

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director
625 Broadway, 12th Floor, Albany, New York 12233-7011
P: (518) 402-9706 | F: (518) 402-9020
www.dec.ny.gov

December 28, 2022

DLV Properties, LLC
Attn: Tom Celik
9829 Main Street
Clarence, NY 14031
tom@visoneco.com

Re: Certificate of Completion
624 River Road Site
North Tonawanda (C), Niagara County
Site No. C932176

Dear Tom Celik:

Congratulations on having satisfactorily completed the remedial program at the 624 River Road Site. Enclosed please find an original, signed Certificate of Completion (COC). The New York State Department of Environmental Conservation (Department) is pleased to inform you that the Final Engineering Report is hereby approved, allowing the COC to be issued for the above-referenced site.

Please note that you are required to perform the following tasks:

- If you are the site owner, you must record the Notice of Certificate of Completion in the recording office for the county (or counties) where any portion of the site is located within 30 days of issuance of the COC; or if you are a prospective purchaser of the site, you must record the Notice within 30 days of the date that you acquire the site. If you are a non-owner, you must work with the owner to assure the Notice is recorded within the time frame specified. A standard Notice of Certificate of Completion form is attached to this letter.
- Provide electronic copies of the recorded Notice and proof of recording to the Department's project manager. Please return the hard copy of the proof of recording to:

Andrew Zwack, Bureau E
New York State Department of Environmental Conservation
Division of Environmental Remediation
700 Delaware Avenue
Buffalo, NY 14209



- Provide the Notice of Certificate of Completion to the Document Repositories within 10 days of issuance of the COC. The Department will develop a fact sheet announcing the issuance of the COC and describing the institutional and engineering controls (IC/ECs), if any, that are required at the site and distribute it to the County Listserv within 10 days;
- Implement the Department-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program; and you must report the results of these activities to the Department in a Periodic Review Report (PRR) which also includes any required IC/EC Certifications. The site IC/ECs are identified on the attached Site Management Form. The first PRR including the certification of the IC/ECs is due to the Department in April 2024.

If you have any questions, please do not hesitate to contact Andrew Zwack, the Department's project manager, at (716) 851-7220.

Sincerely,

Andrew Guglielmi

Andrew Guglielmi
Division Director
Division of Environmental Remediation

Enclosure

ec w/ enclosure:

Jason Brydges, BE3 Corp, jbrydges@be3corp.com
Jeffrey Stravino, Hodgson Russ LLP, JStravin@hodgsonruss.com
C. Vooris – NYSDOH, christine.vooris@health.ny.gov
Charlotte Bethoney – NYSDOH, charlotte.bethoney@health.ny.gov
Michael Tucholski – NYSDOH, daniel.tucholski@health.ny.gov
Matt Gokey, matthew.gokey@tax.ny.gov
Paul Takac, paul.takac@tax.ny.gov

ec w/o enc.:

Andrew Zwack – NYSDEC, R9
Benjamin McPherson - NYSDEC, R9
Andrew Caprio - NYSDEC, R9
Michael Cruden - NYSDEC
Kieran McCarthy – NYSDEC
Michael Murphy – NYSDEC
Kelly Lewandowski - NYSDEC

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)
CERTIFICATE OF COMPLETION

CERTIFICATE HOLDER(S):

Name

DLV Properties, LLC

Address

9829 Main Street, Clarence, NY 14031

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 1/3/20 **Agreement Execution:** 1/13/20

Agreement Index No.: C932176-01-20

Application Amendment Approval: 12/30/20

Agreement Amendment Execution: 1/11/21

Application Amendment Approval: 9/27/22

Agreement Amendment Execution: 10/10/22

SITE INFORMATION:

Site No.: C932176 **Site Name:** 624 River Road

Site Owner: DLV Properties, LLC

Street Address: 622 & 624 River Road

Municipality: North Tonawanda **County:** Niagara **DEC Region:** 9

Site Size: 4.863 Acres

Tax Map Identification Number(s): p/o 181.16-1-21.111, 181.16-1-21.112

Percentage of site located in an EnZone: 0 - 49 %

A description of the property subject to this Certificate is attached as Exhibit A and a site survey is attached as Exhibit B.

CERTIFICATE ISSUANCE

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the Final Engineering Report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the site, that the applicable remediation requirements set forth in the ECL have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

Allowable Uses under the BCP: Restricted-Residential, Commercial, and Industrial

Cleanup Track: Track 4: Restricted use with site-specific soil cleanup objectives

Tax Credit Provisions:

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 28%.

Tangible Property Credit is 10%. Comprised of 10% Base.

Dependent upon the project being developed in a manner consistent with the approved Brownfield Cleanup Program application, additional rate increases may be available if the site is developed as affordable housing (5%), if the Certificate Holder receives a separate Determination of Conformance with the BOA from the Secretary of State (5%), or if the site is used primarily for manufacturing activities (5%) not to exceed a maximum 24%.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls which are contained in the approved Site Management Plan and an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Niagara County as Instrument No. 2022-22424.

LIABILITY LIMITATION

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the site and to a person who develops or otherwise occupies the site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

CERTIFICATE TRANSFERABILITY

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the site as provided by ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

CERTIFICATE MODIFICATION/REVOCATION

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

- (1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;
- (2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;
- (3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;
- (4) there is good cause for such modification or revocation;
- (5) either the Applicant or the Applicant's successors or assigns failed to manage the controls or monitoring in full compliance with the terms of the remedial program;
- (6) the terms and conditions of the environmental easement have been intentionally violated or found to be not protective or enforceable.

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing is not received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Basil Seggos
Commissioner
New York State Department of Environmental Conservation

By: Andrew Guglielmi Date: 12/28/2022

Andrew O. Guglielmi, Director
Division of Environmental Remediation

Exhibit A
Site Description

SCHEDULE "A" PROPERTY DESCRIPTION

All that Tract or Parcel of Land, situate in the City of North Tonawanda, County of Niagara and State of New York, being part of Lots 75 & 76 Mile Reserve and lands under water of the Niagara River and being bounded and described as follows:

Beginning at a point in the west line of River Road distant 1087.74 feet southerly from the south line of lands conveyed to John Carr by deed recorded in Liber 115 of Deeds at Page 226 and the northeast corner of lands conveyed to Wayne J. Miller and James J. Ehrig by deed recorded in Liber 2136 of Deeds at Page 247;

Thence westerly along Miller and Ehrig's North line, S 65°50'19" W a distance of 701.89 feet to a point on the westerly face of the existing Break Wall along the shore of the Strait of Niagara;

Thence northerly along westerly face of the Break Wall N 28°18'05" W a distance of 16.66 feet to an angle point in said wall;

Thence continuing northerly, along the westerly face of the Break Wall, N 18°51'28" W a distance of 291.35 feet to a point on the south line of lands conveyed to Michael R. Hayhurst and others by deed recorded in Liber 2146 of Deeds at Page 48;

Thence easterly along Hayhurst's south line, N 65°50'19" E a distance of 676.83 feet to a point in the west line of River Road;

Thence southerly along the west line of River Road, S 24°02'15" E a distance of 306.73 feet to the point or place of beginning. Containing 4.863 acres more or less.

Exhibit B

Site Survey

Legend

| Abbreviations | Symbols | Line Styles |
|---------------------------|--------------------------|----------------------------------|
| Ex - Existing | Sanitary Manhole | ST - Sanitary Sewer |
| E - East | Cleanout | SA - Storm Sewer |
| N - North | Catch Basin | W - Water Line |
| W - West | Drain Inlet | G - Gas Line |
| S - South | Storm Manhole | T - Telephone Wires or Cables |
| R.O.W. - Right of Way | Electric Meter | E - Electric Wires or Cables |
| K.A.K.A. - also known as | Electric Meter | OH - Overhead Wires |
| Electric Meter | Electric Meter | CL - Contour Line |
| Well Monitoring Well | Power Pole | CL - Centerline of Ditch |
| ELHH - Electric Hand Hole | Guy Wire Anchor | CL - Centerline of Road |
| Deciduous Tree | Telephone River | CL - Centerline of Road |
| Bush | Fire Hydrant | CL - Building Setback Line |
| Coniferous Tree | Water Valve | CL - Easement Line |
| Electric Manhole | Water Service Valve | CL - Priority Line |
| Signal Pole | Gas Valve | CL - Undergroud Electric |
| Cable Manhole | Gas Service Valve | CL - Paint Stripe |
| Water Manhole | Sign | CL - Former Boundary Parcel Line |
| Traffic Manhole | Mailbox | CL - Undergroud Cable TV |
| Large Rock | Metal Post | CL - Undergroud Fiber Optic |
| Spot Light | Concrete R.O.W. Monument | |
| | Light Standard | |
| | Telephone Manhole | |
| | Bollard | |
| | Irrigation Control Valve | |
| | Traffic Control Box | |

Legal Description

BCP Site

All that Tract or Parcel of Land, situate in the City of North Tonawanda, County of Niagara and State of New York, being part of Lots 75 & 76 Mile Reserve and lands under water of the Niagara River and being bounded and described as follows:

Beginning at a point in the west line of River Road distant 1087.74 feet southerly from the south line of lands conveyed to John Carr by deed recorded in Liber 115 of Deeds at Page 226 and the northeast corner of lands conveyed to Wayne J. Miller and James J. Ehrig by deed recorded in Liber 2136 of Deeds at Page 247;

Thence westerly along Miller and Ehrig's North line, S 65°50'19" W a distance of 701.89 feet to a point on the westerly face of the existing Break Wall along the shore of the Strait of Niagara;

Thence northerly along westerly face of the Break Wall N 28°18'05" W a distance of 16.66 feet to an angle point in said wall

Thence continuing northerly, along the westerly face of the Break Wall, N 18°51'28" W a distance of 291.35 feet to a point on the south line of lands conveyed to Michael R. Hayhurst and others by deed recorded in Liber 2146 of Deeds at Page 48;

Thence easterly along Hayhurst's south line, N 65°50'19" E a distance of 676.83 feet to a point in the west line of River Road;

Thence southerly along the west line of River Road, S 24°02'15" E a distance of 306.73 feet to the point or place of beginning. Containing 4.863 acres more or less.

Notes:

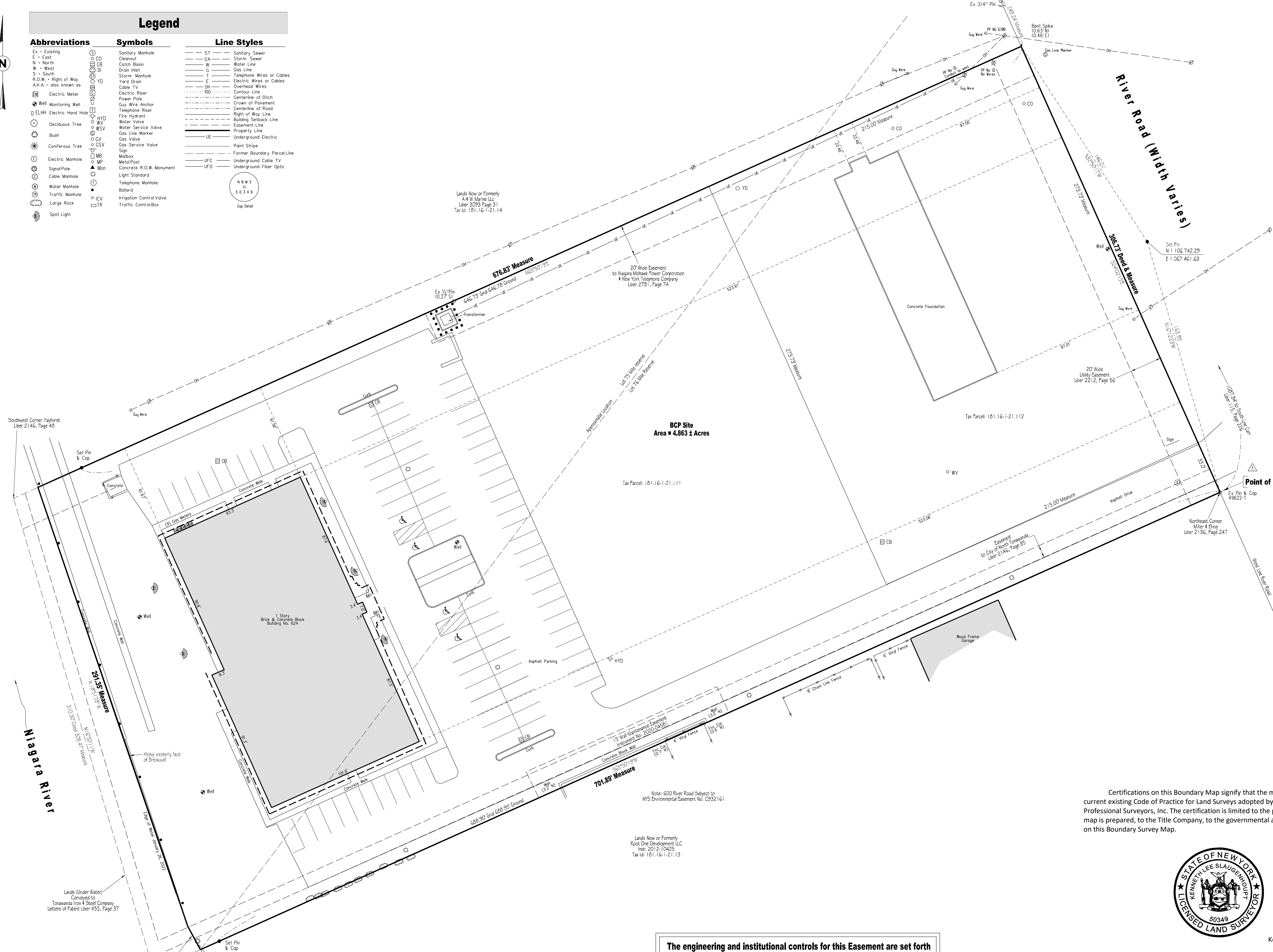
- North as Shown on this Map is True North at 78°35' Meridian of West Longitude, as established by GPS Static Survey;

- Control Point 1 Set Nail N. 1106539.21, E. 1067287.59
- JAVAD GPS Receiver 944
- Static GPS Observations January 27, 2022
- 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' 39.17321" | W 78° 53' 25.58439" | 17665.449 |
| NONE | NVBT | N 42° 59' 17.96015" | W 78° 07' 20.37548" | 62516.205 |
| NONE | NVFD | N 42° 25' 41.78557" | W 79° 20' 22.71955" | 77098.898 |
| NONE | NVHB | N 42° 43' 02.66339" | W 78° 50' 47.27348" | 35603.086 |
| NONE | NVLP | N 43° 09' 54.85475" | W 78° 45' 13.35706" | 17916.008 |

Linear Unit - U.S. Survey Foot. Combined scale factor: 0.99992301. All dimensions shown are Ground.



The engineering and institutional controls for this Easement are set forth in the Site Management Plan (SMP). A copy of the SMP must be obtained from any party with an interest in the property. The SMP can be obtained from NYS Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233, or at derweb@gw.dec.state.ny.us

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

Certifications on this Boundary Map signify that the map was prepared in accordance with the current existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Surveyors, Inc. The certification is limited to the persons for whom the Boundary Survey map is prepared, to the Title Company, to the governmental agency and to the lending institution listed on this Boundary Survey Map.



Map Showing Boundary Survey of
BCP Site
 624 River Road

Niagara Boundary
 And Mapping Services

PO Box 1120
 Lewiston, NY 14092
 (716) 293-9584
 E-Mail: lee@niagoraboundary.com

UNAUTHORIZED ALTERATION OR ADDITION TO THIS SURVEY MAP IS A VIOLATION OF SECTION 7206, PROVISION 2 OF THE NEW YORK STATE EDUCATION 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.

| LOT | SECTION | TOWNSHIP | RANGE |
|----------------------|------------------|-----------------|-------|
| 75 & 76 Mile Reserve | | North Tonawanda | |
| CITY | Niagara | | |
| COUNTY | New York | | |
| STATE | New York | | |
| DATE | January 27, 2022 | | |
| SCALE | 1" = 30' | | |
| JOB NO. | 11462 June 2022 | | |
| REVISIONS | | | |

ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY MARKED WITH AN ORIGINAL OF THE LAND SURVEYOR'S EMBOSSED SEAL SHALL BE CONSIDERED TO BE VALID TRUE COPIES.

THIS SURVEY WAS PREPARED FOR THE PARTIES AND PURPOSE INDICATED HEREON. ANY EXTENSION OF THE USE BEYOND THE PARTIES OR PURPOSE INDICATED IS EXPRESSLY FORBIDDEN WITHOUT WRITTEN RELEASE OR PERMISSION OF THE UNDERSIGNED.

USE OF THIS SURVEY IN CONJUNCTION WITH AN AFFIDAVIT OF NO CHANGE IS FORBIDDEN.

NOTICE OF CERTIFICATE OF COMPLETION
Brownfield Cleanup Program
6 NYCRR Part 375-1.9(d)

624 River Road, Site ID No. C932176
622 and 624 River Road, North Tonawanda, NY, 14120
North Tonawanda, Niagara County

Tax Map Identification Numbers: p/o 181.16-1-21.111 and 181.16-1-21.112

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to DLV Properties, LLC for a parcel approximately 4.863 acres located at 622 and 624 River Road in North Tonawanda, Niagara County.

PLEASE TAKE NOTICE, the Certificate was issued upon satisfaction of the Commissioner, following review by the Department of the Final Engineering Report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the site, that the remediation requirements set forth in ECL Article 27, Title 14 have been or will be achieved in accordance with the time frames, if any, established in the Remedial Work Plan.

PLEASE TAKE NOTICE, the remedial program for the site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

- Unrestricted Use, as set forth in 6 NYCRR 375-1.8(g)(1)i
- Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)i.
- Restricted Residential Use, as set forth in 6 NYCRR 375-1.8(g)(2)ii.
- Commercial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iii.
- Industrial Use, as set forth in 6 NYCRR 375-1.8(g)(2)iv.

Further, the use of groundwater is restricted and may not be used, unless treated in accordance with the requirements provided by the New York State Department of Health, or a local County Health Department with jurisdiction in such matters and such is approved by the Department as not inconsistent with the remedy.

PLEASE TAKE NOTICE, the remedial program relies upon use restrictions or the long-term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Niagara County as Instrument No. 2022-22424.

PLEASE TAKE NOTICE, the Environmental Easement requires that the approved Site Management Plan (SMP) for this property be adhered to. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDEC, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, New York 12233.

PLEASE TAKE NOTICE, provided that the Environmental Easement, SMP and Certificate are complied with, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the site and to a person who develops or otherwise occupies the site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

**624 River Road, C932176
622 and 624 River Road, North Tonawanda, NY, 14120**

PLEASE TAKE NOTICE, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

PLEASE TAKE NOTICE, the Certificate may be revoked if the Environmental Easement as implemented, if applicable, is not protective or enforceable.

PLEASE TAKE NOTICE, the Certificate may entitle the Certificate holder(s) to tax credits in accordance with Tax Law Sections 21, 22 and 23.

PLEASE TAKE NOTICE, the Certificate may only be transferred to the Certificate holder's successors or assigns upon transfer or sale of the site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer **WILL** bar the successors and assigns from the benefits of the Certificate.

PLEASE TAKE NOTICE, the Certificate may be modified or revoked by the Commissioner as set forth in the applicable regulations.

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 Office located at 700 Delaware Avenue, Buffalo, NY 14209, by contacting the Regional Environmental Remediation Engineer, or at <https://www.dec.ny.gov/data/DecDocs/C932176>.

WHEREFORE, the undersigned has signed this Notice of Certificate

DLV Properties, LLC

By: _____

Title: _____

Date: _____

STATE OF NEW YORK) SS:
COUNTY OF)

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

Signature and Office of individual
taking acknowledgment

Please record and return to:
DLV Properties, LLC
Attn: Tom Celik
9829 Main Street
Clarence, NY 14031

Feb. 2022



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Site Management Form
 12/21/2022



SITE DESCRIPTION

SITE NO. **C932176**

SITE NAME 624 River Road

SITE ADDRESS: 622 & 624 River Road ZIP CODE: 14120

CITY/TOWN: North Tonawanda

COUNTY: Niagara

ALLOWABLE USE: Restricted-Residential, Commercial, and Industrial

SITE MANAGEMENT DESCRIPTION

| SITE MANAGEMENT PLAN INCLUDES: | YES | NO |
|--|-------------------------------------|-------------------------------------|
| IC/EC Certification Plan | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Monitoring Plan | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Operation and Maintenance (O&M) Plan | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Periodic Review Frequency: once a year | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Periodic Review Report Submitted Date: 04/30/2024 | | |

Description of Institutional Control

DLV Properties, LLC

9829 Main Street

622 River Road

Environmental Easement

Block: 1

Lot: 21

Sublot: 112

Section: 181

Subsection: 16

S_B_L Image: 181.16-1-21.112

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

Site Management Plan

Soil Management Plan

624 River Road

Environmental Easement

Block: 1

Lot: 21

Sublot: 111

Section: 181

Subsection: 16

S_B_L Image: 181.16-1-21.111

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Monitoring Plan

Site Management Plan

Soil Management Plan

Description of Engineering Control

DLV Properties, LLC

9829 Main Street

622 River Road

Environmental Easement

Block: 1

Lot: 21

Sublot: 112

Section: 181

Subsection: 16

S_B_L Image: 181.16-1-21.112

Cover System

Monitoring Wells

624 River Road

Environmental Easement

Block: 1

Lot: 21

Sublot: 111

Section: 181

Subsection: 16

S_B_L Image: 181.16-1-21.111

Cover System

Monitoring Wells