

# Brownfield Cleanup Program Application

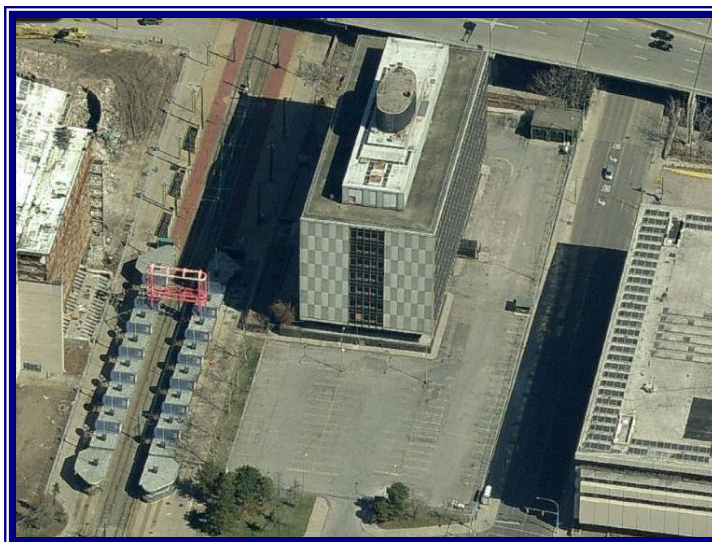
125 Main Street Site  
Buffalo, New York

January 2012

0105-049-100

Prepared for:

Harbor District Associates, LLC



Prepared by:



2558 Hamburg Turnpike, Buffalo, New York | phone: (716) 856-0635 | fax: (716) 856-0583



NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION



**BROWNFIELD CLEANUP PROGRAM (BCP)**

ECL ARTICLE 27 / TITLE 14

DEPARTMENT USE ONLY  
BCP SITE #:

07/2010

**Section I. Requestor Information**

NAME Harbor District Associates, LLC

ADDRESS 570 Delaware Avenue

CITY/TOWN Buffalo, New York

ZIP CODE 14202

PHONE 716-886-0211

FAX 716-886-2269

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 Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS. (See Exhibit A)

NAME OF REQUESTOR'S REPRESENTATIVE Mr. Michael DePriest

ADDRESS 570 Delaware Avenue

CITY/TOWN Buffalo, New York

ZIP CODE 14202

PHONE 716-886-0211

FAX 716-886-2269

E-MAIL MikeDePriest@benderson.com

NAME OF REQUESTOR'S CONSULTANT TurnKey Environmental Restoration, LLC

ADDRESS 2558 Hamburg Turnpike, Suite 300

CITY/TOWN Buffalo, New York

ZIP CODE 14218

PHONE 716-856-0635

FAX 716-856-0583

E-MAIL mlesakowski@benchmarkturnkey.com

NAME OF REQUESTOR'S ATTORNEY Mr. Craig Slater, Esq. (Harter, Secrest and Emery)

ADDRESS Twelve Fountain Plaza, Suite 400

CITY/TOWN Buffalo, New York

ZIP CODE 14202

PHONE 716-845-4233

FAX 716-853-1617

E-MAIL cslater@hselaw.com

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

☐ **PARTICIPANT**

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

☒ **VOLUNTEER**

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

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

Requestor Relationship to Property (check one):

☐ Previous Owner

☐ Current Owner

☒ Potential /Future Purchaser

☐ Other \_\_\_\_\_

If requestor is not the site owner, requestor will have access to the property throughout the BCP project. ☒ Yes ☐ No (see Exhibit B)  
-Proof of site access must be submitted for non-owners

**Section II. Property Information****Check here if this application is to request significant changes to property set forth in an existing BCA:** ☐

Existing BCP site number: \_\_\_\_\_

PROPERTY NAME **125 Main Street Site**ADDRESS/LOCATION **125 Main Street**CITY/TOWN **Buffalo**ZIP CODE **14204**

MUNICIPALITY(IF MORE THAN ONE, LIST ALL):

**City of Buffalo**COUNTY **Erie**SITE SIZE (ACRES) **2.185**LATITUDE (degrees/minutes/seconds) **N42 ° 52 ' 40 "**LONGITUDE (degrees/minutes/seconds) **W78 ° 52 ' 34 "**HORIZONTAL COLLECTION METHOD: ☐ SURVEY ☐ GPS ☒ MAPHORIZONTAL REFERENCE DATUM: **NAD 83**

COMPLETE TAX MAP INFORMATION FOR ALL TAX PARCELS INCLUDED WITHIN THE PROPERTY BOUNDARIES. ATTACH REQUIRED MAPS PER THE APPLICATION INSTRUCTIONS.

Parcel Address

Parcel No.

Section No.

Block No.

Lot No.

Acreage

**125 Main Street****125****111.17****7****1****2.185**

1. Do the property boundaries correspond to tax map metes and bounds?

☒ Yes ☐ No

If no, please attach a metes and bounds description of the property.

2. Is the required property map attached to the application? (application will not be processed without map)

☒ Yes ☐ No

3. Is the property part of a designated En-zone pursuant to Tax Law § 21(b)(6)?

☐ Yes ☒ NoFor more information please see Empire State Development's [website](#).

If yes, identify area (name) \_\_\_\_\_

Percentage of property in En-zone (check one): ☒ 0-49% ☐ 50-99% ☐ 100%

4. Is this application one of multiple applications for a large development project, where the development project spans more than 25 acres (see additional criteria in BCP application instructions)? If yes, identify name of properties in related BCP applications: \_\_\_\_\_

☐ Yes ☒ No

5. Property Description Narrative:

**See Attachment 01**

6. List of Existing Easements (type here or attach information)

Easement HolderDescription**NA**

7. List of Permits issued by the NYSDEC or USEPA Relating to the Proposed Site (type here or attach information)

TypeIssuing AgencyDescription**PBS****NYSDEC****PBS No. 9-387495 & 9-387746****SPILLS****NYSDEC****Multiple spills on-Site (see Attachment 05)**

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

Initials of each Requestor: \_\_\_\_\_

**Section III. Current Property Owner/Operator Information**OWNER'S NAME **Erie Canal Harbor Development Corporation**ADDRESS **95 Perry Street**CITY/TOWN **Buffalo**ZIP CODE **14203**PHONE **(716) 846-8200**FAX **(716) 846-8262**E-MAIL **eriecanalharbor@esd.ny.gov**OPERATOR'S NAME **Currently Vacant (see Attachment 07 for parcel operator information)**

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

**Section IV. Requestor Eligibility Information (Please refer to ECL § 27-1407)**

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

- |  |                              |  |
|--|------------------------------|--|
| 1. Are any enforcement actions pending against the requestor regarding this site?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the requestor subject to an existing order relating to contamination at the site?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Has the requestor been determined to have violated any provision of ECL Article 27?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Has the requestor previously been denied entry to the BCP?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving contaminants?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 7. Has the requestor been convicted of a criminal offense that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 8. Has the requestor knowingly falsified or concealed material facts or knowingly submitted or made use of a false statement in a matter before the Department?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.8(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

**Section V. Property Eligibility Information (Please refer to ECL § 27-1405)**

- |  |                              |  |
|--|------------------------------|--|
| 1. Is the property, or was any portion of the property, listed on the National Priorities List?<br>If yes, please provide relevant information as an attachment.   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the property, or was any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites?<br>If yes, please provide: Site # _____ Class # _____   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility?<br>If yes, please provide: Permit type: _____ EPA ID Number: _____<br>Date permit issued: _____ Permit expiration date: _____ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Is the property subject to a cleanup order under navigation law Article 12 or ECL Article 17 Title 10?<br>If yes, please provide: Order # _____   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum?<br>If yes, please provide explanation as an attachment.   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

**Section VI. Project Description**What stage is the project starting at? ☒ Investigation ☐ Remediation

Please attach a description of the project which includes the following components:

- Purpose and scope of the project
- Estimated project schedule

(See Attachment 3)

## Section VII. Property's Environmental History

To the extent that existing information/studies/reports are available to the requestor, please attach the following:

### 1. Environmental Reports

A Phase I environmental site assessment report prepared in accordance with ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), and all environmental reports related to contaminants on or emanating from the site.

If a final investigation report is included, indicate whether it meets the requirements of ECL Article 27-1415(2): ☐ Yes ☒ No NA

### 2. SAMPLING DATA: INDICATE KNOWN CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN TO HAVE BEEN AFFECTED. LABORATORY REPORTS SHOULD BE REFERENCED AND COPIES INCLUDED.

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum	x				
Chlorinated Solvents					
Other VOCs		x			
SVOCs	x				
Metals	x				
Pesticides					
PCBs					
Other*					

\*Please describe: \_\_\_\_\_

### 3. SUSPECTED CONTAMINANTS: INDICATE SUSPECTED CONTAMINANTS AND THE MEDIA WHICH MAY HAVE BEEN AFFECTED. PROVIDE BASIS FOR ANSWER AS AN ATTACHMENT.

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum	X	X			
Chlorinated Solvents					
Other VOCs		X			
SVOCs	X	X			
Metals	X				
Pesticides					
PCBs					
Other*					

\*Please describe: \_\_\_\_\_

### 4. INDICATE KNOWN OR SUSPECTED SOURCES OF CONTAMINANTS (CHECK ALL THAT APPLY). PROVIDE BASIS FOR ANSWER AS AN ATTACHMENT.

- ☒ Above Ground Pipeline or Tank  
 ☐ Lagoons or Ponds  
 ☒ Underground Pipeline or Tank  
 ☒ Surface Spill or Discharge  
☐ Routine Industrial Operations  
 ☐ Dumping or Burial of Wastes  
 ☐ Septic tank/lateral field  
 ☐ Adjacent Property  
☒ Drums or Storage Containers  
 ☐ Seepage Pit or Dry Well  
 ☐ Foundry Sand  
 ☐ Electroplating  
☐ Coal Gas Manufacture  
 ☐ Industrial Accident  
 ☐ Unknown

Other: Former manufacturing uses/ junk yard and storage/ contractor yard/ boot and shoe manufacturer (See Attachment 1) \_\_\_\_\_

### 5. INDICATE PAST LAND USES (CHECK ALL THAT APPLY):

- ☐ Coal Gas Manufacturing  
 ☒ Manufacturing  
 ☐ Agricultural Co-op  
 ☐ Dry Cleaner  
 ☒ Salvage Yard  
 ☐ Bulk Plant  
☐ Pipeline  
 ☐ Service Station  
 ☐ Landfill  
 ☐ Tannery  
 ☐ Electroplating  
 ☐ Unknown

Other: Former industrial (see no. 4 above and Attachment 1) and commercial with petroleum storage (Former Donovan office building) \_\_\_\_\_

### 6. PROVIDE A LIST OF PREVIOUS PROPERTY OWNERS AND OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS AS AN ATTACHMENT. DESCRIBE REQUESTOR'S (See attachments 6 + 7) RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER AND OPERATOR. IF NO RELATIONSHIP, PUT "NONE".

## Section VIII. Contact List Information

Please attach, at a minimum, the names and addresses of the following:

1. The chief executive officer and planning board chairperson of each county, city, town and village in which the property is located.
2. Residents, owners, and occupants of the property and properties adjacent to the property.
3. Local news media from which the community typically obtains information.
4. The public water supplier which services the area in which the property is located.
5. Any person who has requested to be placed on the contact list.
6. The administrator of any school or day care facility located on or near the property.
7. The location of a document repository for the project (e.g., local library). In addition, attach a copy of a letter sent to the repository acknowledging that it agrees to act as the document repository for the property.

## Section IX. Land Use Factors (Please refer to ECL § 27-1415(3))

1. Current Use: ☐ Residential ☒ Commercial ☐ Industrial ☒ Vacant ☐ Recreational (check all that apply)  
Provide summary of business operations as an attachment.

2. Intended Use Post Remediation: ☐ Unrestricted ☐ Residential ☒ Commercial ☐ Industrial (check all that apply)  
Provide specifics as an attachment.

3. Do current historical and/or recent development patterns support the proposed use? (See #14 below re: discussion of area land uses)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4. Is the proposed use consistent with applicable zoning laws/maps?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
5. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, designated Brownfield Opportunity Area plans, other adopted land use plans?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7. Are there any federal or state land use designations relating to this site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9. Is the property accessible to existing infrastructure?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites within ½ mile?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species within ½ mile?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12. Are there floodplains within ½ mile?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
13. Are there any institutional controls currently applicable to the property?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
14. Describe the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas in an attachment. (See attachment 11)	
15. Describe the potential vulnerability of groundwater to contamination that might migrate from the property, including proximity to wellhead protection and groundwater recharge areas in an attachment. (See attachment 12)	
16. Describe the geography and geology of the site in an attachment. (See attachment 13)	

## Section X. Statement of Certification and Signatures

(By requestor who is an individual)

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

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

(By an requestor other than an individual)

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

Date: 1/23/12 Signature: [Signature] Print Name: Mike DePietri

### SUBMITTAL INFORMATION:

Three (3) complete copies are required.

- Two (2) copies, one paper copy with original signatures and one electronic copy in Portable Document Format (PDF) on a CD, 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

- One (1) paper copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our [website](#) for the address of our regional offices.

### FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: \_\_\_\_\_ LEAD OFFICE: \_\_\_\_\_



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## LIST OF APPLICATION ATTACHMENTS

*NYSDEC Brownfield Cleanup Program Application  
125 Main Street Site  
Buffalo, New York*

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<b>Exhibit.</b>	<b>Description</b>
A	NYS Department of State Corporation & Business Entity Database
B	Proof of Site Access
C	Bank Letter

<b>Attachment No.</b>	<b>Description</b>
1	Site Description, BCP Eligibility Statement, Location Map and Site Plan
2	Tax Map, Survey, Metes and Bounds Description
3	Project Description and Schedule
4	Redevelopment Plan
5	Previous Environmental Investigations
6	Listing of Current and Previous Site Owners
7	Listing of Current and Previous Site Operators
8	Brownfield Site Contact List
9	Document Repository Confirmation Letter
10	Environmental Factors and Historic Land Use Considerations
11	Nearby Land Use Map
12	Groundwater Vulnerability Assessment
13	Description of Site Geography/Geology
14	Electronic Copy of BCP Application and Attachments

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# EXHIBIT A

## NYS DEPARTMENT OF STATE CORPORATION & BUSINESS ENTITY DATABASE

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through January 6, 2012.

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Selected Entity Name: HARBOR DISTRICT ASSOCIATES, LLC

Selected Entity Status Information

**Current Entity Name:** HARBOR DISTRICT ASSOCIATES, LLC

**Initial DOS Filing Date:** OCTOBER 23, 2006

**County:** ERIE

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

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

SHAUN B JACKSON ESQ  
570 DELAWARE AVENUE  
BUFFALO, NEW YORK, 14202

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate.](#)

### \*Stock Information

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

\*Stock information is applicable to domestic business corporations.

**Name History**

<b>Filing Date</b>	<b>Name Type</b>	<b>Entity Name</b>
OCT 23, 2006	Actual	HARBOR DISTRICT ASSOCIATES, LLC

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

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

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## EXHIBIT B

### PROOF OF SITE ACCESS

# Erie Canal Harbor Development Corp.

95 Perry Street, 5<sup>th</sup> Floor  
Buffalo, NY 14203  
P: (716) 846-8200  
F: (716) 846-8262  
[www.eriecanalharbor.com](http://www.eriecanalharbor.com)

January 12, 2012

Mr. David Locey, P.E.  
New York State Department of Environmental Conservation  
Division of Environmental Remediation, Region 9  
270 Michigan Avenue  
Buffalo, New York 14203-2999

**Re: 125 Main Street Site**

Dear Mr. Locey:

Please let this letter serve to notify you that Erie Canal Harbor Development Corporation (ECHDC) currently leases the 125 Main Street Site to Harbor District Associates, LLC, and that Harbor District Associates, LLC. will be the ultimate owner, as provided for in our Development Agreement and that Harbor District Associates, LLC and its agents have full access rights to the property.

I hope this letter is satisfactory for your purposes. Please do not hesitate to contact me with any questions.

Sincerely,



Thomas Dee  
President

# EXHIBIT C

## BANK LETTER

January 23, 2012

Stephen Scalione  
Director of Finance  
Benderson Development Company  
8441 Cooper Creek Boulevard  
University Park, Florida 34201

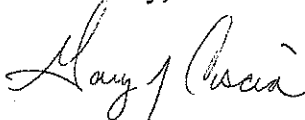
**RE: Donovan Block Redevelopment Financing**

Dear Mr. Scalione,

With respect to the above mentioned financing request, please note that the environmental contamination at the subject site will be very problematic. Most lenders will be unwilling to commit to financing with known hazardous materials due to the increased risk and uncertainty of unforeseen effects and extensive remediation requirements. If financing were able to be obtained, it would contain terms very onerous to Benderson, including but not limited to, increased pricing, lower leverage and amplified guarantees. I am happy to discuss these issues with you further at your convenience.

The Largo Group of Companies structures, arranges and closes commercial mortgages for acquisitions, refinances and redevelopment projects for developers throughout the United States and Canada. Largo is the largest privately owned commercial mortgage banking company in Upstate New York and currently has offices in Getzville, New York; Albany, New York; Toronto, Ontario; and Sarasota, Florida. Since its inception, Largo has financed \$10 Billion in commercial mortgages and has a servicing portfolio exceeding \$1 Billion.

Sincerely,



Gary J. Coscia  
President  
Largo Real Estate Advisors, Inc.



# ATTACHMENT 01

**SITE DESCRIPTION & BCP ELIGIBILITY STATEMENT**

**FIGURE 1-1 LOCATION MAP**

**FIGURE 1-2 SITE PLAN**

**SITE PHOTOLOG**

## Attachment 01

### Site Description and BCP Eligibility Statement 125 Main Street Site Brownfield Cleanup Program Application

#### **A. SITE DESCRIPTION**

The subject property (hereinafter, the “Project Site” or the “Site”) subject to the BCP application is comprised of a single parcel totaling an approximate 2.185-acre, located in the historic canal district of the City of Buffalo, Erie County, New York (see Figures 1-1 and 1-2). A land use map for the Site and surrounding area is included in Attachment 11.

The parcel included in this application is described as:

Parcel Address	SBL No.	Acreage	Current Parcel Owner
125 Main Street	111.17-7-1	2.185	Erie Canal Harbor Development Corp. 95 Perry Street Buffalo, NY 14203

The Site is bound by Interstate 190 to the north; Scott Street to the south; Washington Street to the east; and Main Street to the west (see Figures 1-1 and 1-2). The Site is located in a predominantly commercial area of the City of Buffalo. Residential development is located approximately within 0.15-miles to the west.

Given the location of the Site in the central portion of the City of Buffalo, the Site has likely been developed since at least the early 1800s. Based on historic Sanborn Maps, historic use of the Site included:

#### **1889**

- Commercial storefronts and a restaurant
- Junk Yard
- American Bit Brace Factory, including machine shop
- Cooper and Sibley Paper Box Factory
- Boot and Shoe manufacturing company

## **Attachment 01**

### **Site Description and BCP Eligibility Statement 125 Main Street Site Brownfield Cleanup Program Application**

- Tin Shop
- Paint Shop
- Patent Medicine manufacturer
- Wire works, including weaving and painting
- Quay Street ran through the central area of the Site
- The Hamburg Canal ran through the southern end of the Site

#### **1899**

- Commercial storefronts, restaurant, hotel
- Junk Yard
- A. Krauss Hide and Wool Warehouse
- Forbush and Brown Boot and Shoe manufacturing company
- Tin Shop
- Quay Street ran through the central area of the Site
- The Hamburg Canal ran through the southern end of the Site

#### **1925**

- Commercial storefronts, restaurant, hotel
- Contractors Yard
- Junk Yard
- Lehigh Valley Railroad Passenger Station
- Quay Street ran through the central area of the Site

#### **1951**

- Commercial storefronts, restaurant, hotel
- Lehigh Valley Railroad Passenger Station

## **Attachment 01**

### **Site Description and BCP Eligibility Statement 125 Main Street Site Brownfield Cleanup Program Application**

- Quay Street ran through the central area of the Site

The majority of the Site was historically utilized as the General William J Donovan State Office Building from approximately 1961 through 2008. According to the NYSDEC Petroleum Bulk Storage Database (PBS No 9-387495 & 9-387746) and the City of Buffalo municipal records, the Site has contained at least four (4) underground storage tanks (USTs). PBS records indicate at least three (3) USTs were closed and removed and one 2,000-gallon tank was closed prior to 1991, located in a subterranean vault. Additional hazardous/regulated materials and/or wastes associated with on-Site maintenance activities were likely used, and stored on-Site, including paints, water treatment chemicals (e.g. aquacides, acids, etc.), solvents, coolants, compressor oil, diesel fuel, and gasoline. (see Attachment 5).

A 2007 Phase I Environmental Site Assessment Report (dated May 2007) and subsequent Phase II Environmental Site Assessment Report (dated November 2007), were completed on the former General William J Donovan State Office Building (i.e., 125 Main Street) by URS Corporation (see Attachment 5). The Phase II investigation revealed evidence of subsurface contamination, including elevated levels of semi-volatile organic compounds (SVOCs) particularly poly-aromatic hydrocarbon (PAHs) exceeding NYSDEC Part 375 Commercial soil cleanup objectives (SCOs). The volatile organic compound (VOC) acetone was detected in excess of technical and operational guidance series (TOGS) water quality standards on the north end of the Site. Three underground storage tanks (USTs) were removed from the Site in 2008.

In fall 2011, additional subsurface data collected Benchmark Environmental Engineering and Science, PLLC (Benchmark) revealed elevated concentrations of PAHs and metals above NYSDEC Part 375 Commercial SCOs Site-wide (see Attachment 5).

## Attachment 01

### Site Description and BCP Eligibility Statement 125 Main Street Site Brownfield Cleanup Program Application

As evidenced by the contamination identified in the subsurface investigations, environmental concerns are associated with the Project Site that may require remediation. Soil/fill material excavated and/or encountered at the Site, will require special handling due to elevated concentrations of PAHs and metals present in accordance with NYSDEC Part 360 regulations. The confirmed environmental contamination of the Site complicates use and future redevelopment/reuse of the Project Site.

#### **B. ELIGIBILITY FOR ACCEPTANCE INTO THE BROWNFIELD CLEANUP PROGRAM**

The Site meets the definition of a “Brownfield site” as set forth in New York State Environmental Conservation Law (the “ECL”). The ECL Section 27-1405(2) defines a “Brownfield site” as “any real property, the development or reuse of which may be complicated by the presence or potential presence of a contaminant”. The regulations in 6NYCRR 375-3.3(a)(1) reiterate that a brownfield site has two elements and adds a “reasonable basis” test to each:

- (1) A brownfield site has two elements:
  - (i) There must be confirmed contamination on the property or a reasonable basis to believe that contamination is likely to be present on the property (the “Contamination Element”); and,
  - (ii) There must be a reasonable basis to believe that the contamination or potential presence of contamination may be complicating the development, use or reuse of the property (the “Complication Element”)

Moreover, the New York State Department of Environmental Conservation BCP Eligibility Guidance dated March 2005 which is incorporated into the Brownfield Cleanup Program Guide establishes several factors that the Department considers in evaluating whether the Contamination Element and the Complication Element exist.

## Attachment 01

### Site Description and BCP Eligibility Statement 125 Main Street Site Brownfield Cleanup Program Application

#### **The Contamination Element**

The Department considers the following factors with respect to the Contamination Element, to the extent they are relevant to the proposed Site:

- (A) The nature and extent of known or suspected contamination;
- (B) Whether contaminants are present at levels that exceed standards, criteria or guidance;
- (C) Whether contamination on the proposed site is historic fill material or exceeds background levels;
- (D) Whether there are or were industrial or commercial operations at the proposed site which may have resulted in environmental contamination; and/or,
- (E) Whether the proposed site has previously been subject to closure, a removal action, an interim or final remedial action, corrective action or any other cleanup activities performed by or under the oversight of the State or Federal government.

The Contamination Element of the BCP Eligibility Test has clearly been met in this application because:

- A. The previous investigations have established that on-Site soils have been impacted by contaminants which will require remediation. See Attachment 5.
- B. Contaminated soils, evidenced by analytical sample results that show elevated concentrations of SVOCs and metals, are present at the Project Site in excess of NYSDEC Part 375 Commercial SCOs (See Attachment 5). Commercial re-use is contemplated for the Site.
- C. Part 360 regulations dictate that soil/fill materials present on the Site that are excavated as part of Site redevelopment and cannot be re-used on-Site must be deposited in a Part 360 landfill.
- D. Contamination on the proposed site is attributable to historic industrial use of the Site, which includes petroleum storage, a wire works, tin shops, paint shops, junk yard, contractor's yard, American Bit Brace Factory, including a machine shop, and a boot and shoe manufacturing company.

## Attachment 01

### Site Description and BCP Eligibility Statement 125 Main Street Site Brownfield Cleanup Program Application

#### **The Complication Element**

The Department considers the following factors with respect to the Complication Element; to the extent they are relevant to the proposed Site:

- (A) Whether the proposed site is idled, abandoned or underutilized;
- (B) Whether the proposed site is unattractive for redevelopment or reuse due to the presence or reasonable perception of contamination;
- (C) Whether properties in the immediate vicinity of the proposed site show indicators of economic distress such as high commercial vacancy rates or depressed property values; and/or,
- (D) Whether the estimated cost of any necessary remedial program is likely to be significant in comparison to the anticipated value of the proposed site as redeveloped or reused.

The Complication Element of the BCP Eligibility Test has clearly been met in this application because the proposed Site is unattractive for redevelopment or reuse due to the presence of contamination. This factor is clearly established by the following:

- (A) The Site is currently vacant and underutilized.
- (B) Redevelopment and reuse of the Site is complicated due to the presence of contamination, thereby increasing the future costs of redevelopment; and considerably complicates potential funding sources for redevelopment efforts (see Exhibit C).
- (C) The planned redevelopment of the Site includes subgrade structures and infrastructure, and may include excavating and handling over 15,000 tons of contaminated soil/fill. Part 360 regulations dictate that soil/fill materials present on the Site that are excavated as part of Site redevelopment and cannot be re-used on-Site must be deposited in a Part 360 landfill; the volume of soil/fill anticipated to be excavated and disposed during redevelopment is estimated to cost on the order of \$700,000.



**Site Description and BCP Eligibility Statement**  
**125 Main Street Site**  
**Brownfield Cleanup Program Application**

**The Requestor as a Volunteer**

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

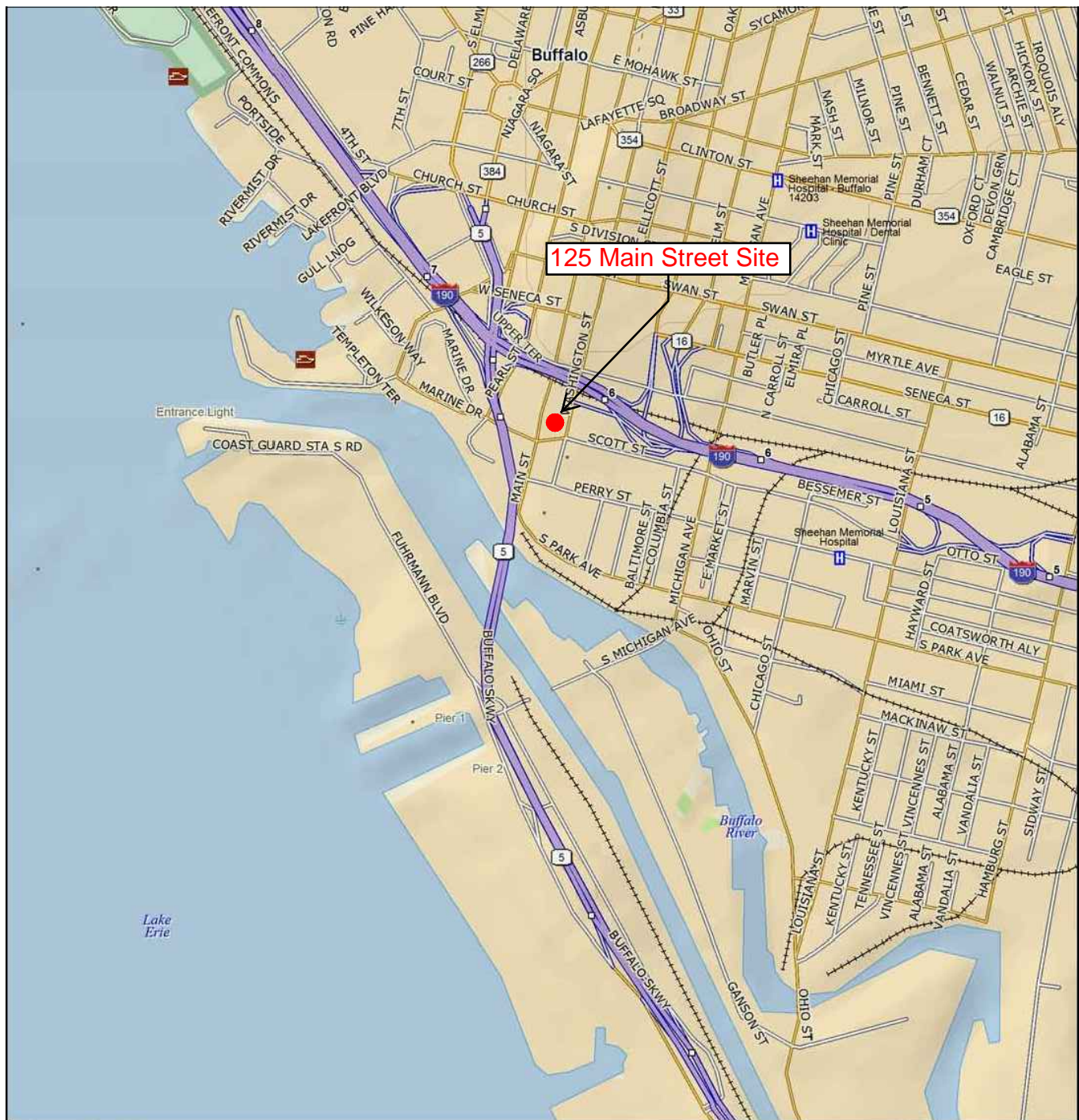
A “Participant” is an applicant who either (i) was the owner of the site at the time of the disposal or discharge of contaminants; or (ii) is otherwise responsible according to applicable principles of statutory or common law liability, unless such person’s liability arises solely as a result of such person’s ownership or operation of or involvement with the site subsequent to the disposal or discharge. NY ECL 27-1405(1)(a). This definition is repeated verbatim at 6 NYCRR 375-3.2(b)(1) and is paraphrased in the Brownfield Cleanup Program Guide at Section 2.4(1)(A).

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

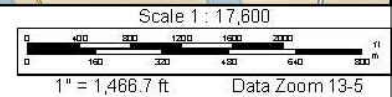
Since the Applicant became involved with the property after the disposal or discharge of contaminants, it is entitled to Volunteer status under NY ECL27-1405(1)(b).

**Based on the foregoing and as further set forth in this BCP application, the Site meets the Contamination Element and the Complication Element tests. As such, the Site qualifies as a Brownfield Site eligible for participation in the BCP, with the Applicant as a Volunteer, because (A) there is confirmed contamination across the Site, and (B) the contamination is complicating the redevelopment and re-use of the Site.**

**FIGURE 1-1**



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2558 HAMBURG TURNPIKE  
 SUITE 300  
 BUFFALO, NY 14218  
 (716) 856-0635

## SITE LOCATION AND VICINITY MAP

BROWNFIELD CLEANUP PROGRAM APPLICATION

125 MAIN STREET SITE

BUFFALO, NEW YORK

PREPARED FOR

HARBOR DISTRICT ASSOCIATES, LLC.

PROJECT NO.: 0105-049-100

DATE: JANUARY 2012

DRAFTED BY: JGT



Base Image per Bing Maps

— Parcel Boundary per GIS (Approximate)

Not to Scale



2558 HAMBURG TURNPIKE  
SUITE 300  
BUFFALO, NY 14218  
(716) 856-0635

## SITE PLAN (AERIAL)

BROWNFIELD CLEANUP PROGRAM APPLICATION

125 MAIN STREET SITE

BUFFALO, NEW YORK

PREPARED FOR

HARBOR DISTRICT ASSOCIATES, LLC.

PROJECT NO.: 0105-049-100

DATE: JANUARY 2012

DRAFTED BY: JGT

FIGURE 1-2



## SITE PHOTOGRAPHS

Photo 1:



Photo 2:



Photo 3:



Photo 4:



Photo 1: Subject Property (125 Main Street) (looking east)

Photo 2: Subject Property (125 Main Street parcel) (looking southeast)

Photo 3: Subject Property (125 Main Street parcel) (looking west)

Photo 4: Subject Property (125 Main Street parcel) (looking northwest)

**125 Main Street Site  
Buffalo, New York**



## SITE PHOTOGRAPHS

Photo 5:



Photo 6:

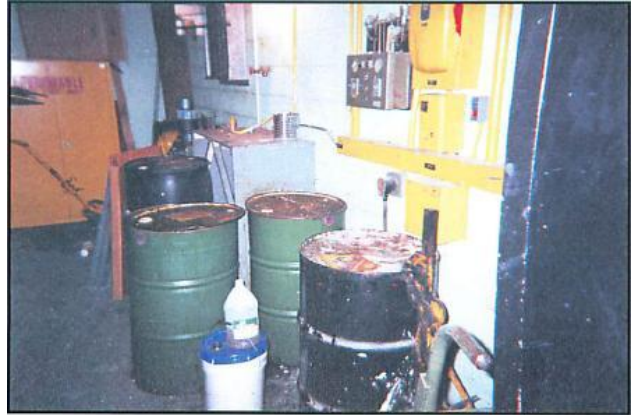


Photo 7:

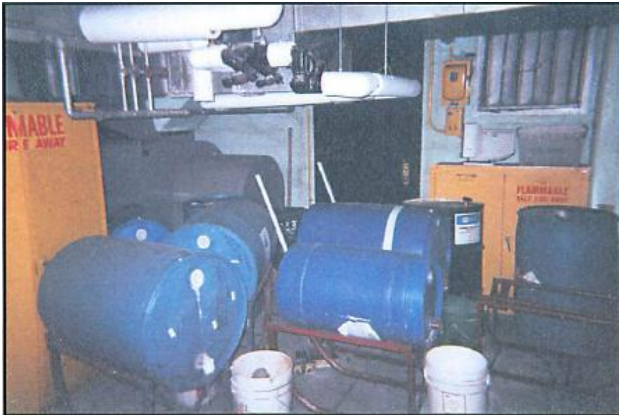


Photo 8:



- Photo 5: Entrance to Fan Room in southwest corner of basement.
- Photo 6: Drums of lubricating oil and hydraulic oil present inside Fan Room (note: flammable storage locker)
- Photo 7: Water treatment chemicals inside Fan Room.
- Photo 8: Containers of dry water treatment chemicals inside Fan Room.

\*Photographs 5-13 taken from Phase I, dated May 2007

**125 Main Street Site  
Buffalo, New York**





## SITE PHOTOGRAPHS

Photo 9:

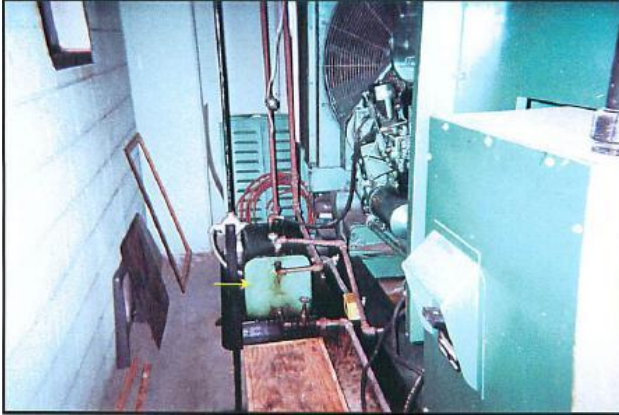


Photo 10:



Photo 11:



Photo 12:



Photo 9: Day tank of diesel fuel for the emergency generator in the basement.

Photo 10: Four flammable storage lockers containing paint, solvents, and lubricants in the penthouse.

Photo 11: Cans of paint and lubricants inside one of the flammable storage lockers.

Photo 12: Typical gauge that may contain mercury.

\*Photographs 5-13 taken from Phase I, dated May 2007

**125 Main Street Site  
Buffalo, New York**



## SITE PHOTOGRAPHS

Photo 13:



Photo 13: Drums of water treatment chemicals in use.

\*Photographs 5-13 taken from Phase I, dated May 2007

**125 Main Street Site  
Buffalo, New York**





## ATTACHMENT 02

### PARCEL DESCRIPTION FIGURE 2-1 TAX MAP

## Attachment 02

### **Parcel Description 125 Main Street Site Brownfield Cleanup Program Application**

#### **PARCEL DESCRIPTION**

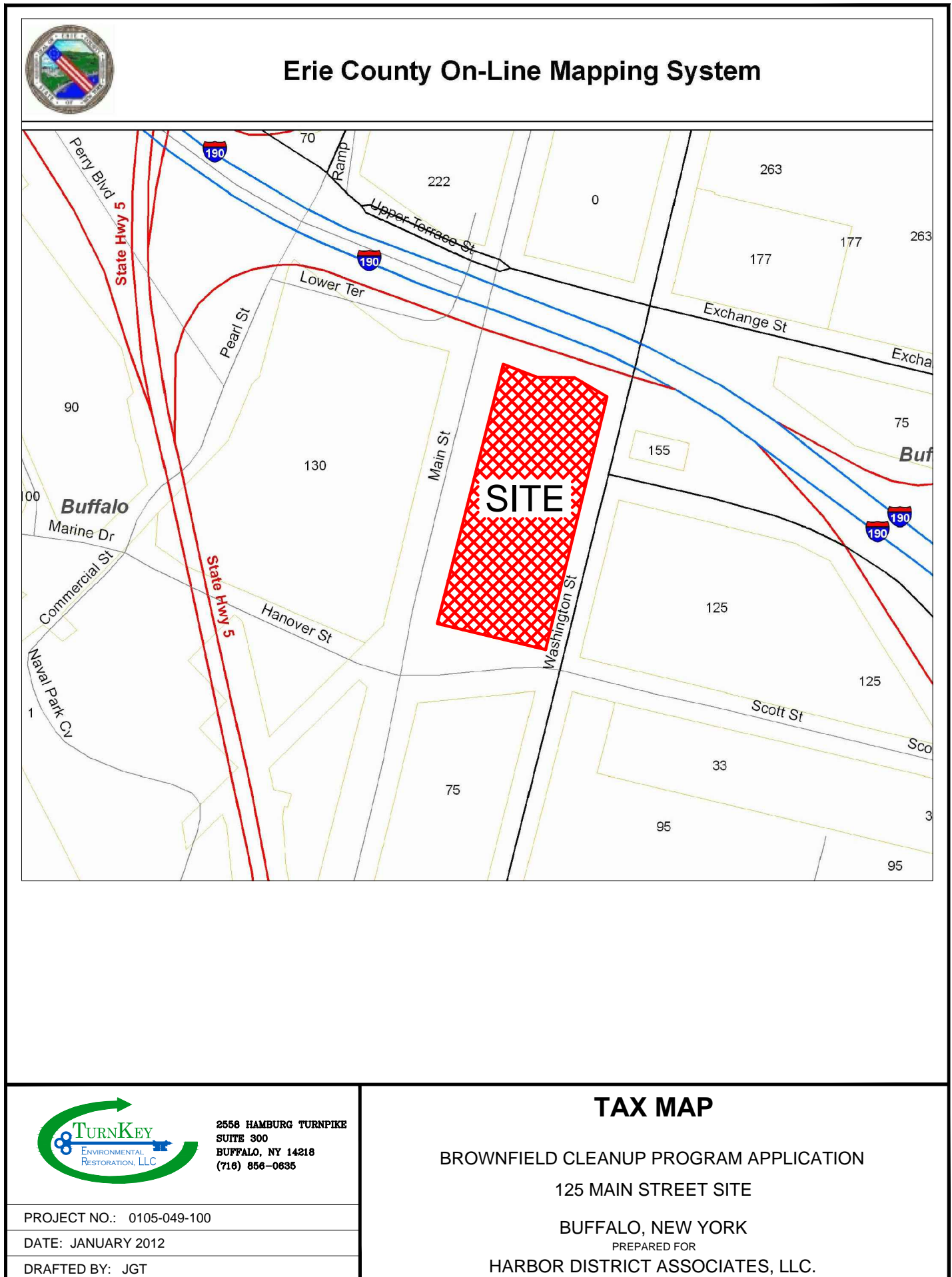
The Project Site comprised of a single parcel totaling an approximate 2.185-acre, located in the City of Buffalo, Erie County, New York (see Figure 2-1).

The parcels included in this application are described as:

<b>Parcel Address</b>	<b>SBL No.</b>	<b>Acreage</b>	<b>Current Parcel Owner</b>
<b>125 Main Street</b>	<b>111.17-7-1</b>	<b>2.185</b>	<b>Erie Canal Harbor Development Corp. 95 Perry Street Buffalo, NY 14203</b>

Parcel boundaries correspond to the City of Buffalo tax map boundaries. The metes and bounds description of the BCP Project Site will be provided to the NYSDEC upon completion of the boundary survey.

**FIGURE 2-1**



# ATTACHMENT 03

## PROJECT DESCRIPTION & SCHEDULE

**Project Description & Schedule**  
**125 Main Street Site**  
**Brownfield Cleanup Program Application**

**PROJECT DESCRIPTION**

Harbor District Associates, LLC (Applicant), plans to redevelop the 125 Main Street parcel as an adaptive re-use commercial development project. Although a final redevelopment plan has not been finalized, a conceptual plan has been developed (see Figure 4-1). The conceptual project redevelopment plan generally includes complete abatement of the current structure and demolition of the building down to the structural steel. The building will then be reconstructed into Class A office space and a hotel.

Harbor District Associates, LLC plans to invest approximately \$32,000,000 to complete this project. The project is expected to generate over 100 construction jobs over the anticipated 18-24 months of redevelopment and create 50 to 60 long-term on-Site jobs. This project will transform an idle property on Main Street in the City of Buffalo back to productive re-use in the highest-priority redevelopment district in the city.

Harbor District Associates, LLC, acting as a Volunteer, is willing to remediate the Site under the Brownfield Cleanup Program (BCP), and is submitting this BCP application for eligibility into the Program. The Applicant will also submit a Remedial Investigation/Alternative Analysis/Interim Remedial Measures (RI/AA/IRM) Work Plan in February 2012.

**PROJECT SCHEDULE**

The environmental engineering and consulting tasks, including completion and implementation of a Remedial Investigation/Alternatives Analysis/Interim Remedial Measures Work Plan (RI/AA/IRM Work Plan), are estimated as follows:

January 2012 – Submit BCP application

February 2012 – Submit RI/AA/IRM Work Plan

March 2012 – Execute Brownfield Cleanup Agreement (BCA)

## **Attachment 03**

### **Project Description & Schedule 125 Main Street Site Brownfield Cleanup Program Application**

Spring/Summer 2012 – Complete Remedial Investigation and IRM Field Activities

Summer 2012- Site Redevelopment begins

Fall 2012 – Submit RI/AA/IRM Report

Winter 2012 – Submit Final Engineering Report (FER)/Site Management Plan (SMP)

Spring 2013 – Receive Certificate of Completion (COC)

# ATTACHMENT 04

## CONCEPTUAL SITE PLAN



