

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
NEW YORK WORKS II ENVIRONMENTAL RESTORATION PROJECT

In the Matter of the
implementation of a
Remedial Program for

NYWII ERP AGREEMENT

Index No. NYWII-E130150-12-14

Elmont 546 Hempstead Turnpike

DEC Site Number: **E130150**

546 Hempstead Turnpike

Elmont, New York 11003

Hereinafter referred to as "Site"

by:

Town of Hempstead

200 North Franklin Street

Hempstead, New York 11550

Hereinafter referred to as "Municipality"

WHEREAS, the New York State Department of Environmental Conservation ("Department" or "NYSDEC") is authorized by Article 56 of the New York State Environmental Conservation Law (hereinafter the "ECL") to address contamination at municipal sites; and

WHEREAS, the Legislature has determined that the preservation, enhancement, restoration and improvement of the quality of the State's environment is one of government's most fundamental obligations; and

WHEREAS, Chapter 54, Laws of 2013 (the "Law of 2013"), provides New York Works funding for services, expenses, and indirect costs related to various environmental projects including, but not limited to, environmental restoration projects. The Law of 2013 allows the Department to enter into agreements with municipalities to undertake environmental restoration projects on behalf of a municipality upon request, provided that the municipality shall provide ten percent of the total project costs (hereinafter referred to as "NYWII ERP Agreement"); and

WHEREAS, the Legislature authorized the Department to develop and implement environmental restoration investigation and remediation projects for certain properties held in title by them; and

WHEREAS, the Municipality submitted an Application requesting that the Department undertake the development and implementation (i.e., the remedial design and remedial construction) of an environmental restoration remediation project (the "Project"), the purpose and scope of which is set forth in the Record of Decision ("ROD") provided in Exhibit A of this NYWII ERP Agreement, on the Site that is described in Exhibit B by metes and bounds and by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor; and

WHEREAS, the Municipality agrees to comply with all terms and conditions of this NYWII ERP Agreement; and

WHEREAS, the Municipality submitted an approvable Application, including submission of its documentation of its authorization to enter into this NYWII ERP Agreement, and of its authorization of the person signing the same to do so; and

WHEREAS, the Project was given a priority ranking based on a score derived from information provided in the Application and is eligible to participate in NYWII ERP; and

WHEREAS, the Municipality has disclosed all responsible party payments received related to the Site prior to entering into this Agreement. Except as provided herein relative to responsible party funding, the Municipality may use any other funding available (i.e., federal, State or other private party monies) towards its cost share; and

WHEREAS, the Department's execution of this NYWII ERP Agreement is made in reliance upon the information provided by, and representations of, the Municipality in its application papers and in this NYWII ERP Agreement; and

WHEREAS, the Municipality has complied, and commits to comply, with the requirements for municipalities established under Article 56 of the ECL.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I) Duties and responsibilities of the Department and the Municipality.

A) The Department, as required by the scope of the Project, shall:

- 1) implement a Citizen Participation Plan (CPP) for the Project consistent with DER-23; and
- 2) design and implement the remedy set forth in the ROD; and
- 3) prepare any necessary Environmental Easement (EE) documents for the Municipality's execution; and
- 4) prepare any necessary Site Management Plan (SMP).

B) The Municipality shall:

- 1) provide necessary assistance to the Department in the implementation of the Site CPP, including providing venues for meetings and contact information; and
- 2) execute and implement any Department prepared EE; and

- 3) implement the SMP, if one is required under this NYWII ERP Agreement, including all operation, maintenance and monitoring; and
- 4) provide the required Periodic Review Reports (PRR) as set forth in the SMP.

In the event that the remedy for the Site, or any Work Plan for the Site, requires a SMP as a consequence of operation, maintenance, and monitoring requirements, including reliance upon institutional or engineering controls, the Municipality shall file the initial PRR on the first day of the eighteenth month following the anniversary of the start of the SMP and continuing at the Department designated period until the Department notifies the Municipality in writing that such PRR may be discontinued.

Such PRR shall be signed by a Professional Engineer or by a qualified environmental professional as defined in 6 NYCRR 375-1.2(ak) approved by the Department to perform that function and certified under penalty of perjury that the institutional and/or engineering controls are unchanged from the previous certification and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a violation or failure to comply with the approved SMP.

The Municipality shall notify the Department within twenty-four (24) hours of discovery of any breach, upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, the Municipality shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the PRR required by this.

The Municipality can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

II) Allowable Use

The ROD determined that the Site will be used for Restricted Residential Use, and the Municipality agrees for itself and for its lessees and successors in title that any proposed change to the Contemplated Use shall be governed by the provisions of ECL § 56-0511 and any implementing regulations thereto.

III) Enforcement and Force Majeure

This NYWII ERP Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. The Municipality shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this NYWII ERP Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within ten (10) days of when it obtains knowledge of any such event. The Municipality shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this NYWII ERP Agreement. The Municipality shall have the burden of proving by a preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

IV) Entry upon Site

The Municipality hereby agrees to provide access to the Site and to all relevant information regarding activities that may have involved hazardous waste at the Site in accordance with the provisions of ECL § 56-0515. Such access shall be for purposes of implementing any investigation, design, and remediation activities necessary to complete the ROD required remedy and inspecting the Site to ensure that any SMP for the conditions on such Site is being implemented satisfactorily, that the engineering and/or institutional controls are continually maintained in the manner the Department may require, that no person has engaged or is engaging in any activity that is not consistent with restrictions placed upon the use of the Site or that will or that reasonably is anticipated to: prevent or interfere significantly with a proposed, ongoing or completed project; or expose the public health or the environment to a significantly increased risk of harm or damage from such Site.

- A) The Department shall have the right to periodically inspect the Site to ensure that the use of the Site complies with the terms and conditions of this NYWII ERP Agreement; such right of inspection shall survive termination of this NYWII ERP Agreement.
- B) If the Department determines that the Municipality has failed to comply with the terms of the NYWII ERP Agreement, the Department may carry out any measures necessary to return the Site to a condition sufficiently protective of human health, in accordance with ECL § 56-0509.4; and neither the Municipality nor any of successors in title, lessees or lenders shall interfere with such access. The Municipality or successor and assign shall pay all costs incurred by the State and any release and indemnification shall be revoked.

V) Payment of State Costs

- A) The Municipality hereby agrees to pay the Department for the Municipality's share of the Project. The Municipality's share is ten percent (10%) of the Project cost for design and construction of the remedy. Construction costs are estimated at \$275,000 based on the Capital Cost provided in the ROD dated 03/20/14. The actual Project costs may vary.

B) The Department will invoice the Municipality periodically. Within ninety (90) days after receipt of an invoice from the Department, the Municipality shall reimburse the Department for the Project costs incurred by the Department at a rate of ten percent (10%) of the Project costs.

C) Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)ii. The Department shall not be required to provide any other documentation of costs, provided, however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D) Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7012

E) The provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply to any objections by the Municipality to any invoiced costs under this NYWII ERP Agreement. Objections shall be sent to the Department as provided under subparagraph V.D.

F) In the event of non-payment of any invoice within the ninety (90) days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with the Laws of 2013 and ECL § 71-4003. If such failure to pay is after the issuance of the Certificate of Completion (COC), enforcement shall include revocation of the COC and loss of any liability protection.

VI) Disposition of Site

A) In the event that there is a Disposition of the Site or any portion of such Site, the Municipality is required to reimburse the State the amount owed. The amount owed shall consist of the "value of the Disposition of the Site" less the Municipal costs allowed to offset such value. The maximum amount of money owed the State is defined as an amount of money, not to exceed the State's costs incurred for the investigation and remediation of this Site under this NYWII ERP Agreement and any prior ERP State Assistance Contract (SAC) or Agreement for this Site. The Municipality's allowed costs consist of taxes owed to the Municipality upon acquisition and the Municipality's share of the Project costs (related to the disposed property) provided under this NYWII ERP Agreement as well as any costs allowed under the prior ERP SAC or Agreement for this Site.

For purposes of this subparagraph, the "value of the Disposition of the Site", or that portion of the Site that is disposed, consists, if the Site is disposed by transfer of title, of

the higher of the Site's sale price or the Site's fair market value at time of sale; or, if the Site is disposed by lease, the higher of the present worth of the stream of rent over a 30 year period beginning the effective date of this NYWII ERP Agreement or the present worth of the fair market value of the stream of rent over the same 30 year period.

However, if the Site is located in an economic development zone or in a zone equivalent area, as those terms are defined in Sections 957 and 959(bb), respectively, of the General Municipal Law; or if the Site is located in a project area that is the subject of a redevelopment plan approved by Municipality's legislative body under Article 18-B of the General Municipal Law; or if the Site will be used to maintain or expand the supply of housing for persons of low income and families of low income as Section 2 of the Private Housing Finance Law defines them, then if the Site is disposed by sale, the "value of the Disposition of the Site", or that portion of the Site that is disposed, consists of the Site's sale price, and if the Site is disposed by lease, the present worth of the stream of rent over a 30 year period beginning the effective date of this NYWII ERP Agreement.

- B) If the Municipality disposes of the Site by sale to a responsible party, the disposition must be at fair market value. Additionally, the Municipality shall collect from such responsible party, in addition to such other consideration, an amount of money constituting the amount of Project costs incurred by the State under this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site plus accrued interest and transaction costs. The Municipality shall pay such funds immediately to the Department for deposit into an appropriate account.

VII) Cost Recovery

- A) The State hereby reserves the right to seek to recover the full amount of any Project Costs incurred by the State under this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site through litigation brought under Article 56 of the ECL or other statute or under the common law, or through cooperative agreements, with responsible parties, other than the following:
 - 1) The Municipality; and
 - 2) any successor in title to the Site, any lessee of the Site, and any person that provides financing to the Municipality, such successor in title, or such lessee relative to the remediation, restoration, or redevelopment of the Site, that did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any hazardous substance located at the Site and did not own the Site before the Municipality acquired title to the Site.
- B) The Municipality shall assist the Department and/or the State in compelling responsible parties to bear the cost of the Project by providing upon request by the Department all information that exists as of the start of the term of this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site that identifies the Site's responsible parties and all other information acquired during the course of the Project's implementation.

C) Upon approval by the Department, the Municipality may make efforts to recover costs from responsible parties. The Municipality hereby agrees to provide the Department with timely advance written notice of any negotiations, proposed agreements, proposed settlements or legal action by which recovery is sought. The Municipality further agrees not to commence such legal action nor enter into any such proposed agreement or settlement without the approval of the Department.

D) If any responsible party payments and/or other responsible party consideration become available to the Municipality during or after the completion of an environmental restoration project, the Municipality shall immediately notify the Department of such availability. The State is entitled to its share of the amount recovered from the responsible party under this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site. If the Municipality shall fail to make such payment to the State within sixty (60) days of receipt of any responsible party payment (or within ninety (90) days of signing this NYWII ERP Agreement, if the payment was received before the NYWII ERP Agreement was signed), the Department may take measures provided for by law.

If any responsible party payments are received prior to entering into this Agreement, the Municipality must pay the State ninety (90) percent of such payments, unless such payments were received for remedial activities conducted under any prior ERP SAC or Agreement for this Site.

The Municipality agrees that it will immediately notify the Department in writing of its receipt of funds from other sources for any of the Municipality's expenditures incurred pursuant to this NYWII ERP Agreement. Any such funds shall first be applied to the Municipality project share. Any additional funds shall then be applied to the State's share of the project costs.

VIII) Liability Protection

As set forth at ECL § 56-0509, the Municipality and applicable successors and assigns shall be entitled to certain liability protections, subject to the terms and conditions stated therein, upon the issuance of a COC for the Site by the Department. However, if the Municipality or its successor or assigns fails to comply with the EE and/or the SMP for the Site after the issuance of the COC, the Department reserves its right to revoke the COC and rescind any release of liability granted to the Municipality pursuant to ECL Article 56.

IX) Indemnification

The Municipality shall indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments, of every nature and, description brought or recovered against it by reason of any acts or omissions of the Municipality, its agents, employees, or contractors related to this Site.

X) Change of Use

The Municipality shall notify the Department at least sixty (60) days in advance of any change of use as defined in ECL § 56-0511, which is proposed for the Site. In the event that the proposed change of use is inconsistent with the remedial program, the Department shall notify the Municipality of such determination within forty-five (45) days of receipt of such notice. In such event, the Municipality shall not implement the proposed change of use.

XI) Environmental Easement

A) If the Department's issuance of a ROD relies upon one or more institutional and/or engineering controls, the Department shall provide an EE for signature. The authorized representative for the Municipality shall within sixty (60) days of receipt of the EE, sign and submit it to the Department for execution. The Municipality's submittal shall satisfy the statutory and regulatory requirements of law as set forth in ECL Article 71, Title 36 and 6 NYCRR Part 375. The executed EE shall be recorded with the recording officer for the county in which the Site is located.

B) The Municipality or the owner of the Site may petition the Department to modify or extinguish the EE filed pursuant to this NYWII ERP Agreement at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer. The Department will not unreasonably withhold its consent.

C) Engineering and Institutional Controls

1) In the event that engineering and/or institutional controls are components of the remedy selected in the Department's ROD pertaining to the Site, the Department will cause the development of a plan to ensure that such controls are continually maintained in the manner satisfactory to the Department. The Municipality and its successors in title, lessees and lenders are prohibited from challenging the imposition or continuance of such controls, and failure to implement or comply with the Department-approved plan or to maintain such controls constitute a violation of this NYWII ERP Agreement and for the duration of such failure, the release and indemnification granted pursuant to ECL § 56-0509.1 shall have no force and effect.

2) The municipality's or successors' in title, lessees' and lenders' failure to cure such violation of engineering or institutional controls in the time period set by the Department will result in the Department seeking recovery of any funds expended on the Site and permanent revocation of any release and indemnification.

XII) Site Lease/Transfer Conditions

The Municipality shall not enter into any lease or transfer title to, the Site or any portion of it until the Municipality binds itself and its lessees and its successors in title, to the following conditions:

- A) The Site will not be used for the use set forth in Paragraph II or any less restrictive use until it is remediated. The Site may continue to be used for the purpose for which it is being used as of the start of the term of this NYWII ERP Agreement if the Department or DOH has not found that the existing state of contamination is such as to prohibit such use from continuing, giving due regard for public health and environmental protection; and
- B) If, before an EE for the Site is executed and recorded, the Municipality wishes to subdivide the Site into separate parcels, it may do so after submitting a change of use notice pursuant to 375-1.11(d).
- C) If a Municipality wishes to sell all or part of a Site before it is remediated, the Municipality's successor in title must first agree to remediate all such parcels under Department oversight in accordance with the Department's ROD and any such parcel cannot be used for the use set forth in Paragraph II or any less restrictive use until it is remediated. The Site may continue to be used for the purpose for which it is being used as of the start of the term of this NYWII ERP Agreement if the Department or DOH has not found that the existing state of contamination is such as to prohibit such use from continuing, giving due regard for public health and environmental protection.

XIII) Communications

- A) All written communications required by this NYWII ERP Agreement shall be transmitted by electronic mail unless otherwise specified by the DER project manager.

1) Communication from the Municipality shall be sent to:

- (i) James Harrington, P.E., Director
Remedial Bureau A
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233
Phone: (518) 402-9625
Email: jim.harrington@dec.ny.gov

- (ii) Krista Anders, Director
Bureau of Environmental Exposure Investigation
New York State Department of Health
Empire State Plaza
Coming Tower, Room 1787
Albany, New York 12237

Email: krista.anders@health.ny.gov

(iii) Andrew Guglielmi, Esq.
NYSDEC Office of General Counsel
625 Broadway
14th Floor
Albany, New York 12233-1500
Phone: (518) 402-9185
Email: andrew.guglielmi@dec.ny.gov

2) Communication from the Department to the Municipality shall be sent to:

Kate Murray, Town Supervisor
Town of Hempstead
200 Franklin Street
Hempstead, New York 11550
Phone: 516-489-5000
Email: kmurray@tohmail.org

- B) The Department and the Municipality reserve the right to designate additional or different addressees for communication on written notice to the other.
- C) Each party shall notify the other within ninety (90) days after any change in the addresses listed in this Paragraph.

XIV) Completion or Termination of NYWII ERP Agreement

- A) If the Municipality complies with the requirements of applicable State and federal laws and regulations and with the terms of this NYWII ERP Agreement, the Department shall issue a COC. This NYWII ERP Agreement shall end when the Department issues the COC.
- B) The Department may terminate this NYWII ERP Agreement without prejudice or waiver of any other rights the State has if the Municipality fails to comply with any of the requirements of applicable State or federal laws and regulations or with any of the requirements of this NYWII ERP Agreement. The Department shall provide written notification to the Municipality of its breach of contract, setting forth in writing the basis for termination of the NYWII ERP Agreement and allowing the Municipality a reasonable and specific amount of time within which to cure its breach. If the Municipality does not cure its breach of contract within the period of time allowed by the Department, this NYWII ERP Agreement shall terminate on the date set forth in the letter ("Termination Letter"). The Department shall notify the Municipality of the amount of money that the Municipality owes the State for repayment of State costs incurred for the Project, including the Department's oversight costs and for any other costs incurred by the State in administering and terminating the Municipality's environmental restoration

remediation project ("Demand Letter"). The Municipality agrees that if this NYWII ERP Agreement is terminated by the Department under this Subparagraph B:

- 1) the Municipality, a successor in title, lessee and lender are not entitled to claim any liability limitation benefits provided under ECL § 56-0509 because the Municipality has failed to satisfy the requirement of ECL § 56-0509 (1)(a)(I) to comply with all of the terms and conditions of the NYWII ERP Agreement; and
 - 2) the Municipality shall pay to the Department an amount of money constituting the amount of Project costs incurred by the State under this NYWII ERP Agreement plus accrued interest and transaction costs, with interest thereon as provided by law, within 45 days of the Municipality's receipt of the Department's Demand Letter.
- C) The Municipality may terminate this NYWII ERP Agreement without prejudice or waiver of any other rights within thirty (30) days of receiving notice of the completion of the Remedial Design if the associated engineer's estimate of project costs exceeds the costs as set forth in Paragraph V.A by at least three times. The requirement for the Municipality to pay ten percent (10%) of the Project cost committed up to the date of termination survives the termination.

XV) If this NYWII ERP Agreement is completed or terminated, the following requirements shall survive such completion or termination: Paragraphs VI (Disposition of Site), VII (Cost Recovery), and XII (Site Lease/Transfer Conditions).

If this NYWII ERP Agreement is terminated, the following requirements shall survive such termination: Paragraphs II (Allowable Use), IV (Entry upon Site), V (Payment of State Costs), X (Change of Use), XI (Environmental Easement), and XIII (Communications).

XVI) Miscellaneous

- A) The Municipality shall file all appropriate forms for registration and closure for all known or identified petroleum bulk storage tanks on the Site, and/or all known or identified chemical bulk storage tanks on the Site to allow proper registration and/or closure of all such tanks.
- B) The Department is exempt from the requirement to obtain any State or local permit or other authorization for any activity conducted pursuant to 6 NYCRR Part 375.
- C) The Municipality shall cooperate with the Department to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform the obligations under this NYWII ERP Agreement.
- D) The Municipality shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this NYWII ERP Agreement.

- E) The paragraph headings set forth in this NYWII ERP Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this NYWII ERP Agreement.
- F) The terms of this NYWII ERP Agreement shall constitute the complete and entire agreement between the Department and Municipality concerning the implementation of the activities required by this NYWII ERP Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this NYWII ERP Agreement shall be binding unless made in writing and subscribed by both parties. In the event of a conflict between the terms of this NYWII ERP Agreement and any Work Plan submitted pursuant to this NYWII ERP Agreement, the terms of this NYWII ERP Agreement shall control over the terms of the Work Plan(s). The Municipality consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this NYWII ERP Agreement and further agrees not to contest the validity of this NYWII ERP Agreement or its terms.
- G) Unless otherwise expressly provided herein, terms used in this NYWII ERP Agreement which are defined in ECL Article 56 or in 6 NYCRR Part 375 shall have the meaning assigned to them under said statute or regulations.
- H) The Municipality's obligation under this NYWII ERP Agreement represents payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty. This NYWII ERP Agreement does not constitute a permit and does not confer upon the Municipality the right to engage in the Contemplated Use or any other use of the Site for any particular purpose.
- I) No delay or omission on the part of either party in exercising any right under this NYWII ERP Agreement shall operate as a waiver of such right or of any other right under this NYWII ERP Agreement. A waiver shall not be construed as a bar to any right and/or remedy. No waiver or consent shall be binding unless it is in writing and executed by the Department and the Municipality.
- J) This NYWII ERP Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.
- K) The effective date of this NYWII ERP Agreement is the date it is signed by the Commissioner or the Commissioner's designee after all other parties have signed.
- L) The Municipality acknowledges that it has read, understands, and agrees to abide by all the terms set forth in this NYWII ERP Agreement.
- M) In accordance with Section 41 of the State Finance Law, the State shall have no liability under this NYWII ERP Agreement beyond funds available for this NYWII ERP Agreement.


N) Notwithstanding any provision to the contrary, the Department expressly reserves its rights to postpone, suspend, abandon or terminate this NYWII ERP Agreement, and such actions shall in no event be deemed a breach of this NYWII ERP Agreement.

DATED:

FEB 24 2015

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

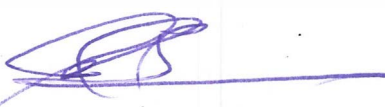


Robert W. Schick, P.E., Director
Division of Environmental Remediation

CONSENT BY MUNICIPALITY

Municipality hereby consents to the issuing and entering of this Agreement, waives Municipality's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Municipality's Name: TOWN OF HEMPSTEAD

By: 

Printed Name: GEORGE L. BAKICH

Title: Commissioner

Date: 1/20/15

STATE OF NEW YORK

COUNTY OF NASSAU

On the 20th day of January in the year 2015, before me, the undersigned, personally appeared GEORGE L. BAKICH (full name) personally known to me who, being duly sworn, did depose and say that he/she resides at 200 No. Franklin St., Hempstead, NY (full mailing address) and that he/she is the Commissioner of the Department of Planning & Economic Development (full legal name of municipality), the municipality described in and which executed the above instrument; and that he/she signed his/her name thereto as authorized by said municipality.

Notary Public, State of New York Traci Beth Miller

TRACI BETH MILLER
Notary Public, State of New York
No. 01M16186425
Qualified in Nassau County
Commission Expires April 28, 2016

Site Number: E130150

Exhibit A
Record of Decision

12/1/12

JOSEPH J. MARTIN
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

BY:

Robert W. Schick, Jr., Director
Division of Environmental Conservation

RECORD OF DECISION

Elmont - 546 Hempstead Turnpike-aka-Elmont Welding
Environmental Restoration Project
Elmont, Nassau County
Site No. E130150
March 2014



Prepared by
Division of Environmental Remediation
New York State Department of Environmental Conservation

DECLARATION STATEMENT - RECORD OF DECISION

Elmont - 546 Hempstead Turnpike-aka-Elmont Welding
Environmental Restoration Project
Elmont, Nassau County
Site No. E130150
March 2014

Statement of Purpose and Basis

This document presents the remedy for the Elmont - 546 Hempstead Turnpike-aka-Elmont Welding site, an environmental restoration site. The remedial program was chosen in accordance with the New York State Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 375.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (the Department) for the Elmont - 546 Hempstead Turnpike-aka-Elmont Welding site and the public's input to the proposed remedy presented by the Department. A listing of the documents included as a part of the Administrative Record is included in Appendix B of the ROD.

Description of Selected Remedy

The elements of the selected remedy are as follows:

1. Remedial Design

A remedial design program will be implemented to provide the details necessary for the construction, operation, optimization, maintenance, and monitoring of the remedial program. This remedy would fully delineate the extent of the contamination in the surface and shallow subsurface soil prior to excavation. Green remediation principles and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows:

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gases and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which would otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals; and
- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development.

2. Excavation

After sampling to refine the boundary of the area requiring excavation, the top two feet of soils exceeding restricted residential soil cleanup objectives will be excavated and disposed off-site in a permitted facility. Documentation samples will then be taken from the base of the excavation.

3. Cover System

A site cover will be required to allow for restricted residential use of the site. The cover will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper two feet of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required it will be a minimum of two feet of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for restricted residential use. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d).

4. Institutional Control

Imposition of an institutional control in the form of an environmental easement for the controlled property that:

- requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8(h)(3);
- allows the use and development of the controlled property for restricted residential, commercial and industrial uses as defined by Part 375-1.8(g), although land use is subject to local zoning laws; and
- requires compliance with the Department approved Site Management Plan.

5. Site Management Plan

A Site Management Plan is required, which includes the following:

- a. an Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: The Environmental Easement discussed in Paragraph 4 above.

Engineering Controls: The soil demarcation and cover system discussed in Paragraph 3.

This plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- descriptions of the provisions of the environmental easement including any land use restrictions;
- provisions for the management and inspection of the identified engineering controls;
- maintaining site access controls (fencing until the site is redeveloped) and Department notification; and
- the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

New York State Department of Health Acceptance

The New York State Department of Health (NYSDOH) concurs that the remedy for this site is protective of human health.

Declaration

The selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action to the extent practicable, and is cost effective. This remedy utilizes permanent solutions and alternative treatment or resource recovery technologies, to the maximum extent practicable, and satisfies the preference for remedies that reduce toxicity, mobility, or volume as a principal element.

March 20, 2013

Date



Robert W. Schick, P.E., Director
Division of Environmental Remediation

RECORD OF DECISION

Elmont - 546 Hempstead Turnpike-aka-Elmont Welding
Elmont, Nassau County
Site No. E130150
March 2014

SECTION 1: SUMMARY AND PURPOSE

The New York State Department of Environmental Conservation (the Department), in consultation with the New York State Department of Health (NYSDOH), has selected a remedy for the above referenced site. The disposal of contaminants at the site has resulted in threats to public health and the environment that would be addressed by the remedy. The disposal or release of contaminants at this site, as more fully described in this document, has contaminated various environmental media. Contaminants include hazardous waste and/or petroleum. The remedy is intended to attain the remedial action objectives identified for this site for the protection of public health and the environment. This Record of Decision (ROD) identifies the selected remedy, summarizes the other alternatives considered, and discusses the reasons for selecting the remedy.

The 1996 Clean Water/ Clean Air Bond Act provides funding to municipalities for the investigation and cleanup of brownfields. Brownfields are abandoned, idled, or under-used properties where redevelopment is complicated by real or perceived environmental contamination. They typically are former industrial or commercial properties where operations may have resulted in environmental contamination. Brownfields often pose not only environmental, but legal and financial burdens on communities. Under the Environmental Restoration Program, the state provides grants to municipalities to reimburse up to 90 percent of eligible costs for site investigation and remediation activities. Once remediated, the property can then be reused.

The Department has issued this document in accordance with the requirements of New York State Environmental Conservation Law and 6 NYCRR Part 375. This document is a summary of the information that can be found in the site-related reports and documents.

SECTION 2: CITIZEN PARTICIPATION

The Department seeks input from the community on all remedies. A public comment period was held, during which the public was encouraged to submit comment on the proposed remedy. All comments on the remedy received during the comment period were considered by the Department in selecting a remedy for the site. Site-related reports and documents were made available for review by the public at the following document repository:

Elmont Memorial Library
700 Hempstead Turnpike
Elmont, NY 11003-2366
Phone: (516) 354-5280

A public meeting was also conducted. At the meeting, the findings of the remedial investigation (RI) and the alternatives analyses (AA) were presented along with a summary of the proposed remedy. After the presentation, a question-and-answer period was held, during which verbal or written comments were accepted on the proposed remedy.

Comments on the remedy received during the comment period are summarized and addressed in the responsiveness summary section of the ROD.

Receive Site Citizen Participation Information By Email

Please note that the Department's Division of Environmental Remediation (DER) is "going paperless" relative to citizen participation information. The ultimate goal is to distribute citizen participation information about contaminated sites electronically by way of county email listservs. Information will be distributed for all sites that are being investigated and cleaned up in a particular county under the State Superfund Program, Environmental Restoration Program, Brownfield Cleanup Program, Voluntary Cleanup Program, and Resource Conservation and Recovery Act Program. We encourage the public to sign up for one or more county listservs at <http://www.dec.ny.gov/chemical/61092.html>

SECTION 3: SITE DESCRIPTION AND HISTORY

Location: The Former Elmont Welding Site is located in a suburban area at 546 Hempstead Turnpike, in Elmont, NY. The 0.35-acre site consists of the now-demolished former welding shop and the adjoining vacant lot to the west of the welding shop. The site is bounded by Louis Avenue to the west, Makofske Avenue to the east and Hempstead Turnpike to the south.

Site Features: The site is currently vacant and fenced-in. The welding shop has been demolished by the Town. The adjoining vacant lot is sloped downwards away from the main road. A combination of stone and timber retaining walls exists at the western part of the property.

Current Zoning: The site is zoned for commercial use. The surrounding parcels are currently zoned for a combination of commercial and residential buildings.

Past Use of the Site: The Former Elmont Welding property was originally used as an automobile garage as early as 1925. Past use of the building included an auto repair shop in the 1950s and 1960s. From the 1970s to 2006, the site was used as a welding shop, and the adjacent lot was used as a parking area for construction equipment. The site is currently inactive.

A Phase I Environmental Site Assessment was performed in 2000. A limited soil investigation was performed in 2002. The Department conducted a preliminary investigation of the property with the USEPA Targeted Site Assessment grant funding in 2006. Based on the results of the

investigation the Town of Hempstead applied to the Department's Environmental Restoration Program (ERP) for remedial program funding. However, the ERP application could not be processed due to a lack of funding.

Site Geology and Hydrogeology: The soil consists mainly of sand. The depth to water is 30 to 40 feet below ground surface depending on the site topography. Groundwater flow direction is towards the south.

A site location map is attached as Figure 1.

SECTION 4: LAND USE AND PHYSICAL SETTING

The Department may consider the current, intended, and reasonably anticipated future land use of the site and its surroundings when evaluating a remedy for soil remediation. For this site, alternatives (or an alternative) that restrict(s) the use of the site to restricted-residential use (which allows for commercial use and industrial use) as described in Part 375-1.8(g) were/was evaluated in addition to an alternative which would allow for unrestricted use of the site.

A comparison of the results of the RI to the appropriate standards, criteria and guidance values (SCGs) for the identified land use and the unrestricted use SCGs for the site contaminants is included in the Tables for the media being evaluated in Exhibit A.

SECTION 5: ENFORCEMENT STATUS

Potentially Responsible Parties (PRPs) are those who may be legally liable for contamination at a site. This may include past or present owners and operators, waste generators, and haulers.

No PRPs have been documented to date.

No legal agreements have been signed for this site. The Environmental Restoration Program application was found to be complete but the approval of the application was held pending issuance of the Record of Decision and availability of funds.

Since no viable PRPs have been identified, there are currently no ongoing enforcement actions. However, legal action may be initiated at a future date by the state to recover state response costs should PRPs be identified. Town Of Hempstead will assist the state in its efforts by providing all information to the state which identifies PRPs. Town Of Hempstead will also not enter into any agreement regarding response costs without the approval of the Department.

SECTION 6: SITE CONTAMINATION

6.1: Summary of the Remedial Investigation

A Remedial Investigation (RI) has been conducted. The purpose of the RI was to define the nature and extent of any contamination resulting from previous activities at the site. The field activities and findings of the investigation are described in the RI Report.

The following general activities are conducted during an RI:

- Research of historical information,
- Geophysical survey to determine the lateral extent of wastes,
- Test pits, soil borings, and monitoring well installations,
- Sampling of waste, surface and subsurface soils, groundwater, and soil vapor,
- Sampling of surface water and sediment,
- Ecological and Human Health Exposure Assessments.

The analytical data collected on this site includes data for:

- groundwater
- soil

6.1.1: Standards, Criteria, and Guidance (SCGs)

The remedy must conform to promulgated standards and criteria that are directly applicable or that are relevant and appropriate. The selection of a remedy must also take into consideration guidance, as appropriate. Standards, Criteria and Guidance are hereafter called SCGs.

To determine whether the contaminants identified in various media are present at levels of concern, the data from the RI were compared to media-specific SCGs. The Department has developed SCGs for groundwater, surface water, sediments, and soil. The NYSDOH has developed SCGs for drinking water and soil vapor intrusion. The tables found in Exhibit A list the applicable SCGs in the footnotes. For a full listing of all SCGs see: <http://www.dec.ny.gov/regulations/61794.html>

6.1.2: RI Results

The data have identified contaminants of concern. A "contaminant of concern" is a contaminant that is sufficiently present in frequency and concentration in the environment to require evaluation for remedial action. Not all contaminants identified on the property are contaminants of concern. The nature and extent of contamination and environmental media requiring action are summarized in Exhibit A. Additionally, the RI Report contains a full discussion of the data. The contaminant(s) of concern identified at this site is/are:

LEAD
BENZO(A)PYRENE
BENZO(B)FLUORANTHENE

BENZO[K]FLUORANTHENE
BENZ(A)ANTHRACENE
CADMIUM

As illustrated in Exhibit A, the contaminant(s) of concern exceed the applicable SCGs for:

- soil

6.2: Interim Remedial Measures

An interim remedial measure (IRM) is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before issuance of the Record of Decision.

There were no IRMs performed at this site during the RI.

6.3: Summary of Environmental Assessment

This section summarizes the assessment of existing and potential future environmental impacts presented by the site. Environmental impacts may include existing and potential future exposure pathways to fish and wildlife receptors, wetlands, groundwater resources, and surface water.

Based upon the resources and pathways identified and the toxicity of the contaminants of ecological concern at this site, a Fish and Wildlife Resources Impact Analysis (FWRIA) was deemed not necessary for OU 01.

Nature and Extent of Contamination:

Based upon investigations conducted to date, the primary contaminants of concern for OU1 include polycyclic aromatic hydrocarbons (PAHs), cadmium and lead.

Soil - PAHs are found at higher concentrations in the shallow soils compared to deeper soils on-site. They were found primarily in the former parking lot adjacent to the welding shop. Three out of ten samples collected on-site exceeded the restricted residential SCOs for PAHs. Metals were also generally detected at concentrations slightly exceeding the SCOs in shallower soils at the welding shop.

Groundwater - No site-related contaminants were found in the groundwater. PAHs that were found in the soils were not detected in the groundwater. The analysis of unfiltered groundwater samples showed detections of metals. However, the results from the filtered groundwater samples showed that most of the metal detections found in the unfiltered groundwater samples are a result of the presence of metals in the suspended solids.

6.4: Summary of Human Exposure Pathways

This human exposure assessment identifies ways in which people may be exposed to site-related contaminants. Chemicals can enter the body through three major pathways (breathing, touching or swallowing). This is referred to as *exposure*.

The site is completely fenced, which restricts public access. However, persons who enter the site could contact contaminants in the soil by walking on the site, digging or otherwise disturbing the soil.

6.5: Summary of the Remediation Objectives

The objectives for the remedial program have been established through the remedy selection process stated in 6 NYCRR Part 375. The goal for the remedial program is to restore the site to pre-disposal conditions to the extent feasible. At a minimum, the remedy shall eliminate or mitigate all significant threats to public health and the environment presented by the contamination identified at the site through the proper application of scientific and engineering principles.

The remedial action objectives for this site are:

Soil

RAOs for Public Health Protection

- Prevent ingestion/direct contact with contaminated soil.

RAOs for Environmental Protection

- Prevent migration of contaminants that would result in groundwater or surface water contamination.

SECTION 7: SUMMARY OF THE SELECTED REMEDY

To be selected the remedy must be protective of human health and the environment, be cost-effective, comply with other statutory requirements, and utilize permanent solutions, alternative technologies or resource recovery technologies to the maximum extent practicable. The remedy must also attain the remedial action objectives identified for the site, which are presented in Section 6.5. Potential remedial alternatives for the Site were identified, screened and evaluated in the alternatives analysis (AA) report.

A summary of the remedial alternatives that were considered for this site is presented in Exhibit B. Cost information is presented in the form of present worth, which represents the amount of money invested in the current year that would be sufficient to cover all present and future costs associated with the alternative. This enables the costs of remedial alternatives to be compared on a common basis. As a convention, a time frame of 30 years is used to evaluate present worth costs for alternatives with an indefinite duration. This does not imply that operation, maintenance, or monitoring would cease after 30 years if remediation goals are not achieved. A summary of the Remedial Alternatives Costs is included as Exhibit C.

The basis for the Department's remedy is set forth at Exhibit D.

The selected remedy is referred to as the Excavation and Off-Site Disposal of Contaminated Shallow Soil remedy.

The estimated present worth cost to implement the remedy is \$300,000. The cost to construct the remedy is estimated to be \$275,000 and the estimated average annual cost is \$2,000.

The elements of the selected remedy are as follows:

1. Remedial Design

A remedial design program will be implemented to provide the details necessary for the construction, operation, optimization, maintenance, and monitoring of the remedial program. This remedy would fully delineate the extent of the contamination in the surface and shallow subsurface soil prior to excavation. Green remediation principles and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows:

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gases and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which would otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals; and
- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development.

2. Excavation

After sampling to refine the boundary of the area requiring excavation, the top two feet of soils exceeding restricted residential soil cleanup objectives will be excavated and disposed off-site in a permitted facility. Documentation samples will then be taken from the base of the excavation.

3. Cover System

A site cover will be required to allow for restricted residential use of the site. The cover will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper two feet of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required it will be a minimum of two feet of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for restricted residential use. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d).

4. Institutional Control

Imposition of an institutional control in the form of an environmental easement for the controlled property that:

- requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8(h)(3);
- allows the use and development of the controlled property for restricted residential, commercial and industrial uses as defined by Part 375-1.8(g), although land use is subject to local zoning laws; and
- requires compliance with the Department approved Site Management Plan.

5. Site Management Plan

A Site Management Plan is required, which includes the following:

- a. an Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: The Environmental Easement discussed in Paragraph 4 above.

Engineering Controls: The soil demarcation and cover system discussed in Paragraph 3.

This plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- descriptions of the provisions of the environmental easement including any land use restrictions;
- provisions for the management and inspection of the identified engineering controls;
- maintaining site access controls (fencing until the site is redeveloped) and Department notification; and
- the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

Exhibit A

Nature and Extent of Contamination

This section describes the findings of the Remedial Investigation for all environmental media that were evaluated. As described in Section 6.1, samples were collected from various environmental media to characterize the nature and extent of contamination.

For each medium for which contamination was identified, a table summarizes the findings of the investigation. The tables present the range of contamination found at the site in the media and compares the data with the applicable SCGs for the site. The contaminants are arranged into two categories; semi-volatile organic compounds (SVOCs) and inorganics (metals and cyanide). For comparison purposes, the SCGs are provided for each medium that allows for unrestricted use. For soil, if applicable, the Restricted Use SCGs identified in Section 4 and Section 6.1.1 are also presented.

Groundwater

Groundwater samples were collected at three depths at each location. The samples were collected at the groundwater table, ten feet below the water table and twenty feet below the groundwater table to assess the groundwater conditions on-site. All groundwater samples were analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs) and inorganics (metals and cyanide). The inorganics analyses were based on unfiltered samples, and as such, their analysis values might be elevated since they included suspended solids. In addition, the drilling technique produced turbid groundwater samples that exceeded 50 Nephelometric Turbidity Units.

In order to resolve groundwater turbidity issues and to analyze the dissolved phase for metals, an up-gradient and down-gradient groundwater well was later added to the site investigation. No VOCs were detected above the SCGs in any of the groundwater samples. Only one SVOC was detected marginally above the SCGs. The analysis of filtered (dissolved phase) groundwater samples for metals showed that none of the inorganic compounds detected above the SCGs in the surface and subsurface soil samples were found in the filtered groundwater samples.

Most of the inorganic compounds detected in the unfiltered samples were not detected in the filtered samples above the SCGs, indicating that the contaminants originated from the suspended solids. Only two inorganic compounds, iron and manganese, were detected above the SCGs. Neither iron nor manganese was detected above the SCGs in the on-site soil samples. Therefore, groundwater detection of iron and manganese are not likely to have come from the on-site source but represent natural conditions.

Table 1A - Groundwater (at water table)

Detected Constituents	Concentration Range Detected (ppb) ^a	SCG ^b (ppb)	Frequency Exceeding SCG
SVOCs			
Bis(2-ethylhexyl)phthalate	ND – 6.5	5	2 of 7
Inorganics			
<u>Unfiltered Samples</u>			
Arsenic	ND – 50.4	25	2 of 7
Barium	ND – 1190	1000	2 of 7
Beryllium	0.20 – 7.4	3	4 of 7
Chromium	235 – 738	50	7 of 7
Copper	119 – 510	200	4 of 7
Iron	89,300 – 415,000	300	7 of 7
Lead	43.8 – 187	25	7 of 7
Magnesium	13,200 – 48,000	35,000	2 of 7
Manganese	3,710 – 11,800	300	7 of 7
Nickel	136 – 408	100	7 of 7
Sodium	81,700 – 299,000	20,000	7 of 7
Thallium	8.5 – 26.6	1	7 of 7
<u>Filtered Samples</u>			
Iron	328 – 1750	300	2 of 2
Manganese	366 – 614	300	2 of 2

Table 1B – Groundwater (10 feet below water table)

Detected Constituents	Concentration Range Detected (ppb) ^a	SCG ^b (ppb)	Frequency Exceeding SCG
SVOCs			
Bis(2-ethylhexyl)phthalate	ND – 7	5	2 of 10
Inorganics			
<u>Unfiltered Samples</u>			
Arsenic	ND – 57.3	25	2 of 10
Barium	221 – 1100	1000	3 of 10
Beryllium	0.73 – 7.1	3	5 of 10
Chromium	208 – 762	50	10 of 10
Copper	78.8 – 415	200	4 of 10
Iron	58,500 – 346,000	300	10 of 10
Lead	27.7 – 178	25	10 of 10
Manganese	1,090 – 13,400	300	10 of 10
Nickel	75.3 – 361	100	8 of 10

Detected Constituents	Concentration Range Detected (ppb) ^a	SCG ^b (ppb)	Frequency Exceeding SCG
Sodium	25,300 – 153,000	20,000	10 of 10
Thallium	5.4 – 27.6	1	10 of 10
<u>Filtered Samples</u>			
Iron	220 – 474	300	2 of 3
Manganese	96 – 229	300	0 of 3

Table 1C – Groundwater (20 feet below water table)

Detected Constituents	Concentration Range Detected (ppb) ^a	SCG ^b (ppb)	Frequency Exceeding SCG
SVOCs			
Bis(2-ethylhexyl)phthalate	ND – 5.3	5	1 of 10
Inorganics			
<u>Unfiltered Samples</u>			
Arsenic	ND – 56.8	25	4 of 10
Beryllium	0.39 – 5.5	3	2 of 10
Chromium	122 – 616	50	10 of 10
Copper	141 – 304	200	2 of 10
Iron	68,100 – 271,000	300	10 of 10
Lead	26.6 – 164	25	10 of 10
Manganese	921 – 8,400	300	10 of 10
Nickel	103 – 305	100	9 of 10
Sodium	32,400 – 134,000	20,000	10 of 10
Thallium	3.5 – 20.2	1	10 of 10
<u>Filtered Samples</u>			
Iron	440 – 1260	300	2 of 2
Manganese	108 – 396	300	1 of 2

a - ppb: parts per billion, which is equivalent to micrograms per liter, ug/L, in water.

b- SCG: Standard Criteria or Guidance - Ambient Water Quality Standards and Guidance Values (TOGs 1.1.1), 6 NYCRR Part 703, Surface water and Groundwater Quality Standards, and Part 5 of the New York State Sanitary Code (10 NYCRR Part 5).

No site-related groundwater contamination of concern was identified during the RI. Therefore, no remedial alternatives need to be evaluated for groundwater.

Soil

Shallow subsurface, deep subsurface and deep soil samples were collected at the site. Shallow subsurface soil samples were collected from a depth of 0 - 8 inches. Deep subsurface soil samples were collected from a depth

of 18 - 24 inches. Deep soil samples were collected from a depth of 35 - 60 feet to assess soil contamination impacts to groundwater. The results indicate that soil at the site exceed the unrestricted SCG for semi-volatile organics and metals. No VOCs were detected above their SCGs in any soil samples, and no SVOCs were detected above their SCGs in the deep soil samples. The concentration of SVOCs in soil shows a decreasing trend with depth. Figure 2 shows the nature and extent of the soil contamination in the surface and shallow subsurface soil. Figure 3 shows the nature and extent of the soil contamination in the deep subsurface soil. Most of the inorganic compounds were detected above the SCGs at the former welding shop property.

Table 2A - Shallow Subsurface Soil

Detected Constituents	Concentration Range Detected (ppm) ^a	Unrestricted SCG ^b (ppm)	Frequency Exceeding Unrestricted SCG	Restricted Use SCG ^c (ppm)	Frequency Exceeding Restricted SCG
SVOCs					
Benzo(a)anthracene	0.08 – 31	1	3 of 10	1	3 of 10
Benzo(a)pyrene	0.09 – 26	1	3 of 10	1	3 of 10
Benzo(b)fluoranthene	0.11 – 32	1	3 of 10	1	3 of 10
Benzo(k)fluoranthene	0.04 – 17	0.8	2 of 10	3.9	1 of 10
Chrysene	0.11 – 29	1	3 of 10	3.9	1 of 10
Dibenzo(a,h)anthracene	0.06 – 2.1	0.33	1 of 10	0.33	1 of 10
Indeno(1,2,3-cd)pyrene	0.03 – 7.2	0.5	2 of 10	0.5	2 of 10
Pentachlorophenol	0.89 – 0.94	0.8	4 of 10	6.7	0 of 10
Inorganics					
Cadmium	ND – 4.5	2.5	2 of 10	4.3	1 of 10
Chromium	5 – 86.8 ^d	1 ^e , 30 ^f	10 of 10	110 ^e , 180 ^f	0 of 10
Copper	7.7 – 186	50	4 of 10	270	0 of 10
Lead	3.8 – 1200	63	8 of 10	400	2 of 10
Mercury	0.047 – 0.6	0.18	4 of 10	0.81	0 of 10
Nickel	10.6 – 61.4	30	1 of 10	310	0 of 10
Zinc	12.4 – 895	109	6 of 10	10,000	0 of 10

Table 2B – Deep Subsurface Soil

Detected Constituents	Concentration Range Detected (ppm) ^a	Unrestricted SCG ^b (ppm)	Frequency Exceeding Unrestricted SCG	Restricted Use SCG ^c (ppm)	Frequency Exceeding Restricted SCG
SVOCs					
Benzo(a)anthracene	0.09 – 4.3	1	3 of 10	1	3 of 10
Benzo(a)pyrene	0.19 – 4.4	1	3 of 10	1	3 of 10
Benzo(b)fluoranthene	0.11 – 8	1	3 of 10	1	3 of 10
Benzo(k)fluoranthene	0.057 – 2.8	0.8	3 of 10	3.9	0 of 10

Detected Constituents	Concentration Range Detected (ppm) ^a	Unrestricted SCG ^b (ppm)	Frequency Exceeding Unrestricted SCG	Restricted Use SCG ^c (ppm)	Frequency Exceeding Restricted SCG
Chrysene	0.11 – 4.4	1	3 of 10	3.9	1 of 10
Dibenzo(a,h)anthracene	0.04 – 0.7	0.33	2 of 10	0.33	2 of 10
Indeno(1,2,3-cd)pyrene	0.05 – 2.4	0.5	3 of 10	0.5	3 of 10
Pentachlorophenol	0.86 – 1	0.8	6 of 10	6.7	0 of 10
Inorganics					
Barium	24.2 – 427	350	2 of 10	400	2 of 10
Chromium	6.6 – 28.5 ^d	1 ^e , 30 ^f	10 of 10	110 ^e , 180 ^f	0 of 10
Copper	7.8 – 136	50	8 of 10	270	0 of 10
Lead	2.2 – 1260	63	3 of 10	400	3 of 10
Mercury	ND – 0.82	0.18	4 of 10	0.81	1 of 10
Nickel	7.7 – 40.6	30	1 of 10	310	0 of 10
Zinc	9.6 – 600	109	6 of 10	10,000	0 of 10

Table 2C – Deep Soil

Detected Constituents	Concentration Range Detected (ppm) ^a	Unrestricted SCG ^b (ppm)	Frequency Exceeding Unrestricted SCG	Restricted Use SCG ^c (ppm)	Frequency Exceeding Restricted SCG
Inorganics					
Chromium	6.6 – 28.5 ^d	1 ^e , 30 ^f	9 of 9	110 ^e , 180 ^f	0 of 10

a - ppm: parts per million, which is equivalent to milligrams per kilogram, mg/kg, in soil.

b - SCG: Part 375-6.8(a), Unrestricted Soil Cleanup Objectives.

c - SCG: Part 375-6.8(b), Restricted Use Soil Cleanup Objectives for the Protection of Public Health for Restricted Residential Use, unless otherwise noted.

d - The range of values represent the total analysis of trivalent and hexavalent chromium.

e -- This value represents the SCG for hexavalent chromium.

f -- This value represents the SCG for trivalent chromium.

The primary soil contaminants are inorganics and polycyclic aromatic hydrocarbons (PAHs), both of which are attributable to the past use of the site as a welding shop and parking area for road construction vehicles. Based on the findings of the Site Investigation, the past disposal of hazardous waste has resulted in the contamination of soil. The site contaminants identified in soil which are considered to be the primary contaminants of concern, to be addressed by the remedy selection process are cadmium, lead and PAHs.

Exhibit B

Description of Remedial Alternatives

The following alternatives were considered based on the remedial action objectives (see Section 6.5) to address the contaminated media identified at the site as described in Exhibit A.

Alternative 1: No Action

The No Action Alternative is evaluated as a procedural requirement and as a basis for comparison. This alternative leaves the site in its present condition and does not provide any additional protection to public health and the environment.

Alternative 2: Excavation and Off-Site Disposal of Contaminated Shallow Soil

Prior to excavation, a pre-design sampling program will be done using a grid approach. Based on the results of the sampling, areas of the site with contaminants exceeding NYSDEC Subpart 375-6.8(b) restricted residential soil cleanup objectives would be excavated up to two feet below ground surface. Documentation samples will be taken at the base of the excavation in areas where the excavated depth is two feet and a demarcation layer will be placed if soils at the two-foot depth still exhibit contaminants exceeding NYSDEC Subpart 375-6.8(b) restricted residential soil cleanup objectives. Sheet piles will be installed next to the timber retaining walls at the site boundary if needed to allow for safe excavation.

For cost estimation purposes, it is assumed that about half the site would be contaminated with shallow subsurface soils concentrations exceeding restricted residential soil cleanup objectives. The resulting approximately 600 cubic yards of soil would be excavated and disposed off-site in a permitted facility.

Backfill required to achieve proper post-excavation grading would be clean soil as defined in NYSDEC 6NYCRR Part 375-6.7(d).

The excavated areas would be backfilled with up to two feet of clean soil meeting the SCOs for restricted residential. This alternative would also include a site management plan for any soils requiring demarcation. If needed, the existing fencing would be repaired to maintain site security.

An environmental easement, including a site management plan, would be issued to limit the future use of this property to restricted residential. A remedial design program would be developed to address the specifics of the excavation such as dust control, excavation profile, staging set-up and erosion control.

Present Worth: \$300,000
Capital Cost: \$275,000

Alternative 3: Restoration to Pre-Disposal or Unrestricted Conditions

Pre-design sampling would be performed at two, four and six-foot depths at eight locations. Based on the sampling results, excavation would be performed to a maximum depth of six feet followed by confirmatory sampling. If needed, additional excavation would be done at spot locations until soil meeting unrestricted use SCO is met. Based on a six-foot excavation depth from half the site area, it is estimated that 1,700 cubic yards of soil would be excavated and transported off-site.

Backfill required to achieve proper post-excavation grading would be clean soil defined as soil with no analyte in exceedance of NYSDEC Part 375 soil cleanup objectives for unrestricted use. Removal of the surface and subsurface soil as specified above would immediately eliminate any exposure to on-site contamination sources and return the site to unrestricted use, with the assumption that all end point soil sampling meets or exceeds the unrestricted soil cleanup objectives.

A remedial action work plan would be developed to address the specifics of the excavation like dust control, excavation profile, staging set-up and erosion control. The expected duration for project implementation is one year.

Capital Cost: \$900,000

Exhibit C**Remedial Alternative Costs**

Remedial Alternative	Capital Cost (\$)	Annual Costs (\$)	Total Present Worth (\$)
No Action	0	0	0
Excavation and Off-Site Disposal of Contaminated Shallow Soil	275,000	2,000	300,000
Restoration to Pre-Disposal or Unrestricted Conditions	900,000	0	900,000

Exhibit D

SUMMARY OF THE PROPOSED REMEDY

The Department is proposing Alternative 2, Excavation and Off-Site Disposal of Contaminated Shallow Soil as the remedy for this site. Alternative 2 would achieve the remediation goals for the site by removing the surface and shallow subsurface soils that exceed the restricted residential use SCOs. The protective cover of clean fill on excavated locations will prevent exposure by the public to residual subsurface soil contamination. The implementation of an environmental easement that requires a site management plan would further ensure that the subsurface soil is properly managed. The elements of this remedy are described in Section 7.

Basis for Selection

The proposed remedy is based on the results of the RI and the alternatives analysis. The criteria to which potential remedial alternatives are compared are defined in 6 NYCRR Part 375. A detailed discussion of the evaluation criteria and comparative analysis is included below.

The first two evaluation criteria are termed "threshold criteria" and must be satisfied in order for an alternative to be considered for selection.

1. Protection of Human Health and the Environment. This criterion is an overall evaluation of each alternative's ability to protect public health and the environment.

The proposed remedy (Alternative 2) would satisfy this criterion by removing the shallow contaminated soils and applying a clean fill over any remaining subsurface soil contamination. Furthermore, the implementation of an environmental easement further ensures that the subsurface soil is properly managed. Alternative 3 would achieve the threshold criteria and return the site to unrestricted use with the removal of all contaminated soils that exceeds the unrestricted SCOs. Alternative 1 (No Action) does not provide any additional protection to public health and the environment and will not be evaluated further.

2. Compliance with New York State Standards, Criteria, and Guidance (SCGs). Compliance with SCGs addresses whether a remedy will meet environmental laws, regulations, and other standards and criteria. In addition, this criterion includes the consideration of guidance which the Department has determined to be applicable on a case-specific basis.

Alternatives 2 and 3 would comply with SCGs to the extent practicable. Alternative 2 would address shallow areas of contamination and comply with the restricted residential soil cleanup objectives at the surface through excavation and backfill. Alternative 3 would define and eliminate deeper soil contamination at the site, ensuring a more thorough cleanup of the property. Because Alternatives 2 and 3 satisfy the threshold criteria, the remaining criteria are particularly important in selecting a final remedy for the site.

The next six "primary balancing criteria" are used to compare the positive and negative aspects of each of the remedial strategies.

3. Long-term Effectiveness and Permanence. This criterion evaluates the long-term effectiveness of the remedial alternatives after implementation. If wastes or treated residuals remain on-site after the selected remedy has been implemented, the following items are evaluated: 1) the magnitude of the remaining risks, 2) the adequacy of the engineering and/or institutional controls intended to limit the risk, and 3) the reliability of

these controls.

Alternative 3 would achieve better long-term effectiveness and permanence than Alternative 2 since Alternative 3 includes removal of all contaminated soils. Under Alternative 2, the exposure to the remaining subsurface soil contamination would be minimized by applying a clean soil cover over the excavated areas. The potential for exposure would be further reduced by the implementation of an institutional control in the form of an environmental easement which would limit the site to restricted residential use.

4. Reduction of Toxicity, Mobility or Volume. Preference is given to alternatives that permanently and significantly reduce the toxicity, mobility or volume of the wastes at the site.

Both Alternatives 2 and 3 would be effective in reducing the toxicity, mobility or volume of the contaminated soils on-site. Alternative 2 reduces the toxicity, mobility and volume of on-site shallow soils by transferring the soil material to an approved off-site location. Further mobility reduction is achieved by the application of a clean fill meeting the restricted residential use restrictions. Alternative 3 goes a step further in the reduction of toxicity, mobility and volume by requiring deeper contaminated soils to be excavated and removed off-site, with backfill meeting requirements of unrestricted use for the site.

5. Short-term Impacts and Effectiveness. The potential short-term adverse impacts of the remedial action upon the community, the workers, and the environment during the construction and/or implementation are evaluated. The length of time needed to achieve the remedial objectives is also estimated and compared against the other alternatives.

Alternatives 2 and 3 both have short-term impacts which could easily be controlled. However, Alternative 2 takes significantly shorter time to achieve the remedial objectives compared to Alternative 3 since there is less volume of excavated soil. Hence, Alternative 2 presents less inconvenience to the surrounding neighborhood and businesses due to shorter time required in excavating the soils and placing clean backfill.

6. Implementability. The technical and administrative feasibility of implementing each alternative are evaluated. Technical feasibility includes the difficulties associated with the construction of the remedy and the ability to monitor its effectiveness. For administrative feasibility, the availability of the necessary personnel and materials is evaluated along with potential difficulties in obtaining specific operating approvals, access for construction, institutional controls, and so forth.

Alternative 2 is easier to implement than Alternative 3. With the reduction in volume and depth of excavation, Alternative 2 requires less time, manpower and energy to implement than Alternative 3. With Alternative 3, there are some concerns regarding the stability of the timber retaining walls adjacent to the site in the event that soil was to be excavated deeper. Additional engineering assessment would have to be performed, with possible recommendations of additional sheet piles and supports in order to ensure the integrity of the existing retaining wall. The additional volume of excavated soil would necessitate increased truck traffic on local roads for a longer duration.

7. Cost-Effectiveness. Capital costs and annual operation, maintenance, and monitoring costs are estimated for each alternative and compared on a present worth basis. Although cost-effectiveness is the last balancing criterion evaluated, where two or more alternatives have met the requirements of the other criteria, it can be used as the basis for the final decision.

The cost of the proposed remedy for Alternative 2 is \$300,000 while the cost of Alternative 3 is \$900,000. This cost increment is due to the increase in excavation depth and soil backfill from two feet for Alternative 2 to an estimated depth of six feet for Alternative 3. Also, Alternative 3 has significantly deeper soil boring depths and larger number of soil samples for analysis than Alternative 2. Part of the cost increase for Alternative 3 is also due to the expectation that extensive sheet piling would be constructed to support the existing timber retaining walls adjacent to a residential house in the event that deeper excavation is needed. In this regard, cost effectiveness is one of the major reasons for the selection of Alternative 2.

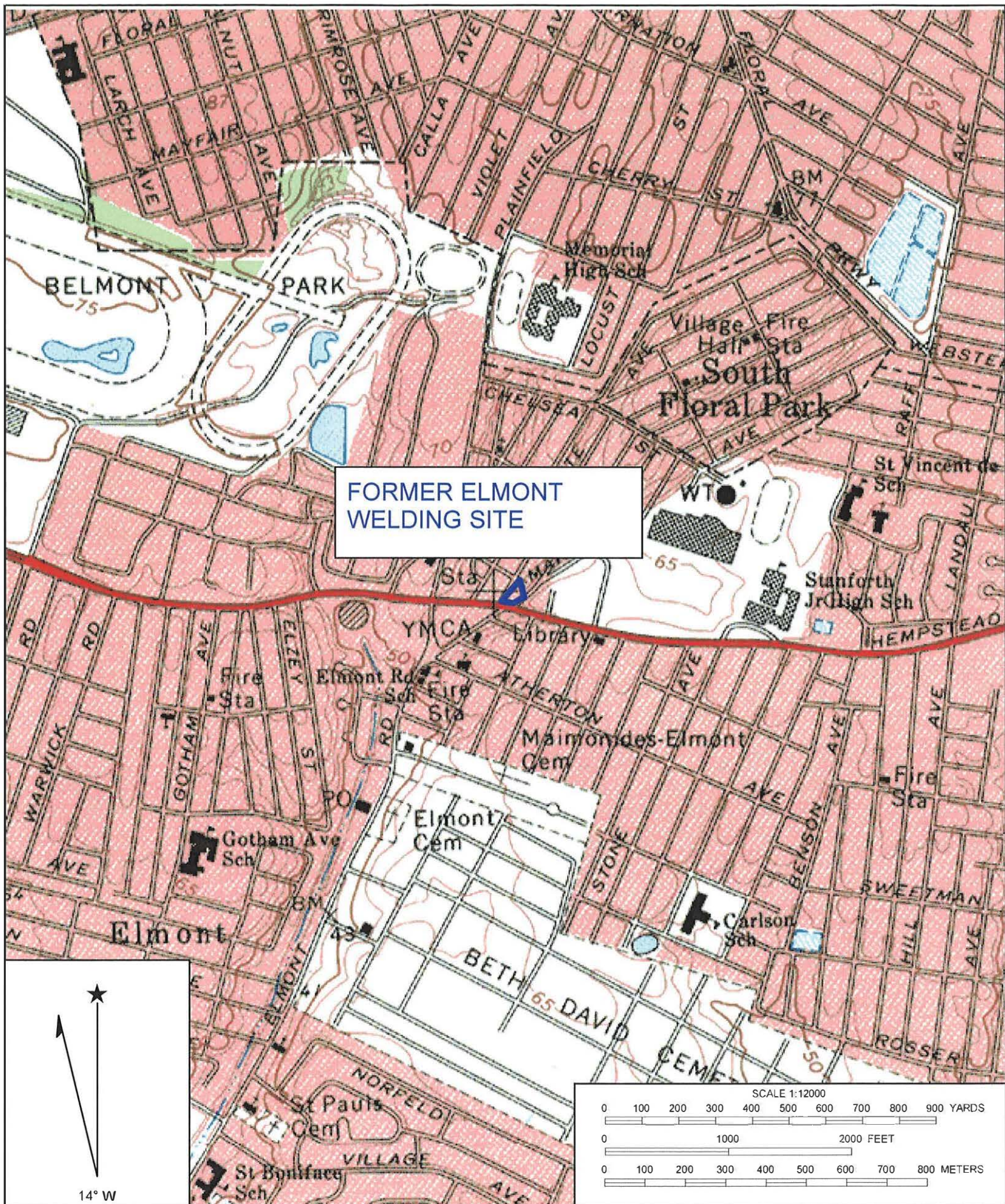
8. Land Use. When cleanup to pre-disposal conditions is determined to be infeasible, the Department may consider the current, intended, and reasonable anticipated future land use of the site and its surroundings in the selection of the soil remedy.

Since the anticipated use of the site is restricted residential, Alternatives 2 would be equally desirable. Any residual contamination with Alternative 2 would be controllable with implementation of a Site Management Plan. With Alternative 3, it is likely that restrictions on the site use would not be necessary since deeper soil contamination would be excavated and backfill meeting unrestricted use would be brought into the site.

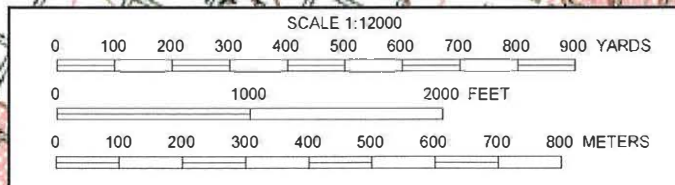
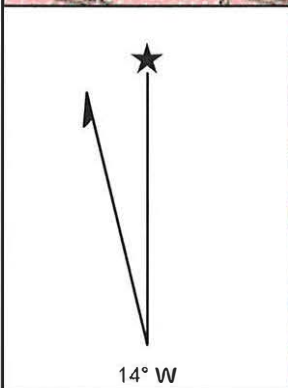
The final criterion, Community Acceptance, is considered a "modifying criterion" and is taken into account after evaluating those above. It is evaluated after public comments on the Proposed Remedial Action Plan have been received.

9. Community Acceptance. Concerns of the community regarding the investigation, the evaluation of alternatives, and the PRAP are evaluated. A responsiveness summary will be prepared that describes public comments received and the manner in which the Department will address the concerns raised. If the selected remedy differs significantly from the proposed remedy, notices to the public will be issued describing the differences and reasons for the changes.

Alternative 2 is being proposed because, as described above, it satisfies the threshold criteria and provides the best balance of the balancing criterion.

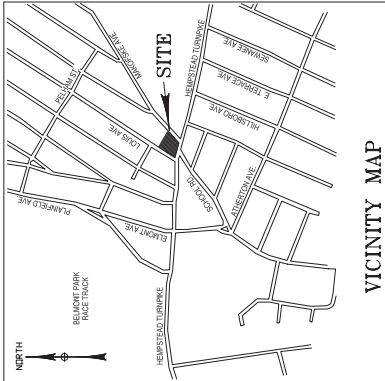
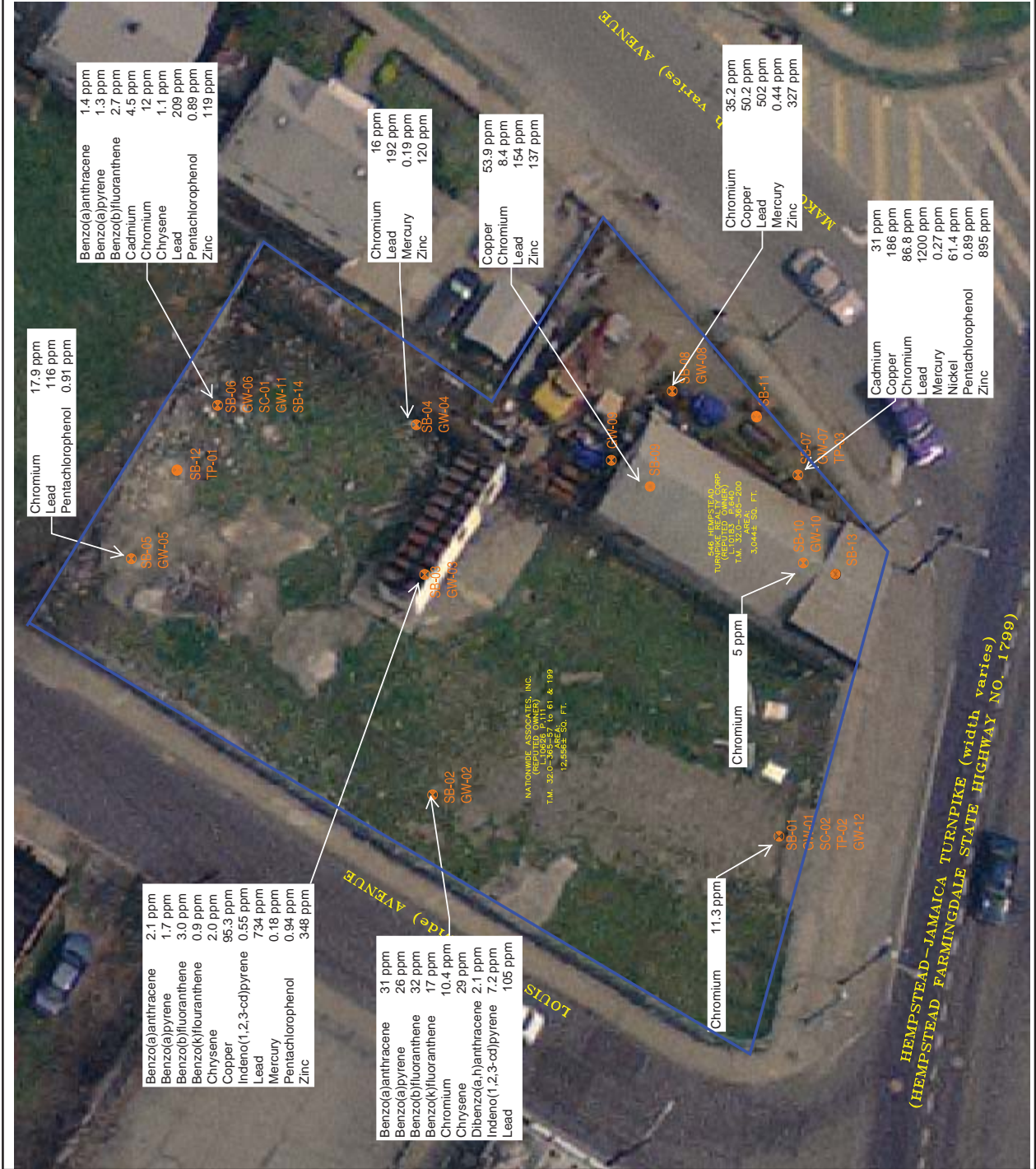


FORMER ELMONT
WELDING SITE



Name: LYNBROOK
Date: 7/13/2006
Scale: 1 inch equals 1000 feet

Location: 040° 42' 28.64" N 073° 42' 28.79" W
Caption: FIGURE 1
SITE LOCATION MAP
NYSDEC 1-30-150



- LEGEND**
- SB-12 SOIL BORING ONLY
 - ⊗ SB-02 SOIL BORING AND GROUNDWATER
 - ⊗ GW-02 SAMPLING LOCATION
 - ⊗ SC-01 SOIL CONDUCTIVITY BORING
 - ⊗ TP-01 TEMPORARY PEIZOMETER

Notes:
SB-01 thru SB-10: (soil samples taken from 0'-4' bgs and 18'-24' bgs)

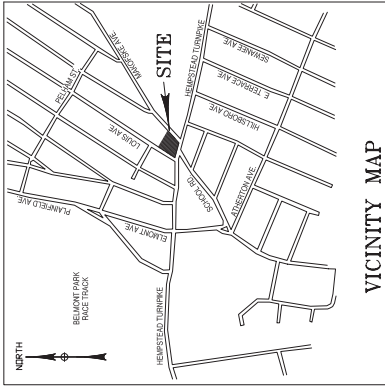
SHALLOW SUBSURFACE SOIL
EXCEEDANCE ABOVE SCGs



Site Boundary

NOTE: The former welding shop was demolished.

TITLE		SCALE		FIGURE	
SITE PLAN		GRAPHIC		2	
FORMER ELMONT WELDING		DATE		10/30/06	
NYSDEC SITE NO. 1-30-150		FILE NAME		0037437-02-003	
PREPARED FOR		JOS NO.		0037437	
NYSDEC		JWC/CWW		10/30/06	
Environmental Resource Management		JRM		0037437-02-003	
DATE		JWC/CWW		10/30/06	



NOT TO SCALE

VICINITY MAP

- ## LEGEND

SOIL BORING ONLY

SOIL ROBIN AND GROUNDWATER

SAMPLING LOCATION

SOIL CONDUCTIVITY BORING

TEMPORARY PEIZOMETER


Notes:

SB-01 thru SB-10: (soil samples taken from 0"-4" bgs and 18"-24" bgs)

DEEP SUBSURFACE SOIL EXCEEDANCE ABOVE
SCGs

— Site Boundary

NOTE: The welding shop was demolished.

TITLE	SITE PLAN FORMER ELMONT WELDING NYSDEC SITE NO. 1-30-150			
PREPARED FOR	NYSDEC			
 NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION	Environmental Resource Management		SCALE	FIGURE
	JOB NO.: JMC/CWW	FILE NAME: 0037437-02-003	DATE	10/30/06 3

APPENDIX A

Responsiveness Summary

RESPONSIVENESS SUMMARY

**Elmont – 546 Hempstead Turnpike – aka – Elmont Welding
Environmental Restoration Project
Elmont, Nassau County, New York
Site No. E130150**

The Proposed Remedial Action Plan (PRAP) for the Former Elmont Welding site was prepared by the New York State Department of Environmental Conservation (the Department) in consultation with the New York State Department of Health (NYSDOH) and was issued to the document repositories on January 29, 2014. The PRAP outlined the remedial measure proposed for the contaminated soil at the Former Elmont Welding site.

The release of the PRAP was announced by sending a notice to the public contact list, informing the public of the opportunity to comment on the proposed remedy.

A public meeting was held on February 11, 2014, which included a presentation of the remedial investigation and alternative analysis (RI/AA) for the Former Elmont Welding Site as well as a discussion of the proposed remedy. The meeting provided an opportunity for citizens to discuss their concerns, ask questions and comment on the proposed remedy. These comments have become part of the Administrative Record for this site. The public comment period for the PRAP ended on March 17, 2014.

This responsiveness summary responds to all questions and comments raised during the public comment period. The following are the comments received, with the Department's responses:

COMMENT 1: What is the time frame for the cleanup?

RESPONSE 1: After ERP funding becomes available for this project and the necessary State Assistance Contract or other funding mechanism is in place with the Municipality, it is anticipated that the remediation field work would take approximately one year to complete. After the field work is completed, an Environmental Easement, Final Engineering Report and Site Management Plan would be submitted to the Department for approval before the issuance of a Certificate of Completion.

COMMENT 2: Why did the groundwater analysis involve filtered and unfiltered samples, and what did each type of sample tell us about the groundwater?

RESPONSE 2: Filtered and unfiltered groundwater samples are analyzed because the groundwater that was collected from the site showed a high degree of turbidity. This turbidity is due to the presence of suspended solids in the groundwater samples. As such, an unfiltered groundwater sample could show constituents that were found in both soil and groundwater. A filtered sample eliminated the suspended solids so that the results only showed the constituents of the groundwater itself. The

analysis of filtered groundwater samples for the site showed that none of the inorganic compounds detected in the soil were actually in the groundwater.

COMMENT 3: What is the size of the filters used to filter the groundwater samples?

RESPONSE 3: The typical filter size that is used to filter the groundwater samples is 0.45 microns. This means that suspended solids that are larger than 0.45 microns would be retained in the filter.

COMMENT 4: Residents living adjacent to this site may be impacted by contaminated run-off from snow and rain at the site. Has the soil been tested at these nearby properties?

RESPONSE 4: The Department did not sample the soil at the nearby properties during the site investigation. The remedial program will include additional sampling to verify the limits of the contamination. Should the data suggest that contamination extends beyond the site boundary, off-site sampling will be undertaken and remediation completed, as necessary.

COMMENT 5: Under the proposed remedy, why is the soil only excavated to two feet? How would the Department handle cases where the future development of the site requires digging below the two-foot depth?

RESPONSE 5: The anticipated future land use for this site is restricted residential (which also allows for commercial use and industrial use). Those areas where soil contamination exceeds restricted residential SCOs in the uppermost two feet will be excavated and backfilled with clean fill. This remedy provides protection of public health and the environment for the typical activities that occur on sites restricted to such use. The remedy also requires an institutional control in the form of an environmental easement and development of a Site Management Plan (SMP). The SMP will provide clear instruction on how future on-site excavations greater than two feet will occur (i.e., how those soils will be managed) to assure the continued protection of public health.

COMMENT 6: Where would the fill come from, and how would the Department know if the fill meets the requirements of the soil cleanup objectives (SCOs)?

RESPONSE 6: The fill may come from any source as long as the soil has been tested in accordance with the Department-approved sampling plan, and imported soil meets the requirements of the restricted residential SCOs

COMMENT 7: What is the direction of the groundwater flow from the site?

RESPONSE 7: The groundwater flows to the south from the site.

COMMENT 8: Once the State Budget passes, can the Legislature stop this project from being funded?

RESPONSE 8: For the project to go forward under the Environmental Restoration Program (ERP), funds must be available, and the Town must apply for and be approved for those funds. Limited ERP

funds were made available in 2013 and the Governor's proposed 2014-2015 budget includes additional funding for the ERP program. The Department expects to solicit applications for the available funding in the Spring of 2014. .

COMMENT 9: Will the public be notified before the start of the excavation activity?

RESPONSE 9: Yes, the public will receive the Remedial Action Fact Sheet through the Department's listserv prior to the start of the excavation activities.

COMMENT 10: Will an engineering firm be involved with the site remediation?

RESPONSE 10: An engineering firm will be employed during the design and construction of this project, as needed to comply with Department regulations and guidance documents governing the ERP.

COMMENT 11: Were there any impacts from this site to the former farm (which is now the Pep-Boys mechanic shop)?

RESPONSE 11: The Department has not identified any impacts from this site to the former farm. Soil contamination is usually localized, and the former farm is 0.1 mile away from the site.

COMMENT 12: What happens if the actual cost is more than the estimated cost in the PRAP?

RESPONSE 12: The municipality can request additional funding with accompanying justification. The Department will review the request and, if approved, the funds will be released to support the project.

COMMENT 13: Who makes the determination as to how deep the final excavation will be?

RESPONSE 13: The Department will determine the excavation depth based on the results of the pre-design sampling. In accordance with the Record of Decision, a maximum depth of the excavation will be two feet below the surface. If the soil still exhibits contamination exceeding the restricted residential soil cleanup objectives (SCOs), a demarcation layer will be placed to delineate the remaining contamination.

COMMENT 14: Is there a possibility that there will still be soil contamination below the two-foot depth if Alternative 2 is selected?

RESPONSE 14: Based on the results of the site investigation, the frequency and concentration of the soil contamination below the two-foot level is expected to be minimal, as most of the soil contamination identified so far is located near the surface. Also see Response 13.

COMMENT 15: Has anybody done any study on cancer rates in this area since the buildings were demolished?

RESPONSE 15: No studies have been conducted to evaluate whether site-related contaminants have contributed to increases in cancer cases for residents living in the area. The Department of Health does provide information on the reported rates of various cancers for all areas of New York State. This information can be found on the “Environmental Facilities and Cancer Map” web page located at the following link:
https://apps.health.ny.gov/statistics/cancer/environmental_facilities/mapping/map/

COMMENT 16: What are the exposure routes at this site, and would wind-blown dust be a risk? There is a bus stop for children near the former welding area.

RESPONSE 16: There is a potential for people to be exposed to site-related contaminants through inhalation of dust, by ingesting soil, or by coming in direct contact with soil from the site. However, contaminant levels in soil are well below the levels where adverse impacts to health are known to occur. Also, because contact with site soil would typically be brief, such as in the case of children standing at the bus stop, impacts to health are not expected.

COMMENT 17: There is talk of privatizing some of the public water supply systems in Nassau County. Would the water supply have to be sampled for contaminants from this site?

RESPONSE 17: Every system, whether public or private, that meets the definition of a public water supplier in New York State must comply with the Department of Health’s Part 5, Subpart 5-1 Public Water Systems Regulations. These regulations require all public water suppliers to deliver water meeting the Part 5 requirements to customers, and addresses how to demonstrate compliance, including well sampling requirements. These regulations can be found at the following web site:
<http://www.health.ny.gov/environmental/water/drinking/regulations/>

APPENDIX B

Administrative Record

Administrative Record

**Elmont – 546 Hempstead Turnpike – aka – Elmont Welding
Environmental Restoration Project
Elmont, Nassau County, New York
Site No. E130150**

Proposed Remedial Action Plan for the Elmont Welding site, dated January 2014, prepared by the Department.

“Final Site Investigation Work Plan for the Former Elmont Welding site”, dated January 2006, prepared by Environmental Resources Management.

“Final Site Investigation Report for the Former Elmont Welding site”, dated November 2006, prepared by Environmental Resources Management.

Exhibit B
Legal Description of Site

Application Appendix 1: Certification of Ownership

I, Katrina R. Brooks, being an attorney duly admitted to the practice of law in the State of New York, affirm under the penalties of perjury the following:

1. That I am the attorney for the Town of Hempstead Department of Planning and Economic Development, the Municipality which is the applicant to undertake a New York Works II Environmental Restoration Project known as Elmont-546 Hempstead Turnpike a/k/a Elmont Welding E130150.
2. That the Property located at 546 Hempstead Turnpike, Elmont, New York, Nassau County, the subject of the Project and is more particularly described as Crown Welding.
3. That I hereby certify to the Commissioner of Environmental Conservation that I have examined or caused to be examined the title to the Property, and that I have approved the same and that as of the date of this affirmation a good and marketable title thereto in fee is vested in and may be conveyed by the Town of Hempstead.
4. That annexed hereto is a certified copy of the deed whereby such title to the Property was conveyed to the Town of Hempstead, and that I hereby certify to the Commissioner of Environmental Conservation that the property title, conveyed by said deed, is identical to the Property which is the subject of the Project; and
5. That I make this affirmation to be attached as an exhibit incorporated by reference into such application.

Dated: October 9, 2014


KATRINA R. BROOKS

NASSAU COUNTY CLERKS OFFICE
ENDORSEMENT COVER PAGE

Recorded Date: 10-03-2001
Recorded Time: 2:43:09 p

Record and Return To:

Liber Book:
Pages From:
To:

Control
Number: 1636
Ref #: 00--013988
Doc Type: X30 VESTING ORDER

Plnt: JAMAICA SQUARE ELMONT
Plnt: HEMPSTEAD TOWN OF
Dfnd: 546 HEMPSTEAD TURNPIKE REALTY CORP
Dfnd: BRUNGES, JOHN

Location:	Section	Block	Lot	Unit
HEMPSTEAD (2820)	0032	00362-00	00011	
HEMPSTEAD (2820)	0032	00362-00	00016	
HEMPSTEAD (2820)	0032	00362-00	00017	
HEMPSTEAD (2820)	0032	00362-00	00018	
HEMPSTEAD (2820)	0032	00362-00	00019	

	Taxes Total	.00
	Recording Totals	20.00
Lrk001	Total Payment	20.00

THIS PAGE IS NOW PART OF THE INSTRUMENT AND SHOULD NOT BE REMOVED
KAREN V. MURPHY
COUNTY CLERK



2001100301636



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
In the Matter of the Town of Hempstead
Acquiring Property in the Urban Renewal
Area Known as Jamaica Square, Elmont,
New York as part of the Town's Federally
Funded Community Development Program,

Town of Hempstead,

Petitioner/Condemnor,

**NOTICE OF
SETTLEMENT**

Index No. 00-013988

546 Hempstead Turnpike Realty Corp.,
John Brunges and Madeline Schlichtig,

Claimants.
-----X

PLEASE take notice that a Vesting Order, of which the within is a
true copy will be presented for settlement to the Hon. Edward G. McCabe, one of
the judges of the within named Court, at 100 Supreme Court Drive, Mineola, New
York 11501, on July 3, 2001, at 9:30 A.M.

Dated: Valley Stream, New York
June 18, 2001

Yours, etc.,

JOSEPH RA, ESQ.

Town Attorney for the Petitioner
Town of Hempstead

BY: MINERVA & D'AGOSTINO, P.C.

by: 

ROSS M. GERBER, ESQ.

Attorneys for Petitioner
107 South Central Avenue
Valley Stream, NY 11580
516-872-7400

TO: SAUL FENCHEL, ESQ.
Siegel, Fenchel & Peddy, P.C.
400 Garden City Plaza
Suite 100
Garden City, NY 11530

CAROL RIZZO, ESQ.
Koeppel, Martone, Leistman & Herman, LLP
155 First Street
Mineola, NY 11501

NASSAU
COUNTY
CLERK

NASSAU
COUNTY
CLERK

At an IAS Part 4 of the Supreme Court of the State of New York, in and for the County of Nassau, located at the Courthouse, at 100 Supreme Court Drive, Mineola, New York on the 27 day of September, 2001.

P R E S E N T :

EDWARD G. McCABE
J.S.C.

LEGIBILITY POOR
FOR MICROFILM

-----X
In the Matter of the Town of Hempstead
Acquiring Property in the Urban Renewal
Area Known as Jamaica Square, Elmont,
New York as part of the Town's Federally
Funded Community Development Program,

Town of Hempstead,

VESTING ORDER

Petitioner/Condemnor,

Index No. 00-013988

546 Hempstead Turnpike Realty Corp.,
John Brunges and Madeline Schlichtig,

Claimants.
-----X

On the reading and filing of the Amended Petition of the Town of Hempstead ("condemnor") in the above entitled proceeding, verified by ROBERT FRANCIS, Commissioner of the Town of Hempstead Department of Planning and Economic Development, on the 6th day of October, 2000, and upon the notice of petition dated October 25, 2000, returnable at an IAS Part 6 of this Court on the 15th day of December, 2000, and thereafter adjourned four times until January 29,

2001, and said petition having been presented to this Court on the 29th day of January, 2001, and upon the reading of the Answering Affirmations of Saul Fenchel, Esq. of Siegel, Fenchel & Peddy, P.C. on behalf of the Respondents, 546 Hempstead Turnpike Realty Corp. and Madeline Schlichtig, dated December 14, 2000, and the Reply Affirmations of Ross M. Gerber, Esq. of the law firm of Minerva & D'Agostino, P.C., the attorneys for the Petitioner, dated December 26, 2000, and December 27, 2000, and upon the reading of the Supplementary Affidavit of the Respondent, Madeline Schlichtig, sworn to on the 9th day of January, 2001 and the Supplementary Affidavit of Bob Pitts, an officer/shareholder of the Respondent, 546 Hempstead Turnpike Realty Corp., sworn to on the 5th day of January, 2001, and upon the reading of the Memorandum of Law on behalf of the Respondents, 546 Hempstead Turnpike Realty Corp. and Madeline Schlichtig, dated January 8, 2001, and upon the reading of the Memorandum of Law on behalf of the Petitioner, Town of Hempstead, dated January 23, 2001 and upon the Affidavit of Carmine Guiliano, as President and Senior Appraiser for Restorent Development Corporation, sworn to on the 24th day of January, 2001, and upon the Letter of Saul R. Fenchel, Esq. and the Memorandum of Law on behalf of the Respondent, Madeline Schlichtig on the issue of compensability of a liquor license, both dated January 31, 2001, and upon the Notice of Appearance of Donald F. Leistman, Esq. of Koeppel, Martone, Leistman & Herman, LLP, as attorney for John Brunjes, and upon the reading of the affidavit of personal service

upon claimant, JOHN BRUNGES of 15 Harriet Court, Malverne, New York, sworn to the 27th day of November, 2000; and the affidavit of personal service upon claimant, MADELINE SCHLICHTIG of 311 Chestnut Street, West Hempstead, New York sworn to the 27th day of November, 2000; and the affidavit of personal service upon SIEGEL, FENCHEL & PEDDY, attorneys for Claimant, 546 HEMPSTEAD TURNPIKE REALTY CORP, who accepted service on behalf of their client, 546 HEMPSTEAD TURNPIKE REALTY CORP., sworn to the 25th day of November, 2000.; and upon the Notice of Pendency filed in the Nassau County Clerk's Office on August 31, 2000; and upon hearing said Petition on the 29th day of January, 2001; and pursuant to the Memorandum Decision of this Court, dated March 8, 2001 and redated, June 4, 2001, and it appearing to the satisfaction of the court that the condemnor is entitled to the relief demanded in the petition herein; it is

ADJUDGED:

1. The description of the property is as follows: See the metes and bounds description annexed hereto as Exhibit "A" (Parcel 1 is known on the Land and Tax Map of Nassau County as Section 32, Block 362, Lots 11, 16, 17, 18, 19 and 41; Parcel 3 is known on the Land and Tax Map as Section 32, Block 362, Lots 20, 21, 42 and 43; and Parcel 5 is known on the Land and Tax Map of Nassau County as Section 32, Block 365, Lot 200).

2. The condemnor is entitled to take and hold said property for the following public use: to redevelop the area known as the Jamaica Square Urban Renewal Project, by constructing safe, attractive housing instead of the current substandard residential and commercially zoned properties.

3. Pursuant to EDPL 206, the condemnor is exempt from compliance with the requirements of the Eminent Domain Procedure Law Article 2 because prior to the acquisition, and pursuant to GML 505, the Town of Hempstead conducted public hearings upon due notice to the public, in which the Town considered the public use, benefit or purpose to be served by the proposed project, as well as the approximate location for the proposed public project and the reasons for the selection of that location, and the general effect of the proposed project on the environment and residents of the locality, all in compliance with EDPL 204(B).

4. The condemnor has duly served all notices and maps required to be served on the condemnees as owners of the property to be acquired, as required by the Eminent Domain Procedure Law Section 402(B)(2) and has otherwise fully complied with the procedural requirements of the Eminent Domain Procedure Law. Upon the foregoing judgment, it is

ORDERED, ADJUDGED AND DECREED, that the Amended Petition of the condemnor is hereby granted; and it is further

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ORDERED, ADJUDGED AND DECREED, that the condemnor shall file the acquisition map in the office of the County Clerk located in Nassau County; and it is further

ORDERED, ADJUDGED AND DECREED, that upon the filing of the acquisition map in the office of the County Clerk of the County of Nassau, title to the above described property (i.e. Parcels 1, 3 and 5) shall vest in condemnor, and it is further

ORDERED, ADJUDGED AND DECREED, that the condemnees herein shall file a written claim or a notice of appearance pursuant to Section 503 of the Eminent Domain Procedure Law with the condemnor by serving the party designated to accept service in the notice of acquisition, and the Nassau County Clerk's office on or before December 20, 2001. Pursuant to Section 504 of the Eminent Domain Procedure Law, the written claim or notice of appearance shall include:

1. The name and post office address of the condemnee;
2. Reasonable identification by reference to the acquisition map or otherwise, of the property affected by the acquisition, and the condemnee's interest therein;
3. A general statement of the nature and type of damages claimed, including a schedule of fixture items which comprise part or all of the damages claimed;

**LEGIBILITY POOR
FOR MICROFILM**

100-100000

4. If represented by an attorney, the name of the condemnee's attorney and his/her office and post office address and telephone number subscribed at the end of the claim, and it is further

ORDERED, ADJUDGED AND DECREED that ~~the Clerk of the Court shall place this matter on the conference calendar of the undersigned for the~~
The parties shall appear for conference before
on Wednesday October 24, 2001 at 9:30 AM by which time a decision shall be issued
earliest possible date, and that at this conference, a date shall be chosen for a
hearing shall have been filed
hearing, in which the following issues shall be determined:

1. whether or not the \$20,000.00 offer made by the Petitioner for fixtures to respondent, Madeline Schlichtig, and the \$39,000.00 offer made by the Petitioner for fixtures to respondent, 546 Hempstead Turnpike Realty Corp., were adequate offers made in good faith, and
2. whether the respondent, Madeline Schlichtig is entitled to compensation as to the value of her liquor license.

ENTERED

J.S.C.

HON. EDWARD G. McCABE

ENTERED

OCT 03 2001

COURT CLERK

CLERK

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FOR MICROFILM

MEMORANDUM

SUPREME COURT, NASSAU COUNTY

TRIAL/IAS Part 4

In the Matter of the Town of Hempstead
Acquiring Property in the Urban Renewal
Area Known as Jamaica Square, Elmont,
New York as part of the Town's Federally
Funded Community Development Program,

BY: McCabe, J.

Town of Hempstead,

Petitioner/Condemnor,

546 Hempstead Turnpike Realty Corp.,
John Brunges and Madeline Schlichtig,

INDEX NO. 13988/00

Respondents/Condemnees

The petitioner commenced the within proceeding for an order to acquire by eminent domain the real property described in the petition therein and for permission to file the acquisition map thereof in the office of the County Clerk of Nassau County.

The petition states that the Town Board of the Town of Hempstead created an Urban Renewal Area known as Jamaica Square Area, pursuant to Section 504 of the General Municipal Law and that the property which is the subject of this condemnation proceeding was included in the Jamaica Square urban Renewal Area. The petitioner is exempt from compliance with the requirements of Article 2 of the Eminent Domain Procedure Law, (hereinafter EDPL) by virtue of the fact that prior to the acquisition the Town conducted public hearings in which the Town considered the public use, benefit or purpose to be served by the project as well as the general effect of the projects and the reasons for the selection of the location.

The Town Board approved the Urban Renewal Plan on July 27, 1999 and made Findings of Fact pursuant to Section 505 of the General Municipal Law. Included in the findings is the following:

"e there is a feasible method for the relocation of families and individuals displaced from the urban renewal area into decent, safe and sanitary dwellings, which are

or will be provided in the urban renewal area or other areas not generally less desirable in regard to public utilities and public and commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places of employment;"

f. the undertaking and carrying out the Urban Renewal Plan for the Jamaica Square Project, as revised, in the manner provided for in said plan, is in the public interest and will [now] sic. cause any additional or increased hardship to the residents of the Jamaica Square Urban Renewal Area, the area duly designated for urban renewal activities."

The answering papers reveal that though the respondent 546 Hempstead Turnpike Realty Corp. is a corporation it actually is a small family business consisting of two persons, husband and wife, Robert and Roberta Pitts, who have, for thirty (30) years conducted a welding, machine and collision business on the premises which is the only source of income for both Robert and Roberta Pitts.

The answering papers of Madeline Schlichtig indicate that Ms. Schlichtig has operated a bar and grill operation known as White Tavern which has been on the location in question for some fifty-three (53) years.

All respondents seek that as a pre-condition to the vesting of title that the condemnor be directed to issue an advance payment pursuant to Eminent Domain Procedure Law 303 for both real estate and fixtures, as well as relocation assistance.

The petitioner has tendered an offer of \$273,000.00 to respondent Schlichtig which respondent claims represents the value of real estate only. However, the reply papers contain a Summary Appraisal Report prepared by Mohring Appraisal Associates, Inc. together with a letter from Restorent Development Corporation which sets forth an opinion of the salvage value of certain articles that may be considered fixtures of the real property and/or trade fixtures. The offer made included the highest offer for the real estate together with an offer for the fixtures.

The petitioner has tendered an offer to the respondent 546 Hempstead Realty Corp., (Robert and Roberta Pitts) of \$192,000 which represents a value of \$39,000.00 for fixtures and \$153,000.00 for the real estate, which was the highest appraised value.

Subsequent to the making of the offer, an initial environmental inspection was undertaken and a Phase I Environmental Site Assessment Report was completed and issued by Sidney B. Bowne & Son which revealed that there were many petroleum spills within a 1/2 mile radius of the site. In addition an asbestos inspection must be performed. The Town is entitled to a full environmental investigation as part of this condemnation proceeding which would provide an offset to the payment required for the property.

Clearly EDPL 303 requires only the making of a written offer to acquire the property for one hundred (100%) of the valuation and not the actual making of an advance payment.

The Court finds that the question of whether or not the \$20,000.00 offer to respondent Schlichtig and \$39,000.00 to respondent 546 Hempstead Turnpike Realty Corp. for fixtures is an adequate offer made in good faith will be the subject of a hearing before the Court.

In addition, the respondent Schlichtig has raised a novel issue in regard to the liquor license. The respondent Madeline Schlichtig possesses a liquor license for her property, the site of a tavern which is by law "location sensitive". The petitioner claims that even considering the fact that a liquor license is "location sensitive", there is no evidence in the record to suggest that the respondent will not be able to obtain a liquor license for another location. Although there are no cases on point in this jurisdiction, the case law from other jurisdictions places a value on a liquor license in certain condemnation proceedings. The liquor license question will also be the subject of the hearing before the Court.

The Clerk of the Court shall place this matter on the conference calendar of the undersigned for the earliest possible date. At the conference all issues shall be addressed and a date chosen for the hearing.

The petitioner has submitted in their papers that they will comply with the requirements of the Eminent Domain Procedure Law (EDPL) and the other laws of this State and the Federal government in regard to the assistance to be provided to the respondents including relocation assistance. The Court notes that in regard to relocation assistance, the respondents must apply to the petitioner for assistance in accordance with the rules and procedure of the municipality.

The Court hereby grants the application of the petitioner for an order of this Court to acquire by eminent domain the real property described in the amended petition. The petitioner is

Matter of Town of Hempstead

Index No. 13988/00

Page No. 4

hereby authorized to file the acquisition map in the Office of the Clerk of the County of Nassau, and, upon such filing title to the respondents' property shall vest in the petitioner with respect to Parcels 1, 3 and 5.

Settle order on notice.

Duplicate Original : June 4, 2001

Dated. MAR. 08 2001.....



J.S.C.

PARCEL 3

All that plot and parcel of land situated in Elmont, Town of Hempstead, Nassau County, NY known as Tax Lots 20, 21, 42 and 43 in Section 32, Block 362 of the Nassau County Tax Map, also known as Part of Lots 20 through 27 inclusive in Block 20 and shown on the "Map of Jamaica Square #2, Elmont, Town of Hempstead, Nassau County, NY", filed September 8, 1906 as Map Number 41 and more particularly described as follows:

BEGINNING at a point on the widened northwest line of Louis Avenue, said point located the following two courses and distances from the old southwest corner of Arcade Place and Louis Avenue:

1. South $40^{\circ} 22'$ West along the northwest line of Louis Avenue, 70.00 feet
2. North $49^{\circ} 38'$ West, 4.80 feet to the widened line of Louis Avenue the true point or place of beginning; Running thence South $40^{\circ} 22'$ West along said widened line of Louis Avenue, 131.52 feet to the widened northeasterly line of Hempstead Turnpike; Running thence North $74^{\circ} 38'$ West along said line 58.70 feet to a point; Running thence North $40^{\circ} 22'$ East, 100.33 feet to a point; Running thence North $49^{\circ} 38'$ West, 29.00 feet to a point; Running thence South $49^{\circ} 38'$ East, 82.20 feet to the point or place of BEGINNING.

Containing an area of 9,281 square feet or 0.213 acres.

RECEIVED IN
THIS CONDITION

PARCEL 5

All that plot and parcel of land situated in Elmont, Town of Hempstead, Nassau County, NY known as Tax Lot 200 in Section 32, Block 365 of the Nassau County Tax Map, also known as Part of Lots 67 through 69 inclusive in Block 18 and shown on the "Map of Jamaica Square #2, Elmont, Town of Hempstead, Nassau County, NY", filed September 8, 1906 as Map Number 41 and more particularly described as follows:

BEGINNING at a point on the northwest corner of the herein described parcel, said point located the following three courses and distances from the old southeast corner of Pelham Street and Louis Avenue:

1. South 40° 22' West along the southeast line of Louis Avenue, 784.00 feet
2. South 49° 38' East, 87.00 feet
3. South 40° 22' West, 56.00 feet to the true point or place of beginning; Running thence South 49° 38' East, 36.21 feet to the widened north line of Makofske Avenue; Running thence southwesterly on a curve to the right having a radius of 420.00 feet and an arc length of 59.01 feet to a point; Running thence South 60° 31' 10" W, 3.79 feet to a curve connecting the northerly line of Makofske Avenue with the northeasterly line of Hempstead Turnpike; Running thence northerly on a curve to the right having a radius of 50.00 feet and an arc length of 43.63 feet; Running thence, North 69° 28' 50" West along the northeasterly line of Hempstead Turnpike, 3.26 feet to Tax Lot 200; Running thence North 40° 22' East along said lot 77.11 feet to a point; Running thence South 49° 38' East, 14.50 feet; Running thence North 40° 22' East, 14.00 feet to the point or place of BEGINNING.

Containing an area of 3,039 square feet or 0.0698 acres.

RECEIVED IN
THIS CONDITION

PARCEL 1

All that plot and parcel of land situated in Elmont, Town of Hempstead, Nassau County, NY known as Tax Lots 11, 16, 17, 18, 19 and 41 in Section 32, Block 362 of the Nassau County Tax Map, also known as Lots 11, 13, 16, 17, Part of Lots 12, 18 and 19 in Block 20 and shown on the "Map of Jamaica Square #2, Elmont, Town of Hempstead, Nassau County, NY", filed September 8, 1906 as Map Number 41 and more particularly described as follows:

BEGINNING at a point on the southeasterly line of Rouquette Avenue, said point located 140 feet southwesterly from the old southeast corner of Arcade Place and Rouquette Avenue; Running thence the following four courses and distances:

1. South 49° 38' East, 87.00 feet
2. North 40° 22' East, 14.00 feet
3. South 49° 38' East, 29.00 feet
4. South 40° 22' West, 100.33 feet to the northeasterly widened line of Hempstead Turnpike; Running thence along said line the following two courses and distances:

1. North 74° 38' West, 32.00 feet

2. North 68° 23' West, 30.625 feet to the southeast corner of tax lot 15; Running thence the following three courses and distances along tax lots 15 and 14:

1. North 40° 22' East, 95.69 feet
2. North 49° 38' West, 29.00 feet
3. South 40° 22' West, 105.54 feet to the northeasterly line of Hempstead Turnpike;

Running thence North 68° 23' West along said line, 22.15 feet to a curve connecting the east line of Hempstead Turnpike with the widened southeast line of Rouquette Avenue; Running thence on a curve to the right having a radius of 19 feet and an arc length of 10.86 feet to the said widened line of Rouquette Avenue; Running thence North 40° 22' East along said line, 102.38 feet to a point; Running thence North 49° 38' West, 5.00 feet to the old line of Rouquette Avenue; Running thence North 40° 22' East along said line, 14.00 feet to the point or place of BEGINNING.

Containing an area of 9,575 square feet or 0.2198 acres.

RECEIVED IN
THIS CONDITION

STATE OF NEW YORK, COUNTY OF

SS.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

☐ **Certification by Attorney** certify that the within has been compared by me with the original and found to be a true and complete copy.

☐ **Attorney's Acknowledgment** state that I am the attorney(s) of record for

action; I have read the foregoing

in the within

and know the contents thereof;

the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

SS.:

I, the undersigned, being duly sworn, depose and say: I am

☐ **Individual Verification** in the action: I have read the foregoing

and know the contents thereof; the same is true to my own knowledge, except

as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

☐ **Corporate Verification**

the of a

corporation and a party in the within action; I have read the foregoing and know the contents thereof; and the same is true to my own knowledge,

except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF NASSAU

SS.:

(If more than one box is checked—indicate after names type of service used.)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at Lynbrook, New York 11563

On June 18, 2001

I served the within Notice of Settlement with Vesting Order

☒ **Service By Mail:**

by mailing a copy to each of the following persons at the last known address set forth after each name below.

☐ **Personal Service on Individual**

by delivering a true copy of each personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein.

☐ **Service by Electronic Means**

by transmitting a copy to the following persons by ☐ FAX at the telephone number set forth after each name below ☐ E-MAIL at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a copy to the address set forth after each name.

☐ **Overnight Delivery Service**

by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name below.

SAUL FENCHEL, Esq.

Siegel, Fenchel & Peddy, P.C.

400 Garden City Plaza

Suite 100

Garden City, New York 11530

CAROL RIZZO, Esq.

Koepfel, Martone, Leistman & Herman, LLP

155 First Street

Mineola, New York 11501

LEGIBILITY POOR
FOR MICROFILM

ROSS M. GERBER
Notary Public, State of New York
No. 02GE4886438
Qualified in Nassau County
Commission Expires Feb. 8, 2003

Sworn to before me on

6/18/01

Sharon M. Gerber

Sharon M. Gerber

The name signed must be printed beneath

SHARON WEINBRAND

NOTICE OF ENTRY

PLEASE take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

MINERVA AND D'AGOSTINO, P.C.

Attorneys for

Office and Post Office Address
107 SOUTH CENTRAL AVENUE
VALLEY STREAM, NEW YORK 11580

To

Attorney(s) for

NOTICE OF SETTLEMENT

PLEASE take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 19
at M.

Dated,

Yours, etc.,

MINERVA AND D'AGOSTINO, P.C.

Attorneys for

Office and Post Office Address
107 SOUTH CENTRAL AVENUE
VALLEY STREAM, NEW YORK 11580

To

Attorney(s) for

Index No. 00-013988

Year 19

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

In the Matter of the Town of Hempstead
Acquiring Property in the Urban Renewal
Area Known as Jamaica Square, Elmont,
New York as part of the Town's Federally
Funded Community Development Program,

Town of Hempstead,

Petitioner/Condemnor,

546 Hempstead Turnpike Realty Corp.,
John Brunges and Madeline Schlichtig,

Claimants.

NOTICE OF SETTLEMENT WITH
VESTING ORDER

MINERVA AND D'AGOSTINO, P.C.

Attorneys for

Office and Post Office Address, Telephone
107 SOUTH CENTRAL AVENUE
VALLEY STREAM, NEW YORK 11580
(516) 872-7400

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

LEGIBILITY POOR
FOR MICROFILM

CLERK OF NASSAU COUNTY

County Clerk's Office
State of New York,
County of Nassau

} ss: 00--013988

I, Maureen O'Connell, Clerk of the County of Nassau and of the
Supreme and County Courts, Courts of Record, do hereby certify that I
have compared the annexed with the original order filed in my
office.....Oct 3, 2001....., and that
the same is a true transcript thereof, and of the whole of such original.

In testimony whereof, I have hereunto set my hand and affixed the
seal of said county and court Sept 30, 2014

Maureen O'Connell Maureen O'Connell, Clerk

Exhibit C

Municipal Resolution

CASE NO. 18911

RESOLUTION NO. 1561-2014

Adopted: November 12, 2014

Councilman Santino offered the following resolution and moved its adoption:

**RESOLUTION AUTHORIZING THE SUPERVISOR TO
ENTER INTO AND EXECUTE A NYW11 ERP AGREEMENT
WITH THE STATE OF NEW YORK TO UNDERTAKE AN
ENVIRONMENTAL RESTORATION PROJECT LOCATED
AT 546 HEMPSTEAD TURNPIKE, ELMONT, NEW YORK/**

WHEREAS, Article 56 of the Environmental Conservation Law authorizes State assistance to municipalities for environmental restoration projects by means of a contract and the Town of Hempstead deems it to be in the public interest and benefit under this law to enter into a contract therewith; and

WHEREAS, the enacted Executive Budget for State Fiscal Year 2013-2014 (the "13/14 Budget"), as reflected in Chapter 54, Laws of 2013 (the "Laws of 2013), provided New York Works 11 funding for services, expenses and indirect costs related to various environmental projects including, but not limited to, environmental restoration projects. The Law allows the Department of Environmental Conservation (the "Department") to enter into agreements with municipalities to undertake environmental restoration projects on behalf of a municipality upon request, provided that the municipality shall provide ten percent (10%) of the total project costs (hereinafter referred to as "NYW11 ERP"); and

WHEREAS, the Town of Hempstead, after thorough consideration and study of available data, has determined that certain work, as described in its application and attachments, hereinafter called the "Project", is desirable and is in the public interest and is required in order to implement the Project.

NOW, THEREFORE, BE IT

RESOLVED, that the Supervisor is authorized to act on behalf of the Town of Hempstead in all matters related to State assistance under ECL Article 56, Title 5; and

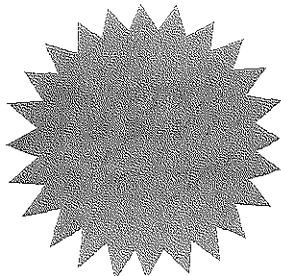
BE IT FUTHER RESOLVED that the Supervisor is also authorized to make a request to the Department by applying for participation in the NYW11 ERP and to enter into an agreement to undertake an environmental restoration project at 546 Hempstead Turnpike, Elmont, New York on behalf of the Town of Hempstead; and

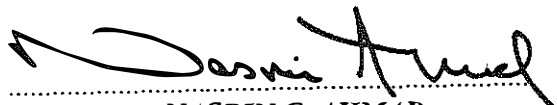
BE IT FURTHER RESOLVED that the Commissioner of the Department of Planning and Economic Development is authorized to execute the NYW11 ERP

STATE OF NEW YORK
COUNTY OF NASSAU
TOWN OF HEMPSTEAD } ss.:

I do hereby certify that I have compared the annexed copy of Resolution No. 1561-2014 with the original on file in the office of the Town Clerk of the Town of Hempstead, and that the same is a true and correct copy of said original and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Hempstead on this day of November 13, 2014





NASRIN G. AHMAD
Town Clerk

Adopted: November 12, 2014

Councilman Santino offered the following resolution and moved its adoption:

**RESOLUTION AUTHORIZING THE SUPERVISOR TO
ENTER INTO AND EXECUTE A NYW II ERP AGREEMENT
WITH THE STATE OF NEW YORK TO UNDERTAKE AN
ENVIRONMENTAL RESTORATION PROJECT LOCATED
AT 546 HEMPSTEAD TURNPIKE, ELMONT, NEW YORK/**

WHEREAS, Article 56 of the Environmental Conservation Law authorizes State assistance to municipalities for environmental restoration projects by means of a contract and the Town of Hempstead deems it to be in the public interest and benefit under this law to enter into a contract therewith; and

WHEREAS, the enacted Executive Budget for State Fiscal Year 2013-2014 (the "13/14 Budget"), as reflected in Chapter 54, Laws of 2013 (the "Laws of 2013"), provided New York Works 11 funding for services, expenses and indirect costs related to various environmental projects including, but not limited to, environmental restoration projects. The Law allows the Department of Environmental Conservation (the "Department") to enter into agreements with municipalities to undertake environmental restoration projects on behalf of a municipality upon request, provided that the municipality shall provide ten percent (10%) of the total project costs (hereinafter referred to as "NYW11 ERP"); and

WHEREAS, the Town of Hempstead, after thorough consideration and study of available data, has determined that certain work, as described in its application and attachments, hereinafter called the "Project", is desirable and is in the public interest and is required in order to implement the Project.

NOW, THEREFORE, BE IT

RESOLVED, that the Supervisor is authorized to act on behalf of the Town of Hempstead in all matters related to State assistance under ECL Article 56, Title 5; and

BE IT FUTHER RESOLVED that the Supervisor is also authorized to make a request to the Department by applying for participation in the NYW11 ERP and to enter into an agreement to undertake an environmental restoration project at 546 Hempstead Turnpike, Elmont, New York on behalf of the Town of Hempstead; and

BE IT FURTHER RESOLVED that the Commissioner of the Department of Planning and Economic Development is authorized to execute the NYW11 ERP agreement, to submit documentation, and to otherwise act for the Town of Hempstead's governing body in all matters related to the Project and for State assistance; and

BE IT FURTHER RESOLVED, that the Town of Hempstead agrees that it will fund its portion of the cost of the Project by reimbursing the Department ten percent (10%) of Project costs and that funds will be available to reimburse the Department within ninety (90) days after receipt of an invoice from the Department; and

BE IT FURTHER RESOLVED, that one (1) certified copy of this authorization, which takes effect immediately, be prepared and sent to the Albany office of the New York State Department of Environmental Conservation together with the Application for Participation in NYW 11 ERP.

The foregoing Resolution was adopted upon roll call as follows

AYES: SIX (6)

NOES: NONE (0)