent changes of an index and other periodic market-rate adjustments to base rent are recorded in variable lease expense in the period incurred. Residual value guarantees or payments for terminating the lease are included in the lease payments only when it is probable they will be incurred.

The Organization has made an accounting policy election to account for lease and non-lease components in its contracts as a single lease component for all asset classes. The non-lease components typically represent additional services transferred to the Organization such as common area maintenance for real estate, which are variable in nature and recorded in variable lease expense in the period incurred.

Adoption of Topic 842 resulted in the recording of both additional ROU assets and lease liabilities related to the Organization's operating leases of \$5,410,617 at January 1, 2022. The adoption of the new lease standard did not materially impact net assets or cash flows and did not result in a cumulative-effect adjustment to the beginning balance of net assets.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Excess (Deficit) of Revenues over Expenses: The consolidated statements of activities and changes in net assets include excess (deficit) of revenues over expenses, commonly referred to as the performance indicator. Changes in net assets without donor restrictions, which are excluded from excess (deficit) of revenues over expenses, consistent with industry practice, include net assets released from restrictions.

Reclassifications: Certain prior year amounts and disclosures have been reclassified to conform to the 2022 consolidated financial statement presentation. The reclassifications had no effect on excess (deficit) of revenues over expenses, net assets, or the change in net assets.

NOTE 2. LIQUIDITY AND AVAILABILITY

Financial assets available for general expenditure, that is, without donor or other restrictions limiting their use, within one year of December 31 are:

	<u>2022</u>	<u>2021</u>
Financial Assets:		
Cash	\$ 8,314,085	\$ 8,198,033
Patient fees receivable, net	1,870,360	2,401,893
Pharmacy receivables, net	4,226,411	4,086,695
Grant receivables, net	3,174,512	2,465,784
Other receivables	221,049	707,390
Investments	<u>10,336,299</u>	<u>11,369,438</u>
Financial assets available to meet general expenditures within one year	<u>\$ 28,142,746</u>	<u>\$ 29,229,233</u>

Included in investments are units of the Community Foundation investment pool held by the Organization which have restrictions on distribution requests. The Organization can make one aggregate distribution during any 12 month period of up to \$2,500,000 without advance notice. Any distribution requested by the Organization above this amount requires 60 days notice prior to the end of the calendar quarter. The Community Foundation will disburse 95% of the funds within 30 days following the quarter-end with the remaining 5% of funds distributed upon completion of the Community Foundation's annual audit.

The Organization also has an agreement with a financial institution that provides for borrowings on a revolving credit note in accordance with the borrowing base calculation as defined in the agreement, but not to exceed \$6,000,000, with interest at LIBOR plus 2.50%. See further details within Note 9.

NOTE 3. COVID-19 PANDEMIC

The Coronavirus Aid, Relief, and Economic Security (CARES) Act authorized \$100 billion in funding to healthcare providers to be distributed through the Public Health and Social Services Emergency Fund (Relief Funds). The CARES act also authorized the U.S. Small Business Administration (SBA) to temporarily guarantee loans under the Paycheck Protection Program (PPP). Loans under the PPP will be 100 percent guaranteed by the SBA, and the full principal amount of the loans may qualify for forgiveness. Payments from Relief Funds are intended to compensate healthcare providers for lost revenues and qualified expenses incurred in response to the COVID-19 pandemic and are not required to be repaid provided that the recipients attest to and comply with certain terms and conditions, including limitations on balance billing and not utilizing Relief Funds to reimburse expenses or losses that other sources are obligated to reimburse.

In 2020, the Organization received PPP loans in the amount of \$5,169,100. The loan is eligible to be forgiven if all the loan proceeds were used within the provisions of the CARES Act. During 2021, the Organization received full forgiveness of the loan and therefore recorded the loan forgiveness as nonoperating revenues in the accompanying consolidated statements of activities and changes in net assets.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 3. COVID-19 PANDEMIC (CONTINUED)

The Organization received Relief Funds under the CARES Act of \$1,437,492 as of December 31, 2021, all of which were recorded as miscellaneous public support and revenue in the consolidated statements of activities and changes in net assets. There were no Relief Funds received in 2022. The Organization believes it operated in compliance with program requirements, and the funds will not be required to be repaid.

The Organization was awarded \$500,000 as part of the American Rescue Plan Act during 2021. The Organization elected to be funded on a cost-reimbursement basis. The Organization has recognized \$146,067 in miscellaneous revenue in the consolidated statements of activities and changes in net assets for the year ending December 31, 2022 (\$344,817 – 2021). The Organization recorded \$4,498 within other receivables on the accompanying consolidated statements of financial position at December 31, 2022 (\$329,475 – 2021).

NOTE 4. FAIR VALUE MEASUREMENT

Assets and liabilities recorded at fair value in the consolidated statements of financial position are categorized based upon the level of judgment associated with the inputs used to measure their fair value. An asset or a liability's categorization within the fair value hierarchy is based on the lowest level of judgment input to its valuation. Hierarchical levels, defined by U.S. GAAP, are directly related to the amount of subjectivity associated with the inputs to fair valuation of these assets and liabilities as follows:

- Level I: Valuations based on quoted prices in active markets for identical assets or liabilities that the Organization has the ability to access. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment. Level I assets include cash and cash equivalents, as well as debt and equity securities that are traded in active exchange markets.
- Level II: Valuations based on quoted prices in active markets for similar assets or liabilities, quoted prices in markets that are not active or for which all significant inputs are observable, directly or indirectly. Level II assets include equity and fixed income managed funds with quoted prices that are traded less frequently than exchange-traded instruments whose value is determined using a pricing model with inputs that are observable in the market or can be derived principally from or corroborated by observable market data, investments in certain U.S. Treasury and other U.S. Governments and agencies that are highly liquid and are actively traded in over-the-counter markets, as well as interest rate swaps.
- Level III: Valuations based on inputs that are unobservable and significant to the overall fair value measurement. These are generally company-generated inputs and are not market based inputs. Level III assets would include financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques as well as instruments for which the determination of fair value requires significant investment management judgment or estimation as well as investments in units of the Community Foundation investment pool.

**EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.**

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 4. FAIR VALUE MEASUREMENT (CONTINUED)

The Organization's investments are measured at fair value on a recurring basis at December 31, 2022 and 2021 utilizing the following input levels:

At December 31, 2022	Cost	Level 1	Level 2	Level 3	Total
Investments:					
Cash and cash equivalents	\$ 806,383	\$ 806,383	\$ -	\$ -	\$ 806,383
Units of the Community					
Foundation investment pool	8,163,678	-	-	8,163,678	8,163,678
Mutual funds	4,005,563	3,722,649	-	-	3,722,649
Common stock	2,068,568	2,389,627	-	-	2,389,627
Structured notes	400,000	417,628	-	-	417,628
Corporate bonds	515,229	500,012	-	-	500,012
	<u>\$ 15,959,421</u>	<u>\$ 7,836,299</u>	<u>\$ -</u>	<u>\$ 8,163,678</u>	<u>\$ 15,999,977</u>
Interest rate swap asset	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 649,201</u>	<u>\$ -</u>	<u>\$ 649,201</u>

At December 31, 2021	Cost	Level 1	Level 2	Level 3	Total
Investments:					
Cash and cash equivalents	\$ 1,336,165	\$ 1,336,165	\$ -	\$ -	\$ 1,336,165
Units of the Community					
Foundation investment pool	9,337,100	-	-	9,337,100	9,337,100
Mutual funds	3,577,733	3,952,543	-	-	3,952,543
Common stock	1,404,508	2,204,701	-	-	2,204,701
Structured notes	300,000	389,448	-	-	389,448
Corporate bonds	987,359	986,581	-	-	986,581
	<u>\$ 16,942,865</u>	<u>\$ 8,869,438</u>	<u>\$ -</u>	<u>\$ 9,337,100</u>	<u>\$ 18,206,538</u>
Interest rate swap liability	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 544,934</u>	<u>\$ -</u>	<u>\$ 544,934</u>

The table below sets forth a summary of changes in the fair value of the Organization's Level 3 investments for the year ended December 31, 2022 and 2021:

	2022	2021
Beginning balance	\$ 9,337,100	\$ 6,139,897
Contributions	-	2,000,000
Interest/dividend income	77,268	62,646
Investment gains/losses	(1,218,000)	1,157,056
Fees	(32,690)	(22,499)
Ending balance	<u>\$ 8,163,678</u>	<u>\$ 9,337,100</u>

The following table represents the Organization's level 3 financial instruments, the valuation techniques used to measure the fair value of those financial instruments as of December 31, 2022 and 2021, and the significant unobservable inputs and the ranges of values for those inputs:

EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC., AND PRIDE CENTER OF WNY, INC.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 4. FAIR VALUE MEASUREMENT (CONTINUED)

<u>Instrument</u>	<u>Fair Value</u>	<u>Principal Valuation Techniques</u>	<u>Significant Unobservable Inputs</u>	<u>Range of Significant Input Values</u>
Units of the Community Foundation Investment Pool	\$8,163,678 – 2022 \$9,337,100 – 2021	Fair value based on the fair value of the underlying investments multiplied by the ownership percentage of the Organization.	Investment agreement with the Organization and underlying investments in the Community Foundation Investment Pool.	n/a

There are no unfunded commitments related to the investment in the units of the Community Foundation investment pool. See Note 2 for details regarding the liquidity of the investment.

Net investment (loss) gain, including interest earned on cash and cash equivalents, consist of the following for the years ended December 31 :

	<u>2022</u>	<u>2021</u>
Interest and dividend income	\$ 255,652	\$ 172,896
Realized gain	71,225	314,817
Unrealized (loss) gain	<u>(2,537,505)</u>	<u>1,663,487</u>
Total net investment (loss) gain	\$ <u>(2,210,628)</u>	\$ <u>2,151,200</u>

NOTE 5. BENEFICIAL INTEREST IN ASSETS HELD BY COMMUNITY FOUNDATION

In March 2018, the Organization transferred assets to the Community Foundation for Greater Buffalo. The assets held at the Community Foundation for Greater Buffalo are invested under the following conditions:

- (1) Assets transferred to the Community Foundation for Greater Buffalo are for investment purposes only and may be withdrawn at any time without penalty, but are subject to certain notification restrictions on large disbursements exceeding the normal spending policy;
- (2) The Community Foundation for Greater Buffalo has exclusive control over the investment, reinvestment, and management of assets comprising the Fund and the Fund will be administered under the Community Foundation for Greater Buffalo's guidelines and policies, as amended from time to time; and
- (3) Additional contributions in any amount may be added to the Organization's Funds at any time.

**EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.**

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 6. LAND, BUILDINGS, AND EQUIPMENT

Land, buildings and equipment consist of the following as of December 31:

	<u>2022</u>	<u>2021</u>
Land	\$ 368,900	\$ 368,900
Buildings and improvements	28,407,664	28,058,174
Furniture and equipment	7,265,314	6,977,630
Vehicles	149,650	110,464
	<u>36,191,528</u>	<u>35,515,168</u>
Less: accumulated depreciation	(11,626,825)	(9,952,362)
	<u>24,564,703</u>	<u>25,562,806</u>
Construction in process	913,264	186,078
	<u>\$ 25,477,967</u>	<u>\$ 25,748,884</u>

NOTE 7. LEASES

The Organization leases buildings and equipment under operating lease agreements that have initial terms ranging from 1 to 10 years. Some leases include one or more options to renew, generally at the Organization's sole discretion, with renewal terms that can extend the lease term up to 5 years. These options to extend a lease are included in the lease terms when it is reasonably certain that the Organization will exercise that option. The Organization's operating leases generally do not contain any material restrictive covenants or residual value guarantees.

Operating lease cost is recognized on a straight-line basis over the lease term. The components of lease expense are as follows for the year ended December 31, 2022:

Operating lease cost	\$ 811,466
Variable lease cost	<u>146,345</u>
Total lease cost	<u>\$ 957,811</u>

Total rent expense for operating leases was approximately \$460,000 for the year ended December 31, 2021.

Supplemental cash flow information related to leases is as follows for the year ended December 31, 2022:

Cash paid for amounts included in measurement of lease liabilities:

Operating cash flows from operating leases \$ 746,188

Right-of-use assets obtained in exchange for new lease obligations:

Operating leases \$ 1,058,495

Average lease terms and discount rates as of December 31, 2022 are as follows:

Weighted-average remaining lease term:

Operating leases 9.72 years

Weighted-average discount rate:

Operating leases 1.71%

**EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.**

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 7. LEASES (CONTINUED)

The aggregate future lease payments for the Organization's operating leases as of December 31, 2022 were as follows:

2023	\$ 813,274
2024	825,074
2025	720,392
2026	626,431
2027	633,976
Thereafter	<u>2,715,549</u>
Total lease payments	\$ <u>6,334,696</u>
Less imputed interest	<u>(514,429)</u>
Present value of lease liabilities	\$ <u>5,820,267</u>

Future minimum lease commitments, as determined under Topic 840, for all non-cancellable operating leases are approximately as follows as of December 31, 2021:

2022	\$ 540,000
2023	344,000
2024	276,000
2025	216,000
2026	220,000
Thereafter	<u>1,108,000</u>
Total minimum lease payments	\$ <u>2,704,000</u>

NOTE 8. LONG-TERM DEBT

The Organization is a party to a series of transactions entered into during June 2018 to finance the construction, renovation and expansion of certain property and equipment ("the Project"). By consummating these transactions, the Organization will be able to garner the benefit of certain New Market Tax Credit (NMTC) enhanced financing to partially fund the construction of the Project. The NMTC program was established pursuant to federal legislation in the year 2000 and is administered through the CDFI Fund of the United States Department of the Treasury. The purpose of the NMTC program is to provide an incentive for businesses to invest in projects being built or operated in low income communities. To be considered eligible, various criteria must be met pertaining to the Project, as well as to the participating entity.

Under the program, participating NMTC investors will receive a maximum 39% tax credit over a period of seven years on qualified equity investments made in the construction of the Project.

The funding of the Project was made by two leveraged loans totaling \$4,597,600 from the Organization, a related party, and a NMTC contribution of \$2,402,400 from PNC New Markets Investor Partners, LLC (PNC). These funds were sent to Evergreen Health Investment Fund, LLC (the Investment Fund), which is 100% owned by PNC. The Investment Fund then made qualifying equity contributions into Primary Care Development Company Health Opportunities, Fund XXI, LLC, a sub Community Development Entity (Sub-CDE) which in turn loaned those funds as qualified low-income community investments to the Organization to fund the construction of the Project.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 8. LONG-TERM DEBT (CONTINUED)

The NMTC program requires the financing structure to remain in place for a period of not less than seven years from the date in which the NMTC investment funds make the qualified equity investment into the Sub-CDE (the "Compliance Period"). During the Compliance Period, the Organization makes interest-only payments (1%) on the loans from the Sub-CDE. At the conclusion of the Compliance Period, PNC has a 'Put Option' associated with its ownership of the Investment Fund whereby it will be entitled to require the Organization to purchase its membership interest in the Investment Fund for \$1,000 plus the costs of taxes and closing costs. If PNC does not exercise their Put Option, the Organization may exercise a 'Call Option' to purchase PNC's membership interests in the Investment Fund for a price equal to the fair value of the interests. Exercise of either the Put Option or Call Option will effectively transfer ownership of the Investment Fund to the Organization, which will allow the Organization to cancel the loans between the Investment Funds and the Foundation.

Long-term debt consists of the following at December 31:

	<u>2022</u>	<u>2021</u>
The Organization modified a promissory note with a bank in 2019 with monthly principal installments that range from \$21,709 to \$45,114 through September 1, 2034 when the remaining principal balance is due. Outstanding borrowings bear interest equal to the SOFR rate in effect plus 1.85% (6.15% – December 31, 2022). The promissory note is secured by land and building, an assignment of leases and rents and all Organization assets. (A)	\$ 6,695,874	\$ 7,034,265
Promissory note payable with quarterly principal payments of \$57,347 commencing March 2026 through December 2052 when the remaining principal is due. Outstanding borrowings bear an interest at a fixed interest rate of 1.20%. This promissory note is related to the NMTC.	6,193,520	6,193,520
The Organization modified a second promissory note with a bank in 2019 with installments that range from \$7,583 to \$11,009 through September 1, 2029, when the remaining principal balance is due. Outstanding borrowings bear interest equal to the SOFR rate in effect plus 1.85% (6.15% – December 31, 2022). The promissory note is secured by land and building, an assignment of leases and rents and all Organization assets. (A)	786,664	886,566
Promissory note payable with quarterly principal payments of \$5,523 commencing March 2026 through December 2052 when the remaining principal is due. Outstanding borrowings bear an interest at a fixed interest rate of 1.20%. This promissory note is related to the NMTC.	<u>596,480</u>	<u>596,480</u>
Total long-term debt	14,272,538	14,710,831
Less: unamortized deferred financing costs	<u>423,032</u>	<u>452,557</u>
	13,849,506	14,258,274
Less: current portion, net	<u>421,817</u>	<u>403,500</u>
	<u>\$ 13,427,689</u>	<u>\$ 13,854,774</u>

(A) The agreements contain certain restrictive covenants, which among other things require the maintenance of certain financial ratios. During the year ended December 31, 2022 the Organization was in compliance with these covenants.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 8. LONG-TERM DEBT (CONTINUED)

The aggregate maturities of the long-term debt in the years subsequent to 2022 are as follows:

	<u>Gross</u>	<u>Deferred Financing Costs</u>	<u>Net</u>
2023	\$ 451,343	\$ 29,526	\$ 421,817
2024	470,434	29,526	440,908
2025	490,332	29,526	460,806
2026	699,683	25,120	674,563
2027	721,301	11,897	709,404
Thereafter	<u>11,439,445</u>	<u>297,437</u>	<u>11,142,008</u>
	<u>\$ 14,272,538</u>	<u>\$ 423,032</u>	<u>\$ 13,849,506</u>

NOTE 9. REVOLVING CREDIT NOTE

The Organization has an agreement with a financial institution that provides for borrowings on a revolving credit note in accordance with the borrowing base calculation as defined in the agreement, but not to exceed \$6,000,000, with interest at the one-month LIBOR plus 2.50%. The revolving credit note is secured by substantially all of the assets of the Organization. The revolving credit facility interest rate was 6.89% for the year ended December 31, 2022. There was no amount outstanding under this agreement as of December 31, 2022 and 2021.

NOTE 10. INTEREST RATE SWAPS

Under the terms of the credit agreement (see Note 8), the Organization uses interest rate swap derivatives to add stability to interest expense and to manage exposure to interest rate movements. The Organization uses the interest rate swap agreements to convert its promissory notes payable from variable rate debt to fixed rate debt. Under the terms of the agreements, the Organization pays fixed rates of 4.37% and receives a variable payment equal to the one-month LIBOR plus 2% (6.39% at December 31, 2022), applied to the notional amount of the swap.

The Organization designated these interest rate swaps agreements as cash flow hedges as they involve the receipt of variable rate amounts from a counterparty in exchange for making fixed-rate payments over the life of the agreements, without exchange of the underlying notional amount.

During the year of each interest rate swap agreement, the Organization recognizes the swap agreements at their fair value as an asset or liability on the balance sheet. At December 31, 2022, the fair value of the swaps resulted in the recording of an asset in the amount of \$649,201 (\$544,934 liability - 2021) in the accompanying balance sheets.

The effective portion of the change in the fair value of the interest rate swap agreements are recorded in nonoperating revenues in the accompanying consolidated statements of activities and changes in net assets. Amounts reported in nonoperating revenues will be reclassified to interest expense as the related interest payments are made on the Organization's variable rate debt.

**EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.**

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 10. INTEREST RATE SWAPS (CONTINUED)

The following table presents the effect of interest rate swap agreements on the consolidated statements of activities and changes in net assets:

Liability, at 1/1/2021	\$ (1,038,436)
Effective portion of gains recognized in nonoperating revenues	341,027
Effective portion of gains recorded in accumulated nonoperating revenues and reclassified into interest expense.	<u>152,475</u>
Liability, at 12/31/2021	\$ <u>(544,934)</u>
Effective portion of gains recognized in nonoperating revenues	1,119,806
Effective portion of gains recorded in accumulated nonoperating revenues and reclassified into interest expense.	<u>74,329</u>
Asset, at 12/31/2022	\$ <u>649,201</u>

These interest rate swaps expire on September 1, 2029 and September 1, 2034 respectively, and are the only derivatives outstanding as of December 31, 2022 and 2021.

NOTE 11. RELATED ENTITIES

The Organization has a 100% ownership interest in a general partner and a 50% ownership interest in another general partner of Evergreen Lofts Supportive Residence, L. P. (Evergreen Lofts). The general partners each have a .005% interest in Evergreen Lofts.

NOTE 12. RETIREMENT PLANS

The Organization has a 403(b) defined contribution retirement plan covering substantially all employees. The Organization contributes a percentage of covered employees' salaries to the plan, subject to certain limitations. In addition, the Organization has a 457(b) defined contribution retirement plan covering certain executive team employees. The Organization contributes a discretionary amount to the plan, subject to certain limitations. Retirement plan expense under these plans amounted to approximately \$1,053,000 for the year ended December 31, 2022 (\$970,000 – 2021).

NOTE 13. COMMITMENT AND CONTINGENCIES

Litigation: From time to time, the Organization may be subject to legal proceedings arising out of the ordinary course of business. Although management cannot predict the outcome of such proceedings, management does not consider such proceedings to result in a material adverse effect on its financial position or its results of operations or its cash flows.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 14. SUBSEQUENT EVENTS

Effective April 1, 2023, all Medicaid recipients (including those enrolled in managed care plans) were moved to a new state-run pharmacy benefit plan called NYRx. As a result, the Organization will no longer benefit from 340b pharmaceutical program income on its Medicaid patient population. The Organization is evaluating how this regulation will impact the Organization's operations and cash flows.

The Organization evaluated its December 31, 2022 consolidated financial statements for subsequent events through May 31, 2023, which is the date the consolidated financial statements were available to be issued.

EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.

CONSOLIDATING STATEMENTS OF FINANCIAL POSITION
December 31, 2022 (with comparative totals as of December 31, 2021)

	EHS, Inc.	Evergreen Foundation of WNY, Inc.	Pride Center of WNY, Inc.	Community Access Services of WNY, Inc.	Eliminations	2022 Consolidated	2021 Consolidated
ASSETS							
Current assets:							
Cash	\$ 7,816,724	\$ 339,075	\$ 24,784	\$ 26,995	\$ 106,507	\$ 8,314,085	\$ 8,198,033
Cash held in escrow	-	95,265	-	-	-	95,265	132,980
Patient fees receivable, net	1,870,360	-	-	-	-	1,870,360	2,401,893
Pharmacy receivables, net	4,226,411	-	-	-	-	4,226,411	4,086,695
Grant receivables, net	2,673,749	30,000	215,200	387,710	(132,147)	3,174,512	2,465,784
Other receivables	221,049	-	-	-	-	221,049	707,390
Prepaid expenses	1,369,430	-	-	-	-	1,369,430	1,147,885
Due from related entities	1,845,996	-	-	-	(1,766,075)	79,921	35,921
Pharmacy inventory	844,746	-	-	-	-	844,746	589,071
Total current assets	20,768,647	484,801	239,984	414,705	(1,791,715)	20,116,422	19,786,113
Investments	15,999,977	-	-	-	-	15,999,977	18,206,538
Deposits	-	20,461	-	-	-	20,461	20,461
Interest rate swaps asset	-	649,201	-	-	-	649,201	-
Note receivable	4,597,600	-	-	-	-	4,597,600	4,597,600
Interest in net assets of HHPWNY, LLC	-	-	-	-	-	-	507,944
Land, buildings and equipment, net	7,140,570	18,262,120	55,435	19,842	-	25,477,967	25,748,884
Operating lease right-of-use assets	4,833,970	497,561	435,262	-	-	5,766,793	-
Total assets	\$ 53,340,764	\$ 19,893,683	\$ 730,681	\$ 434,547	\$ (1,791,715)	\$ 72,607,960	\$ 68,847,079
LIABILITIES AND NET ASSETS							
Current liabilities:							
Accounts payable	\$ 2,564,864	\$ 33,123	\$ 339	\$ 20	\$ -	\$ 2,598,346	\$ 2,743,028
Accrued expenses	3,716,034	20,098	16,105	35,162	-	3,787,399	3,668,558
Current portion of long-term debt, net	-	421,817	-	-	-	421,817	403,500
Current portion of operating lease liabilities	465,624	198,579	56,103	-	-	720,306	-
Refundable advances	442,404	-	-	-	-	442,404	370,860
Deferred revenue	48,190	3,529	90,000	-	(90,000)	51,719	62,425
Due to related entities	-	1,343,080	15,446	407,549	(1,766,075)	-	-
Total current liabilities	7,237,116	2,020,226	177,993	442,731	(1,856,075)	8,021,991	7,248,371
Long-term debt, net	-	13,427,689	-	-	-	13,427,689	13,854,774
Long-term portion of operating lease liabilities, net	4,414,578	301,766	383,617	-	-	5,099,961	-
Interest rate swaps liability	-	-	-	-	-	-	544,934
Due to third parties	800,000	-	-	-	-	800,000	1,224,288
Total liabilities	12,451,694	15,749,681	561,610	442,731	(1,856,075)	27,349,641	22,872,367
Net assets:							
Without donor restrictions	40,988,888	4,138,196	169,071	(8,184)	64,360	45,352,331	45,944,124
With donor restrictions	-	5,806	-	-	-	5,806	30,588
Total net assets	40,988,888	4,144,002	169,071	(8,184)	64,360	45,358,137	45,974,712
Total liabilities and net assets	\$ 53,440,582	\$ 19,893,683	\$ 730,681	\$ 434,547	\$ (1,791,715)	\$ 72,707,778	\$ 68,847,079

EHS, INC., EVERGREEN FOUNDATION OF WNY, INC., COMMUNITY ACCESS SERVICES OF WNY, INC.,
AND PRIDE CENTER OF WNY, INC.

CONSOLIDATING STATEMENTS OF ACTIVITIES AND CHANGES IN NET ASSETS
Year Ended December 31, 2022 (with comparative totals for the year ended December 31, 2021)

	EHS, Inc.	Evergreen Foundation of WNY, Inc.	Pride Center of WNY, Inc.	Community Access Services of WNY, Inc.	Eliminations	2022 Consolidated	2021 Consolidated
Public support and revenue:							
Pharmacy	\$ 79,557,378	\$ -	\$ -	\$ -	\$ -	\$ 79,557,378	\$ 73,883,171
Program service fees	15,899,967	-	-	-	-	15,899,967	10,468,850
Grants	9,433,838	-	660,610	1,216,509	(184,631)	11,126,326	9,261,160
Miscellaneous	785,908	-	20,337	-	-	806,245	3,658,529
Special events	-	442,551	-	-	(254,222)	188,329	313,581
Contributions	-	-	64,187	60,873	(53,500)	71,560	65,966
Interest	54,882	35	-	-	-	54,917	52,446
Rental income	-	1,402,315	-	-	(1,348,172)	54,143	52,904
Total public support and revenue	105,731,973	1,844,901	745,134	1,277,382	(1,840,525)	107,758,865	97,756,607
Operating expenses:							
Pharmacy	54,884,829	-	-	-	-	54,884,829	47,353,674
Management and general	15,594,901	100,530	-	-	(1,642,394)	14,053,037	12,129,437
Medical services	13,902,936	-	-	-	-	13,902,936	9,941,800
Grants	9,106,699	-	-	-	(262,491)	8,844,208	7,755,806
Care coordination	5,379,637	-	-	-	-	5,379,637	5,324,563
Behavioral Health	4,969,344	-	-	-	-	4,969,344	3,905,968
Foundation property	-	1,665,147	-	-	-	1,665,147	1,634,399
Community Access Services	-	-	-	1,216,255	-	1,216,255	1,148,640
Supportive services	948,425	-	-	-	-	948,425	970,034
Pride Center Services	-	-	759,570	-	-	759,570	539,104
Foundation events	-	706,136	-	-	-	706,136	483,124
Total operating expenses	104,786,771	2,471,813	759,570	1,216,255	(1,904,885)	107,329,524	91,186,549
Excess (deficit) of revenues over expenses from operations	945,202	(626,912)	(14,436)	61,127	64,360	429,341	6,570,058
Nonoperating (expenses) revenues:							
Forgiveness of long-term debt	-	-	-	-	-	-	5,169,100
Investment (loss) gain	(2,210,628)	-	-	-	-	(2,210,628)	2,151,200
Unrealized gain on interest rate swaps	-	1,194,135	-	-	-	1,194,135	493,502
Net (loss) income from equity investments	(94,673)	-	-	-	-	(94,673)	31,702
Total nonoperating (expenses) revenues	(2,305,301)	1,194,135	-	-	-	(1,111,166)	7,845,504
(Deficit) excess of revenues over expenses	(1,360,099)	567,223	(14,436)	61,127	64,360	(681,825)	14,415,562
Net assets without donor restrictions:							
(Deficit) excess of revenues over expenses	(1,360,099)	567,223	(14,436)	61,127	64,360	(681,825)	14,415,562
Net assets released from restrictions	-	90,032	-	-	-	90,032	-
(Decrease) increase in net assets without donor restrictions	(1,360,099)	657,255	(14,436)	61,127	64,360	(591,793)	14,415,562
Net assets with donor restrictions:							
Contributions with donor restrictions	-	65,250	-	-	-	65,250	30,588
Net assets released from restrictions	-	(90,032)	-	-	-	(90,032)	-
(Decrease) increase in net assets with donor restrictions	-	(24,782)	-	-	-	(24,782)	30,588
(Decrease) increase in net assets	(1,360,099)	632,473	(14,436)	61,127	64,360	(616,575)	14,446,150
Net assets (deficiency) - beginning of year	42,348,987	3,511,529	183,507	(69,311)	-	45,974,712	31,528,562
Net assets (deficiency) - end of year	\$ 40,988,888	\$ 4,144,002	\$ 169,071	\$ (8,184)	\$ 64,360	\$ 45,358,137	\$ 45,974,712

Finance Report

Combined Balance Sheet

EHS, Inc. / Foundation / CAS / Pride

Assets	September 30, 2023	September 30, 2022	Change
Current Assets			
Cash	13,476,565	\$ 9,353,918	\$ 4,122,647
Pride Week Reserve	155,159	155,159	-
PCDC Reserve fund	74,882	104,007	(29,125)
Accounts Receivables	7,987,174	10,753,262	(2,766,088)
Prepaid Expenses	755,026	584,899	170,127
Pharmacy Inventory	784,074	713,005	71,069
Total Current Assets:	23,232,880	21,664,250	1,568,630
Long-term assets			
Investment Reserve	14,135,657	15,472,648	(1,336,991)
Interest in SNAPCAP	32,000	32,000	-
NMTC - Note Receivable (Foundation)	-	-	-
Other Assets	728,546	617,285	111,261
Due to / Due from Intercompany	3,135,147	2,874,776	260,371
Total Long-term Assets:	18,031,350	18,996,709	(965,359)
Fixed Assets	32,493,582	26,148,941	6,344,641
Total Assets:	\$ 73,757,812	\$ 66,809,900	6,947,912
Liabilities			
Current Liabilities			
Accounts payables	2,604,990	\$ 2,693,142	\$ (88,152)
Accrued payroll and vacation	1,930,760	1,989,231	(58,471)
Third-Party Liabilities	800,000	1,224,288	(424,288)
Other Liabilities	639,164	491,903	147,261
Deferred income	839,146	618,800	220,346
Total Current Liabilities:	6,814,060	7,017,364	(203,304)
Long-Term Liabilities			
Due to / Due from Intercompany	3,135,147	2,874,776	260,371
Lease Liability	5,820,267	-	5,820,267
NMTC liability	2,139,900	2,139,900	-
Mortgage payable	6,497,432	8,139,038	(1,641,606)
Total Long-Term Liabilities:	17,592,746	13,153,714	4,439,032
Total Liabilities:	24,406,806	20,171,078	4,235,728
Net Assets	49,351,006	46,638,822	
Total Liabilities & Net Assets:	\$ 73,757,812	\$ 66,809,900	



Report prepared as of

Income Statements

EHS, Inc. / Foundation
For the quarter ending

	September 30, 2023 - YTD											
	EHS, Inc.									Foundation		
	Admin	Pharmacy	Grants	Care Coord	Medical	Behavioral Health	Supportive Services	CAS & Pride	Total	Rent	Fundraising	Total
REVENUE												
Revenue	\$ -	\$ 66,660,954	\$ 7,609,199	\$ 2,951,824	\$ 6,870,178	\$ 2,911,265	\$ 24,138	\$ 1,391,816	\$ 88,419,374	\$ 1,084,469	\$ 667,597	\$ 1,752,066
Drug costs	-	(39,898,384)	-	-	-	-	-	-	(39,898,384)	-	-	-
Miscellaneous	1,306,826	-	-	-	-	-	-	-	1,306,826	-	-	-
	1,306,826	26,762,570	7,609,199	2,951,824	6,870,178	2,911,265	24,138	1,391,816	49,827,816	1,084,469	667,597	1,752,066
EXPENSES												
Personnel	5,844,232	1,816,797	4,107,609	2,561,230	5,298,780	2,081,583	246,166	868,524	22,824,921	-	148,014	148,014
Non-Personnel	4,881,235	1,978,344	4,196,262	1,433,571	4,612,297	1,129,939	205,767	659,771	19,097,186	459,312	619,119	1,078,431
Capital Improvements	3,326,625	-	-	-	-	-	-	-	3,326,625	-	-	-
	14,052,092	3,795,141	8,303,871	3,994,801	9,911,077	3,211,522	451,933	1,528,295	45,248,732	459,312	767,133	1,226,445
NET INCOME / (LOSS)	\$ (12,745,266)	\$ 22,967,429	\$ (694,672)	\$ (1,042,977)	\$ (3,040,899)	\$ (300,257)	\$ (427,795)	\$ (136,479)	\$ 4,579,084	\$ 625,157	\$ (99,536)	\$ 525,621

	September 30, 2022 - YTD											
	EHS, Inc.									Foundation		
	Admin	Pharmacy	Grants	Care Coord	Medical	Behavioral Health	Supportive Services	CAS & Pride	Total	Rent	Fundraising	Total
REVENUE												
Revenue	\$ -	\$ 60,665,249	\$ 6,576,167	\$ 3,575,478	\$ 5,342,159	\$ 2,414,484	\$ 10,111	\$ 1,501,440	\$ 80,085,088	\$ 1,050,338	\$ 407,090	\$ 1,457,428
Drug costs	-	(36,988,033)	-	-	-	-	-	-	(36,988,033)	-	-	-
Miscellaneous	(2,587,289)	-	-	-	-	-	-	-	(2,587,289)	-	-	-
	(2,587,289)	23,677,216	6,576,167	3,575,478	5,342,159	2,414,484	10,111	1,501,440	40,509,766	1,050,338	407,090	1,457,428
EXPENSES												
Personnel	5,871,707	1,699,927	3,680,888	2,644,776	4,931,716	1,968,476	305,527	976,263	22,079,280	-	253,375	253,375
Non-Personnel	4,719,692	1,724,980	3,436,566	1,323,707	4,552,589	1,068,539	256,224	519,004	17,601,301	462,413	576,188	1,038,601
Capital Improvements	402,847	-	-	-	-	-	-	-	402,847	-	-	-
	10,994,246	3,424,907	7,117,454	3,968,483	9,484,305	3,037,015	561,751	1,495,267	40,083,428	462,413	829,563	1,291,976
NET INCOME / (LOSS)	\$ (13,581,535)	\$ 20,252,309	\$ (541,287)	\$ (393,005)	\$ (4,142,146)	\$ (622,531)	\$ (551,640)	\$ 6,173	\$ 426,338	\$ 587,925	\$ (422,473)	\$ 165,452

Brownfield Cleanup Application
Bailey & Kensington Site

EXHIBIT 6

From: [April Tompkins](#)
To: [Christopher Boron](#)
Subject: RE: Document Repository Request - Bailey & Kensington Site
Date: Tuesday, October 17, 2023 10:06:59 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[Document Repository Request.pdf](#)

This message originated outside your organization. Please use caution!

Good morning Chris,

Per your request, this is to inform you that the Buffalo and Erie County Public Library will be the repository for all documents (and updates) submitted by your company for the Brownfield Cleanup Program at the **Bailey & Kensington Site**. These documents will be made available for public viewing at the **LeRoy R Coles Branch** and/or any other library of your choice. Please refer to our procedure below.

We prefer that you do not take and/or send documents to individual libraries. Please bring or send your documents and [cover letter](#) to the Central Library. We will process according to our procedure and distribute to the location(s) of your choice. **If you would like a confirmation that your documents were received, you will need to include the request in your cover letter and provide an email address.**

Please keep the following in mind:

- Documents (including updates) for public viewing should be either brought in person (to my attention) to the Central Library's administrative reception desk located on the second floor or sent via mail carrier. Documents that are 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 are made available usually within three business days after receipt, excluding weekends and holidays. Documents for the Central/Downtown library are located on the first floor in the Information Services Department.
- If you would like the documents distributed at **libraries other than Central**, you will need to send or give us the appropriate quantity of copies with labels or a list regarding their destination(s). We will distribution accordingly. We do not make copies for distribution.
- Documents that cannot be stapled, should be kept together in some type of binder. Please do

not send 'loose' papers, especially if including a cd or flash drive.

- You have the choice regarding the format (hard copy print and/or disk or flash drive) you wish to submit. If submitting in more than one format (ex: print and disk), please be sure that they are titled/labeled accordingly. **If cd's or flash drives are included, please secure to the corresponding printed document(s) to prevent it from getting lost or separated.** Although CD-ROMs cannot be used on public library computers, patrons may bring in their personal laptop to view the disk in-house. Public computers do have USB ports. If optional, an alternative is the availability to go online using a provided link for patrons to read/print. Patrons are not allowed to take original repository documents out of the Library.

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

Regards,
April

April Tompkins, Sr. Library Clerk
Office of Chief Operating Officer
Buffalo and Erie County Public Library
1 Lafayette Square | Buffalo, NY 14203
Voice: 716-858-7129 | Fax: 716-845-9053
E-mail: tompkinsa@buffalolib.org

From: Christopher Boron <cboron@rouxinc.com>
Sent: Monday, October 16, 2023 5:06 PM
To: April Tompkins <tompkinsa@buffalolib.org>
Subject: Document Repository Request - Bailey & Kensington Site

CAUTION: This email originated from outside of the Library. Attachment and links **may not be safe!**

Hello Ms. Tompkins:

The attached letter is requesting the Buffalo and Erie County Library (LeRoy R Coles Branch, 1187 Delevan Avenue), act as the document repository for the Bailey & Kensington Site.
Please let me know if have any questions.

Regards,
Chris

Christopher Boron | Principal Geologist
2558 Hamburg Turnpike, Suite 300, Buffalo, NY 14218
Main: 716-856-0599 | Cell: 716-864-2726
Email: cboron@rouxinc.com | Website: www.rouxinc.com



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October 16, 2023

Ms. April Tompkins
Buffalo & Erie County Public Library
1 Lafayette Square
Buffalo, NY 14203

Re: Document Repository for Brownfield Cleanup Program
Bailey & Kensington Site
3074 Bailey Avenue, 1096, 1098, 1102 Kensington Avenue
Buffalo, New York 14215

Dear Ms. Tompkins:

On behalf of our client, Roux Environmental Engineering & Geology, D.P.C. would like to request the Buffalo & Erie County Public Library (LeRoy R Coles Branch, 1187 Delevan Avenue) 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 at the LeRoy R Coles Branch.

Sincerely,

ROUX ENVIRONMENTAL ENGINEERING AND GEOLOGY, D.P.C.



Christopher Boron
Principal Geologist