

CHRISTOPHER L. JACOBS, ERIE COUNTY CLERK
REF:

DATE: 12/18/2014
TIME: 3:58:26 PM
RECEIPT: 14200780

PARALEGAL SERVICES OF BUFFALO
ACCOUNT #: 9273

ITEM - 01 740
RECD: 12/18/2014 3:58:39 PM
FILE: 2014253234 BK/PD D 11273/5282
NEW YORK STATE DEPT OF ENVIRONMENTAL CONSERV
ATION
154 SOUTH OGDEN LLC
Recording Fees 85.00
Subtotal 85.00

TOTAL DUE	\$85.00
PAID TOTAL	\$85.00
PAID ESCROW	\$85.00

REC BY: Faith
COUNTY RECORDER

FILED

DEC 18 2014

ERIE COUNTY
CLERK'S OFFICE

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)
CERTIFICATE OF COMPLETION

CERTIFICATE HOLDER(S):

Name: 154 South Ogden LLC Address: 2219 South Park Avenue, Buffalo, NY 14220

BROWNFIELD CLEANUP AGREEMENT:

Application Approval: 10/17/12 Agreement Execution: 11/13/12 Agreement Index No.: C915268-10-12

Application Approval Amendment: none Agreement Execution Amendment: none

SITE INFORMATION

Site No.: C915268 Site Name: 154 South Ogden Street Site
Site Owner: 154 South Ogden LLC
Street Address: 154 South Ogden
Municipality: Buffalo County: Erie DEC Region: 9
Site Size: 20,950 Acres
Tax Map Identification Number(s): A portion of 123, 15-1-4
Percentage of site located in an EnZone: 0 - 49%

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

CERTIFICATE ISSUANCE

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

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

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

Allowable Uses under the BCP: Restricted-Residential, Commercial, and Industrial
Cleanup Track: Track 4: Restricted use with site-specific soil cleanup objectives

Tax Credit Provisions for Entities Taxable Under Article 9, 9-A, 32, and 33:
Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 28 %.
Tangible Property Credit Component Rate is 12 %.

Tax Credit Provisions for Entities Taxable Under Article 22 & S Corporations:
Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 28 %.
Tangible Property Credit Component Rate is 10 %.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls which are contained in the approved Site Management Plan and an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as 2014186727.

LIABILITY LIMITATION

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

CERTIFICATE TRANSFERABILITY

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

CERTIFICATE MODIFICATION/REVOCAION

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

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

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

Joseph J. Martens
Commissioner
New York State Department of Environmental Conservation

By:



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

Date:

December 9, 2014

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

154 South Ogden Street, Site ID No. C915268
Site Address: 154 South Ogden Street, Buffalo, NY, 14220
City of Buffalo, Erie, Tax Map Identification Number: A portion of 123.15-1-4

PLEASE TAKE NOTICE, the New York State Department of Environmental Conservation (Department) has issued a Certificate of Completion (Certificate) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) to 154 South Ogden LLC for a parcel approximately 20.95 acres located at 154 South Ogden Street in the City of Buffalo and Erie County.

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

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

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

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

PLEASE TAKE NOTICE, since the remedial program relies upon use restrictions or the long term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Erie County as 2014186727.

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

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

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

154 South Ogden Street, C915268, 154 South Ogden Street, Buffalo, NY

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

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

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

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

PLEASE TAKE NOTICE, a copy of the Certificate can be reviewed at the NYSDEC's Region 9 located at 270 Michigan Avenue, Buffalo, NY, by contacting the Regional Environmental Remediation Engineer.

WHEREFORE, the undersigned has signed this Notice of Certificate

Mr. James Neimeier

By: James Neimeier

Title: MEMBER

Date: 12/11/2014

STATE OF NEW YORK) SS:
COUNTY OF ERIE)

On the 11th day of December, in the year 2014 before me, the undersigned, personally appeared James Neimeier personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Angelica Gonzalez
Signature and Office of individual taking acknowledgment

Please record and return to:
Mr. James Neimeier
154 South Ogden LLC
2219 South Park Avenue
Buffalo, NY 14220

ANGELICA GONZALEZ
NOTARY PUBLIC-STATE OF NEW YORK
12/03/09 No. 01GO6277101
Qualified in Erie County
My Commission Expires March 04, 2017



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 Site Management Form
 11/14/2014



SITE DESCRIPTION

SITE NO. C915268

SITE NAME 154 South Ogden Street Site

SITE ADDRESS: 154 South Ogden ZIP CODE: 14210

CITY/TOWN: Buffalo

COUNTY: Erie

ALLOWABLE USE: Restricted-Residential, Commercial, and Industrial

SITE MANAGEMENT DESCRIPTION

SITE MANAGEMENT PLAN INCLUDES: YES NO

IC/EC Certification Plan

Monitoring Plan

Operation and Maintenance (O&M) Plan

Periodic Review Frequency: once a year

Periodic Review Report Submitted Date: 02/01/2016

Description of Institutional Control

154 South Ogden LLC

2219 South Park Avenue

154 South Ogden Street

Environmental Easement

Block: 1

Lot: 4

Sublot:

Section: 123

Subsection: 15

S_B_L Image: A portion of 123.15-1-4

Ground Water Use Restriction

IC/EC Plan

Landuse Restriction

Site Management Plan

Soil Management Plan

Description of Engineering Control

154 South Ogden LLC

2219 South Park Avenue

154 South Ogden Street

Environmental Easement

Block: 1

Lot: 4

Sublot:

Section: 123

Subsection: 15

S_B_L Image: A portion of 123.15-1-4
Cover System

Exhibit "A" Property Description

Environmental Easement Description

For 154 South Ogden Street Site

Title No. 1213-41632

For BCP Site No. C915268 and Final Cover System

ALL THAT TRACT OR PARCEL OF LAND situated in the City of Buffalo, County of Erie and the State of New York, being part of lots 6, 7, and 129 1/2, Township 10 Range 7 of the Buffalo Creek Reservation and part of the bed of Buffalo Creek, bounded and described as follow:

BEGINNING at a point in the northwesterly line of South Ogden Street, a distance of 432.34 feet north of its intersection with the northerly line of Mineral Springs Road; thence along the northerly water line of old Buffalo River as shown under map cover no. 422, which line is also the northerly line of lands conveyed to the Western New York and Pennsylvania Railroad Company by Deed recorded in the Erie County Clerk's Office in Liber 1346 of Deeds at Page 372, the following courses: North 88° 40' 35" West a distance of 203.20 feet to a point; thence North 50° 00' 35" West, 63.96 feet to a point; thence South 79° 01' 25" West, 103.95 feet to a point; thence North 88° 45' 35" West 101.60 feet to a point; thence North 86° 27' 35" West 50.04 feet to a point; thence North 78° 02' 35" West, 102.70 feet to a point; thence North 89° 08' 35" West 101.71 feet to a point; thence North 55° 27' 18" West 58.32 feet to a point; thence running along the Northerly and Westerly lines of the Western New York and Pennsylvania Railroad Company lands by Deed aforesaid, South 51° 23' 21" West, 200.81 feet to a point; thence South 8° 30' 30" East, 140.00 feet; thence North 53° 43' 28" West along said lands conveyed to Buffalo Niagara Electric Company, a distance of 465.68 feet to a point; thence North 00° 02' 00" West along a straight line, a distance of 554.71 feet to a point; thence North 79° 58' 59" East along a straight line, a distance of 584.47 feet to a point; thence South 88° 41' 02" East along a straight line; a distance of 703.57 feet to the northwesterly line of South Ogden Street, a distance of 739.22 feet to the point of beginning containing 20.95 acres of land, more or less.

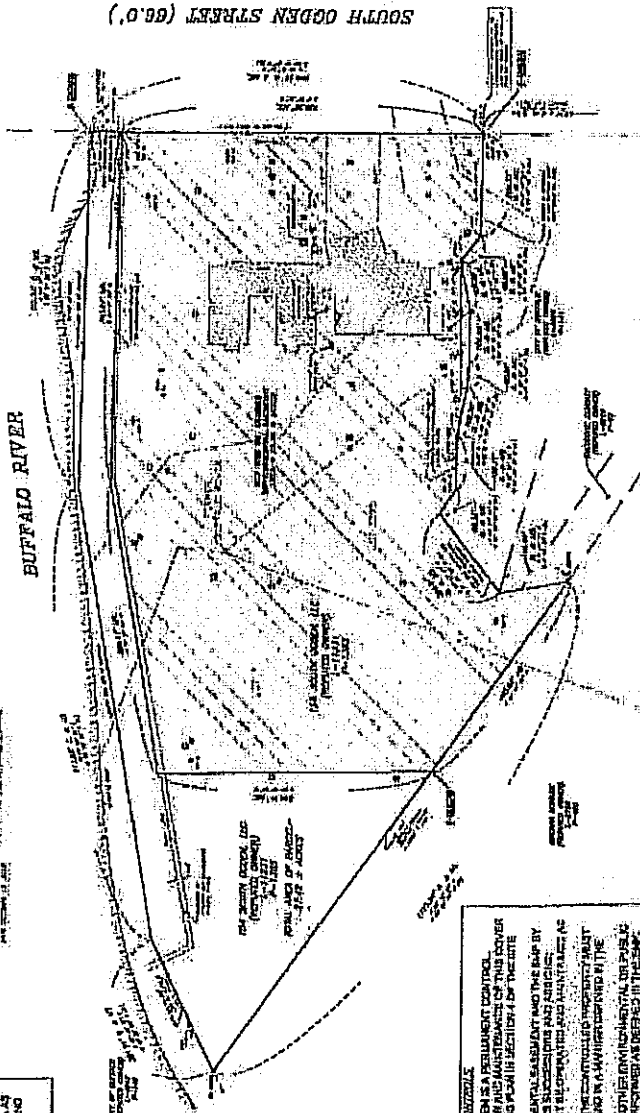
EXHIBIT 'B' - FINAL SURVEY

GENERAL NOTES:

1. THIS SURVEY WAS MADE BY THE BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20546.
2. THE SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACTS OF 1892 AND 1908.
3. THE SURVEY WAS MADE BY THE BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20546.
4. THE SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACTS OF 1892 AND 1908.
5. THE SURVEY WAS MADE BY THE BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20546.
6. THE SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACTS OF 1892 AND 1908.

THIS PROPERTY IS SUBJECT TO AN EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF A WATER CONDUIT BY THE BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20546.

THE BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20546, HAS A RIGHT OF ACCESS TO THIS PROPERTY FOR THE PURPOSES OF CONDUCTING SURVEYING OPERATIONS.



GENERAL NOTES:

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ENVIRONMENTAL IMPACT STATEMENT

FOR THE PROPOSED WATER CONDUIT

THE PROPOSED WATER CONDUIT IS A NECESSARY FACILITY FOR THE PROTECTION OF THE BUFFALO RIVER AND ITS WATERSHED. THE CONSTRUCTION AND MAINTENANCE OF THIS FACILITY WILL BE CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) AND THE FEDERAL WATER POLLUTION CONTROL ACT (FWPCA).

Wendel

1000 17th Street, N.W.
Washington, D.C. 20036
Tel: (202) 462-1000
Fax: (202) 462-1001

Wendel

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AGREEMENT / INSTITUTIONAL CONTROLS

THE BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20546, HAS A RIGHT OF ACCESS TO THIS PROPERTY FOR THE PURPOSES OF CONDUCTING SURVEYING OPERATIONS.

THE BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20546, HAS A RIGHT OF ACCESS TO THIS PROPERTY FOR THE PURPOSES OF CONDUCTING SURVEYING OPERATIONS.

NO.	DESCRIPTION	DATE	BY
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