



BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

[] Amendment to [check one or more boxes below]

- [] Add
[] Substitute
[] Remove
[] Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [Complete Section I-IV below and Part II]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? [] Yes [x] No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See http://www.dec.ny.gov/chemical/76250.html

[] Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [Complete Sections I and V below and Part II]

[x] Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [Complete Section I and V below and Part II]

[] Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY: Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

[] Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment: The Queen City Lofts project (ID: C314125) is located at 178-182 Main Street and 11 South Bridge Street, Poughkeepsie, New York was accepted into the BCP on October 23, 2015. The Volunteer is the contract vendee for the adjoining property to the south of the BCP Site, located at 15 South Bridge Street. This parcel will allow for critical off-street parking for the planned development. The Volunteer wishes to amend the BCA to add a 0.15-acre portion of this adjoining property to the current BCP site which is impacted with contamination that requires remediation (See attachment for discussion of contamination at the portion of the parcel to be added to the BCP). The additional parcel represents less than 20% of the current BCP Site and therefore qualifies as a minor modification.

Please refer to the attached instructions for guidance on filling out this application

Section I. Existing Application Information

BCP SITE NAME: Queen City Lofts

BCP SITE NUMBER: C314125

NAME OF CURRENT APPLICANT(S): The Kearney Realty & Development Group, Inc.

INDEX NUMBER OF EXISTING AGREEMENT: C314125-10-15

DATE OF EXISTING AGREEMENT: 11/03/15

Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)?

Yes

No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF NEW REQUESTOR'S REPRESENTATIVE

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? Yes No

Describe Requestor's Relationship to Existing Applicant:

Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? Yes No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? Yes No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Yes No
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. Yes No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. Yes No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? Yes No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? Yes No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? Yes No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? Yes No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? Yes No
11. Have all known bulk storage tanks on-site been registered with DEC? Yes No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

Requestor's Relationship to Property (check one):

Prior Owner Current Owner Potential /Future Purchaser Other _____

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? Yes No

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

Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS 178-182 Main Street and 11 South Bridge Street

CITY/TOWN Poughkeepsie

ZIP CODE 12601

TAX BLOCK AND LOT (TBL) (in existing agreement)

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
178 Main Street		6062	76	942131	0.46
182 Main Street		6062	76	945130	0.04
11 South Bridge Street		6062	84	941122	0.11

Check appropriate boxes below:

- Changes to metes and bounds description or TBL correction
- Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: 0.15

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
15 South Bridge Street (0.15-acre portion)		6062	84	943116	0.46

- Reduction of property
- Approximate acreage removed: _____

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From ECL 27-1405(31):</p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of July 1, 2015:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, that defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, that sets affordable units aside for tenants at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Queen City Lofts	BCP SITE NUMBER: C314125
NAME OF CURRENT APPLICANT(S): The Kearney Realty & Development Group, Inc.	
INDEX NUMBER OF EXISTING AGREEMENT: C314125-10-15	
EFFECTIVE DATE OF EXISTING AGREEMENT: 11/03/15	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
(Individual) I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department. Date: _____ Signature: _____ Print Name: _____
(Entity) I hereby affirm that I am (title _____) of (entity _____); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law. _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department. Date: _____ Signature: _____ Print Name: _____

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am President (title) of Kearney Realty # Development Group (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 5-6-2016 Signature: 

Print Name: Ken Kearney

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: NOVEMBER 3, 2015

Signature by the Department: AMENDMENT #1

DATED: AUGUST 18, 2016

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

SUBMITTAL INFORMATION:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

FOR DEPARTMENT USE ONLY

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

PROJECT MANAGER: _____

Attachment A – Supplemental Information

Executive Summary

The Volunteer (The Kearney Realty & Development Group, Inc.) for the current “Queen City Lofts” Brownfields Cleanup Program project (BCP ID: C314125) proposes to amend the existing Agreement by adding a 0.15-acre portion of the southern adjoining property to the current BCP site.

A subsurface investigation was performed at this adjoining property by Ecosystems Strategies, Inc. (ESI) in March 2016. The investigation documented previous environmental conditions associated with its historical utilization as a taxi facility (i.e., PBS registrations, reported spill events, and remedial activities) and fieldwork activities consisting of soil, groundwater, and soil vapor sampling. Field evidence of significant petroleum contamination was observed during the extension of soil borings located in the vicinity of the former automotive maintenance building (garage), and in groundwater at temporary monitoring wells completed in this area. High concentrations of tentatively identified compounds (TICs) related to gasoline were detected in grossly contaminated soil samples, and elevated concentrations of petroleum related VOCs were detected in one groundwater sample. Spill number 1503545 was reported to NYSDEC as a result of these findings. Relatively elevated levels of tetrachloroethylene (PCE) were also detected in sub-slab soil vapor samples collected within the garage area, indicating a likely source of PCE in soil and/or groundwater at the property.

The portion of the property in the vicinity of the former garage, containing the grossly impacted soil, petroleum contaminated groundwater, and soil vapor impacted by PCE, is proposed for inclusion into the existing BCP site. Turnover, Inc. currently owns the adjoining property, pending purchase by the Volunteer.

Site Location and Description

The existing BCP site is adjoined to the south by a vacant 0.46-acre parcel located at 15 South Bridge Street. This adjoining property is occupied by a one-story former garage building with contiguous one-story and partial two-story office and storage structures (the northern and westernmost portions of the office and storage structures are dilapidated). Asphalt parking and grass-covered yard areas occupy the remaining portions of the property.

The specified portion of the property which represents the proposed amendment consists of an irregular-shaped, 0.15-acre area located at the eastern portion of the property. The proposed amendment would add the former garage, storage, and office buildings as well as their adjacent exterior areas to the existing Queen City Lofts BCP project. A Fieldwork Map indicating the approximate dimensions of the proposed addition and contamination requiring remediation is provided as Attachment B.

Historical Environmental Conditions

Previous environmental investigations performed by ESI have documented the following conditions at the property proposed for addition.

- NYSDEC spill number 9106196 was reported in September 1991 as a result of a tank test failure. The spill was closed in July 1992 and state cleanup standards were reportedly met.

Attachment A – Supplemental Information

- NYSDEC spill number 0611093 was reported in January 2007 upon discovery of petroleum impacted soils during the extension of soil borings. The spill was closed approximately two weeks later and state cleanup standards were reportedly not met.
- The USEPA Resource Conservation and Recovery Information System (RCRIS) database lists the subject property as a no longer registered, non-generator of hazardous waste (Site ID: NYR000044123).
- ESI has knowledge that this property was used as a taxi facility and remedial activities were performed as a result of historical commercial activities. An inactive vapor extraction system (VES) is located at the central portion of the property.

The NYSDEC petroleum bulk storage (PBS) database indicates that the subject property is a PBS facility, which is registered as follows:

- PBS Number: 3-185086 – provided for an in-service, 8,000-gallon gasoline underground storage tank (UST) installed in October 1977.
- PBS Number: 3-601912 – provided for an inactive, 275-gallon waste oil aboveground storage tank (AST) that was closed/removed in September 2006.

Subsurface Environmental Conditions

Field evidence of petroleum contamination was observed during the extension of borings and in groundwater at temporary monitoring wells located within the proposed addition area. A high peak concentration of total TICs related to gasoline compounds were detected in overtly impacted soil samples, and petroleum-related volatile organic compounds (VOCs) were identified in groundwater at concentrations above NYSDEC Ambient Water Quality Standards (AWQS). Based on these observations and laboratory results ESI reported spill number 1511940 to the NYSDEC. This petroleum contamination is likely to be associated with a release that had previously been subject to remediation activities.

Relatively elevated levels of the chlorinated solvent PCE were detected in soil vapor samples collected at the northern and eastern interior portions of the garage. These findings support the conclusion that an unknown source of PCE is present in soil and/or groundwater at the subject property.

Purpose and Scope of the Project

The purpose of the existing Queen City Lofts project is Site remediation to facilitate a multi-use development consisting of commercial and affordable housing units (restricted residential). The proposed addition would address subsurface contamination requiring remediation and provide critical off-site parking space for the planned development. Remediation is required to address NYSDEC spill number 1503545 and accommodate the proposed use of the Site. Therefore, the Site qualifies as a Brownfield Site as defined at 6 NYCRR 375-1.2(b).

The Site is encumbered with open NYSDEC spill number 1511940 that was reported as the result of petroleum contaminated soils discovered during subsurface investigative activities in March 2016. The open spill file requires the Volunteer (pending purchase) to remediate subsurface soil and groundwater contamination at the Site in accordance NYSDEC regulations. Spill closure activities would be performed pursuant to a Remedial Action Work Plan (RAWP) approved by NYSDEC under the BCP. After acquiring title, the Requestor will take appropriate measures to remediate and prevent human, environmental, or natural resource exposure to subsurface soil contamination at the Site. A 550-gallon fuel oil AST is located in the northwestern portion of the former garage building; however, no current information regarding 8,000-gallon gasoline UST

Attachment A – Supplemental Information

(listed as active) is available. All tanks identified during development will be registered and managed in accordance with NYSDEC regulations.

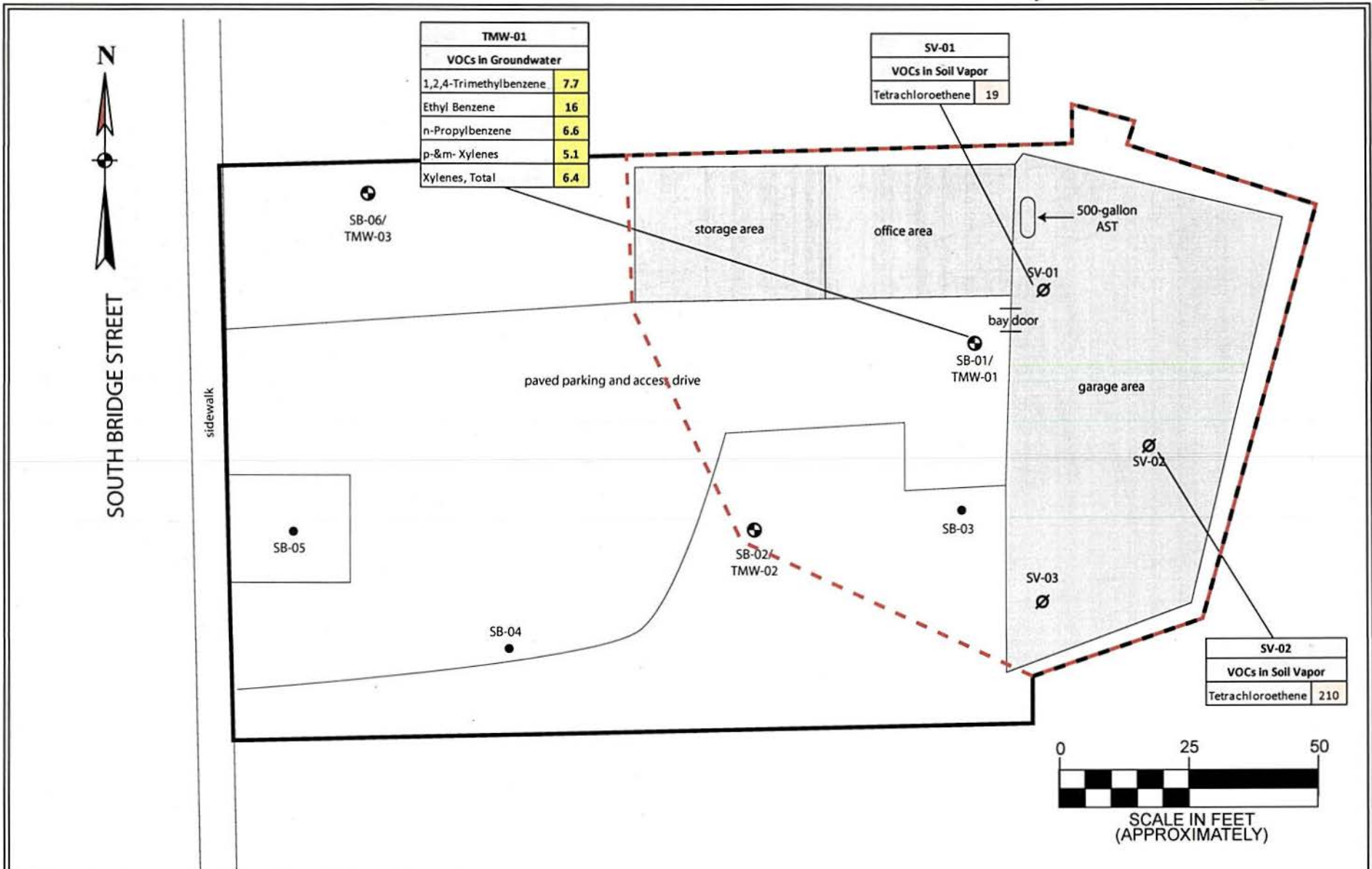
The lender/investors for this project will require any cleanup be conducted with oversight of the NYSDEC so that the NYSDEC can issue a certificate of completion and liability release from the State of New York. The remediation of the existing contamination will increase project costs because of expenses or "premiums" associated with disposal of contaminated soil, increased labor or "trade" premium due to the need to use HAZWOPER-trained-workers in and around the contaminated materials as well as ancillary monitoring and reporting costs. In addition, there will be scheduling impacts associated with soil sampling and excavation site constraints that will extend the timeframes customarily required for traditional site excavation.

The proposed BCP addition will enable the Volunteer to limit its liability to on-site issues, an important underwriting consideration for the lenders. Moreover, the BCP addition will enable the applicant to qualify for hazardous waste program fee exemption. Finally, enrollment in the BCP is a priority consideration of New York State Homes and Community Renewal.

The tax credits available under the Brownfield Cleanup Program will make the project more economically feasible and result in substantial public benefits associated with increased availability of parking space for the commercial and residential development while facilitating redevelopment of the area.

Anticipated Project Schedule

Anticipated Date	Item/Task
May 2016	Submit amendment application to the NYS DEC Brownfield Cleanup Program (BCP)
May 2016	NYSDEC determination of completeness
May-June 2016	Amended BCA executed Submission of RIWP
August 2016	Completion of Investigation
September 2016	Submission of RIR and RAWP
November 2016	Approval of RAWP Issuance of Decision Documentation
January – May 2017	Remediation
December 2017	Certificate of Certificate of Completion



All feature locations are approximate. This map is intended as a schematic to be used in conjunction with the associated report, and it should not be relied upon as a survey for planning or other activities.

Fieldwork Map
 15 South Bridge Street
 City of Poughkeepsie
 Dutchess County, New York

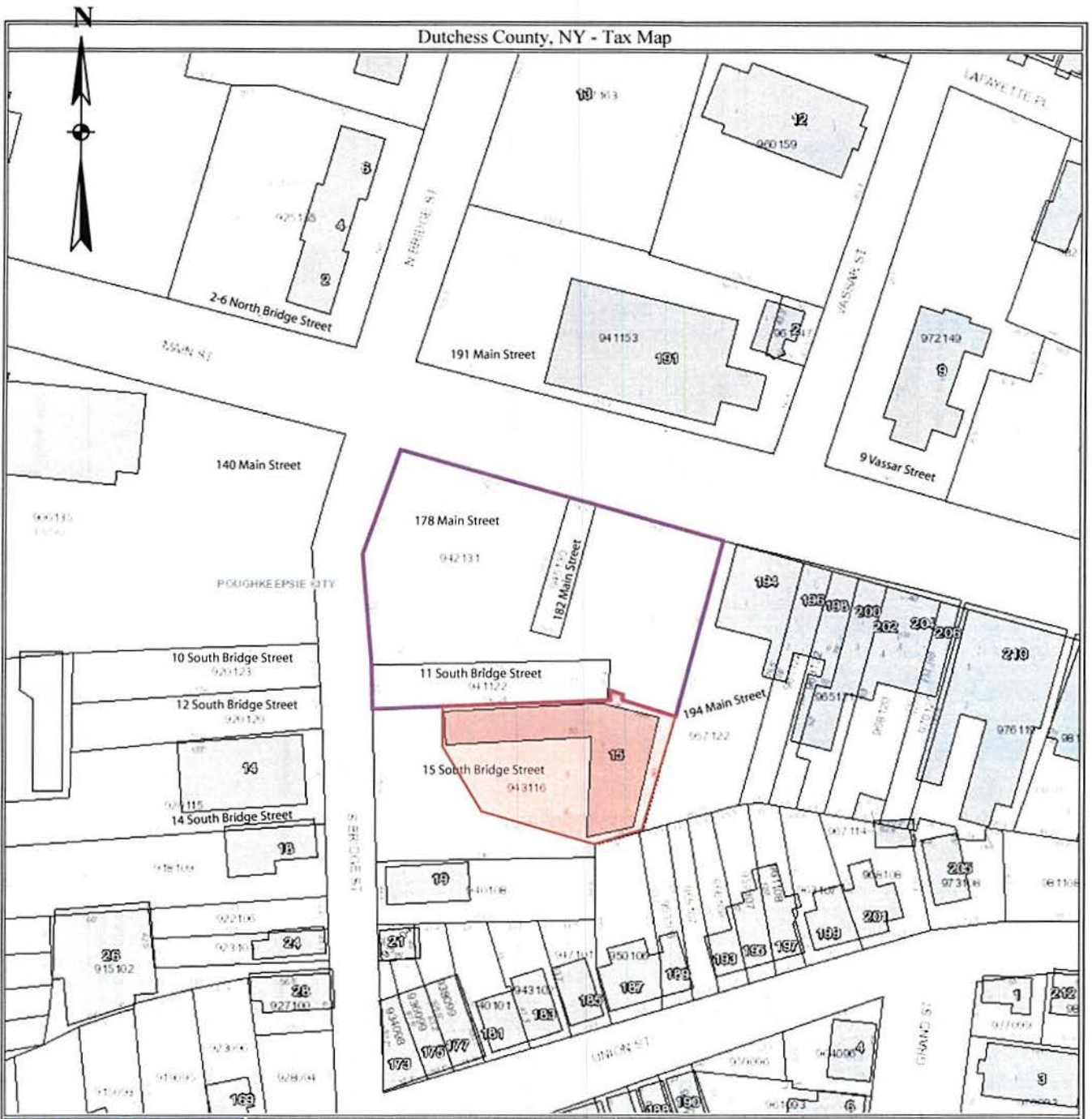
- Legend:**
- subject property border
 - 15 South Bridge Street property border
 - + soil boring/temporary monitoring well location
 - soil boring location
 - ∅ soil vapor location
 - concentrations above AWQS (results in ppm)
 - relatively elevated concentrations (results in ug/m3)

ESI File: KP15045B.50

May 2016

Scale as shown

Attachment B



ParcelAccess
Dutchess County, NY
Print date: 6/16/2015

Parcel Grid #: 13130000606200769421310000
Municipality: City Poughkeepsie

This map is provided as a service of the Dutchess County's Intranet ParcelAccess. Absolutely no accuracy or completeness guarantee is implied or intended.

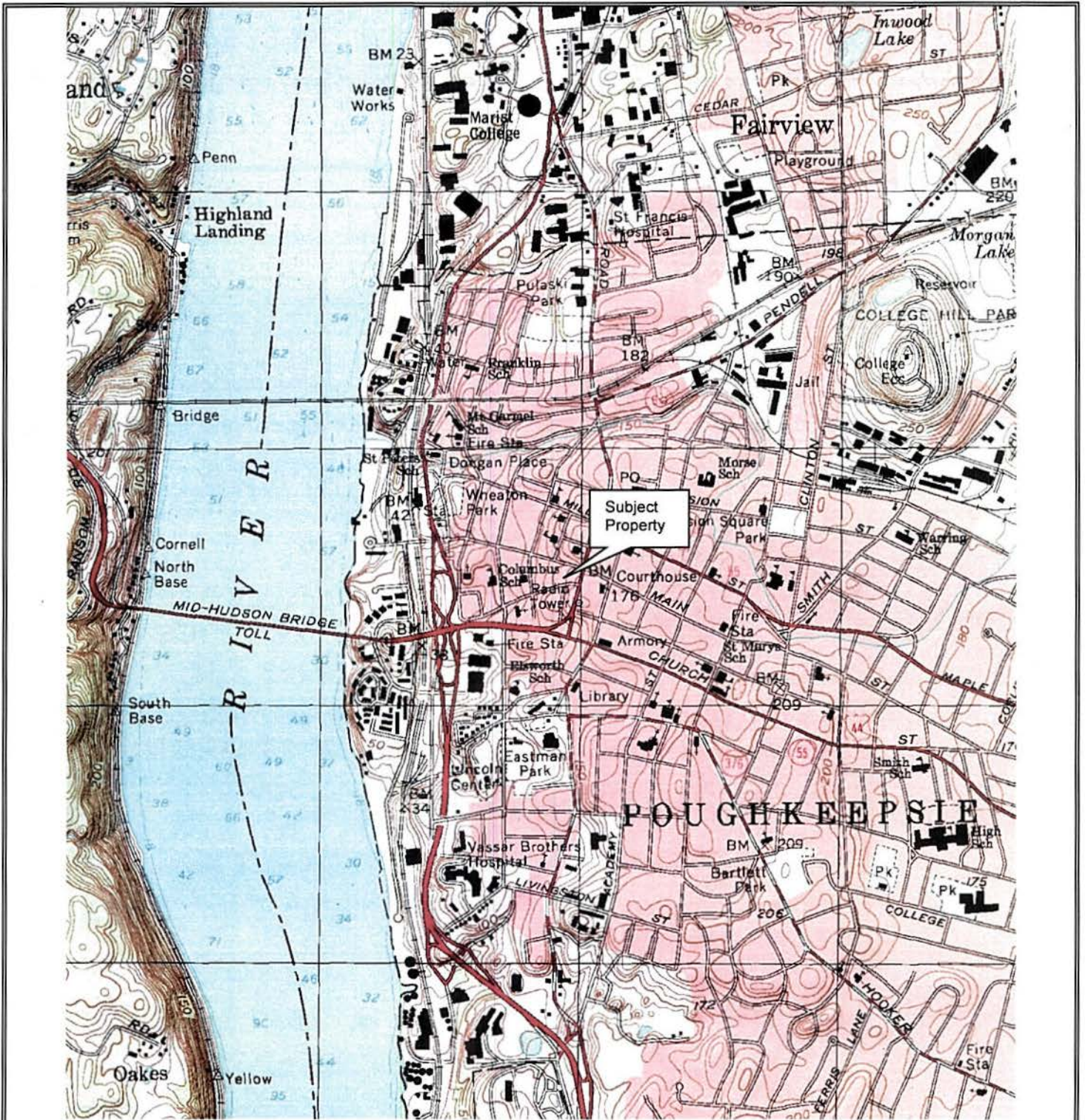
Tax Map
Portion of 15 South Bridge Street
City of Poughkeepsie
Dutchess County, New York

Legend:

- BCP Brownfield Site C314125
- subject property border

SCALE IN FEET (APPROXIMATELY)

ESI File: KP15045B.50
May 2016
Attachment B



Source: USGS Topographic Map of the Poughkeepsie, New York Quadrangle, dated 1995, digital image provided by MyTopo.com

U.S.G.S. Topographic Map
 Portion of 15 South Bridge Street
 City of Poughkeepsie
 Dutchess County, New York



ESI File: KP15045.50

April 2016

Attachment B