

Periodic Review Report

2250 Factory Outlet Boulevard
(BCP Site No. C932127)
Niagara Falls, New York

July 2020

0105-020-001

Prepared For:

NF-3rd Associates, LLC

Prepared By:



PERIODIC REVIEW REPORT

**2250 FACTORY OUTLET BOULEVARD SITE
(BCP SITE NO. C932127)
NIAGARA FALLS, NEW YORK**

July 2020

0105-020-001

Prepared for:

Benderson Development Company, LLC

Prepared By:



Benchmark Environmental Engineering & Science, PLLC
2558 Hamburg Turnpike, Suite 300
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PERIODIC REVIEW REPORT

2250 Factory Outlet Blvd Site

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1.0 INTRODUCTION

Benchmark Environmental Engineering & Science, PLLC (Benchmark) has prepared this Periodic Review Report (PRR) on behalf of Benderson Development Company, LLC to summarize the post-remedial status of New York State Department of Environmental Conservation (NYSDEC) Brownfield Cleanup Program (BCP) Site No. C932127.

This PRR has been prepared for the 2250 Factory Outlet Boulevard Site (Site or BCP Site) in accordance with NYSDEC DER-10 *Technical Guidance for Site Investigation and Remediation* (May 2010). Appendix A includes the completed NYSDEC Institutional and Engineering Controls Certification Form. This PRR and the associated inspection form have been completed for the June 14, 2015 to June 14, 2020 reporting period.

1.1 Background

The 2250 Factory Outlet Boulevard Site (Niagara County Tax Map No. 145.20-1-1) is an approximate 5-acre parcel owned by Benderson Development Company, LLC (see Figures 1 and 2). An approximate 1.81-acre portion of the greater 5-acre parcel is subject to the Brownfield Cleanup Agreement (BCA) with the NYSDEC and this PRR. The Site was investigated and subsequently deemed acceptable by the NYSDEC for admission into the BCP. Based on historic use of the Site, soil/fill was impacted by chromium at concentrations that required cleanup. The interim remedial measure (IRM) for the Site included excavation followed by off-site disposal of contaminated soil/fill. The IRM served as the final remedy. The greater parcel was redeveloped as a Niagara Frontier Transportation Authority (NFTA) bus terminal with associated offices and a surface lot parking.

1.2 Compliance and Recommendations

At the time of the Site inspection (May 27, 2020), the Site was fully compliant with the Site Management Plan (SMP). No modification to the current SMP is recommended at this time.

2.0 SITE OVERVIEW

Grossman's Building Supply developed the property in the early 1970s. Prior to that time, the Site was reportedly undeveloped. The approximate 39,000 square foot vacant concrete block building (slab-on-grade) formerly located on the western portion of the property was demolished in January 2007 (see Figure 2). The Site is bounded by Interstate 190 to the west, a car dealership to the north, Military Road to the northeast, Factory Outlet Boulevard to the southeast, and an automobile oil and lube facility to the south.

Environmental site investigations conducted at the Site between 2004 and 2006 revealed the presence of chromium-impacted soil/fill requiring remediation. In December 2006, a BCA was executed by Benderson Development Company, LLC and NYSDEC, and remedial efforts under the BCP began in December 2006 with the Remedial Investigation (RI).

Based on the findings of the RI, it was determined that an IRM would be necessary to address chromium-impacted soil/fill. The IRM was initiated in February 2007 and included excavation and off-site disposal of approximately 1,569 tons of hazardous chromium-impacted soil/fill and approximately 5,359 tons of non-hazardous chromium impacted soil/fill. After IRM excavation activities were completed, all excavation areas were backfilled and graded to pre-existing conditions prior to redevelopment. The IRM was successful in removing all known chromium-impacted soil/fill on-site, and remedial activities were completed in June 2007. The RI/AAR/IRM report and SMP for the Site were approved by NYSDEC in November 2007. The Certificate of Completion (COC) was issued for the Site on December 14, 2007.

3.0 REMEDY PERFORMANCE

The Site inspection included a walk-over of the entire BCP Site to visually observe and document the use and integrity of the cover systems. The Site inspection confirms that the soil cover system has been maintained and functioning and is compliant with the SMP requirements.

Appendix A includes the completed NYSDEC Institutional and Engineering Controls (IC/EC) Certification form. Appendix B includes photographs taken during the inspection on May 7, 2020.

4.0 SITE MANAGEMENT PLAN

The SMP prepared for the Site was approved by NYSDEC in November 2007. The SMP includes an Operation, Monitoring and Maintenance (OM&M) Plan, a Soil/Fill Management Plan, and a copy of the Environmental Easement. A brief description of the components of the SMP is presented below.

4.1 Annual Inspection and Certification Program

The annual inspection and certification program outlines the requirements for the Site, which are to certify and attest that the institutional controls and/or engineering controls employed at the Site are unchanged from the previous certification. The annual certification primarily consists of an annual Site inspection to complete the auto-generated NYSDEC IC/EC Certification Form. The Site inspection is conducted to verify that the IC/ECs:

- Are in place and effective.
- That nothing has occurred that would impair the ability of the controls to protect the public health and environment.
- That nothing has occurred that would constitute a violation or failure to comply with any operation and maintenance plan for such controls.
- Access is available to the Site to evaluate continued maintenance of such controls.

A Benchmark Qualified Environmental Professional (QEP) conducted a Site inspection on May 27, 2020. At the time of the inspection, the property was being used as an NFTA bus terminal and associated offices, with surface parking, paved walkways, and landscaped areas. No observable indication of intrusive activities was noted during the Site inspection. The facility uses municipal water supply, and no observable use of groundwater was noted during the Site inspection. The building was closed during the inspection due to COVID-19.

Appendix A includes the completed Site Management Periodic Review Report Notice – Institutional and Engineering Controls Certification Form. Appendix B includes photographs taken during the Site inspection.

4.2 Soil/Fill Management Plan

A Soil/Fill Management Plan (SFMP) was included in the approved-SMP. The SFMP provides guidelines for the management of soil and fill material during any future intrusive activities.

According to Benderson Development Company, LLC, no intrusive activities requiring management of on-site soil/fill or the placement of backfill materials occurred during the reporting period.

4.3 Institutional Control Requirements and Compliance

As detailed in the Environmental Easement, the following institutional controls (ICs) need to be maintained as a requirement of the BCA for the Site.

- Groundwater-Use Restriction: Groundwater use for potable and non-potable purposes is prohibited
- Land-Use Restriction: The controlled property may be used for commercial and/or industrial use
- Implementation of the SMP including the Soil/Fill Management Plan, and Monitoring Plan.

5.0 CONCLUSIONS AND RECOMMENDATIONS

At the time of the Site inspection on May 7, 2020, the Site was in full-compliance with the SMP.

The Site has been fully compliant with the SMP since issuance of the COC in 2007. There are no current plans for additional on-site development; however, if invasive activities are planned at the Site prior to the next PRR, Benderson Development Company, LLC will submit requisite work plans to NYSDEC. Annual Site inspections will be performed and completion of the PRR, as required by the SMP, will continue triennially with the next PRR due July 15, 2023.

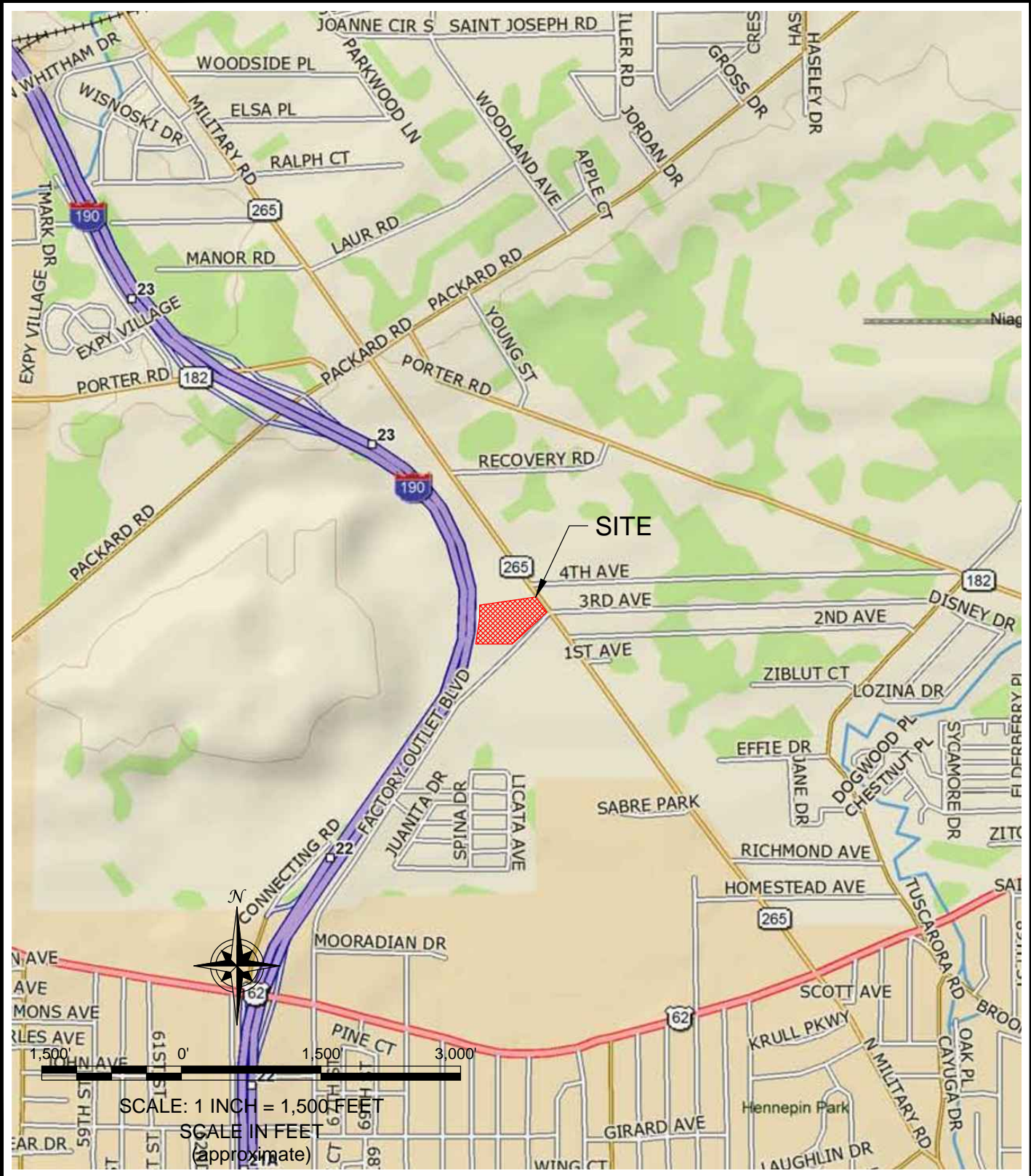
6.0 DECLARATION/LIMITATION


Benchmark Environmental Engineering & Science, PLLC personnel conducted the annual Site inspection for BCP Site No. C932127 in Niagara Falls, New York according to generally accepted practices. This report complied with the scope of work provided to Benderson Development Company, LLC by Benchmark Environmental Engineering & Science, PLLC.

This report has been prepared for the exclusive use of Benderson Development Company, LLC. The contents of this report are limited to information available at the time of the site inspection. The findings herein may be relied upon only at the discretion of Benderson Development Company, LLC. Use of or reliance upon this report or its findings by any other person or entity is prohibited without written permission of Benchmark Environmental Engineering & Science, PLLC.

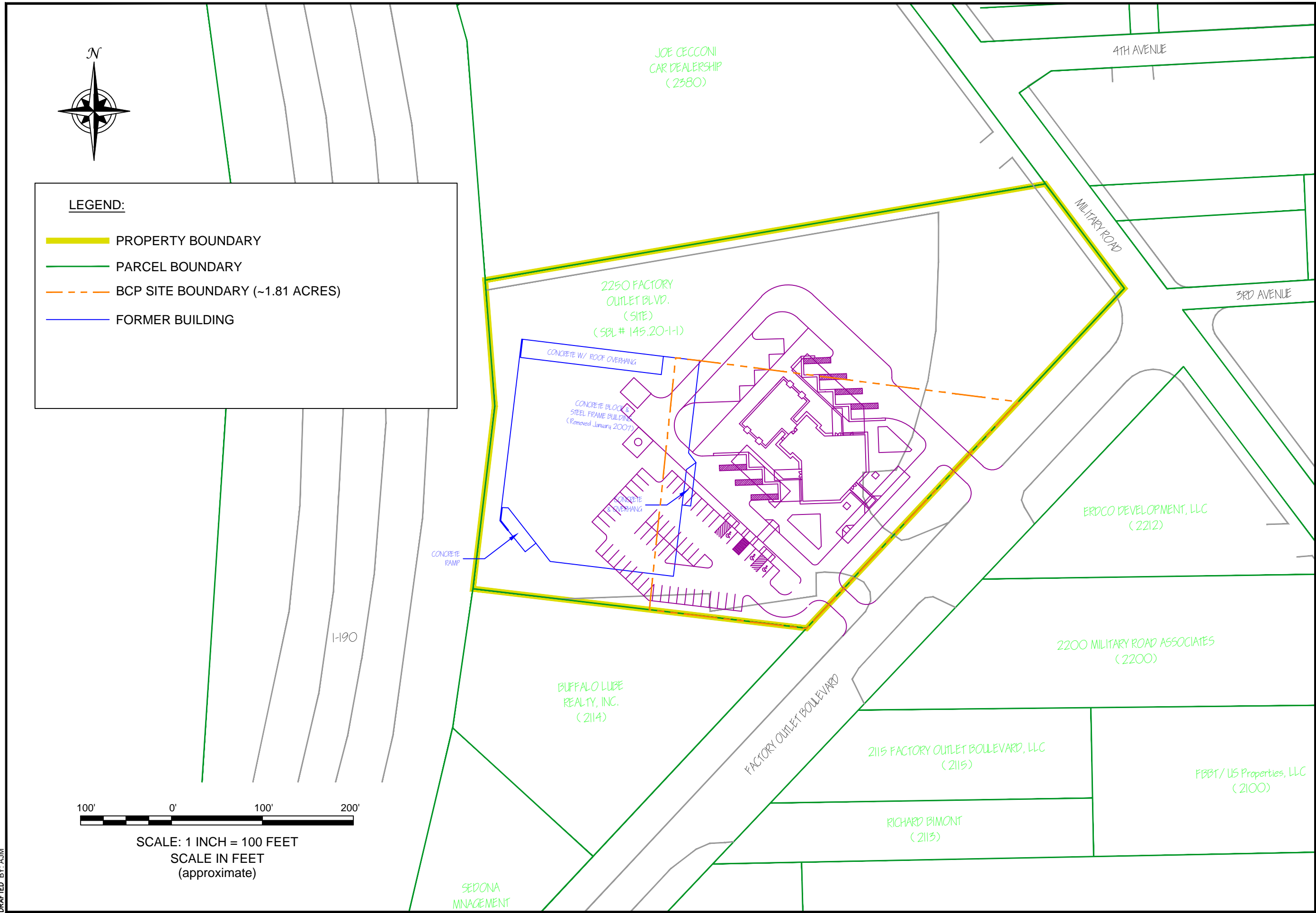
FIGURES

FIGURE 1



<div data-bbox="105 1728 397 2028"><p>BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE, PLLC</p></div> <div data-bbox="406 1728 634 2028"><p>2558 HAMBURG TURNPIKE SUITE 300 BUFFALO, NY 14218 (716) 856-0599</p></div>	<div data-bbox="729 1728 1421 1791"><h2>SITE LOCATION AND VICINITY MAP</h2></div> <div data-bbox="800 1812 1347 2028"><p>PERIODIC REVIEW REPORT 2250 FACTORY OUTLET BOULEVARD SITE NIAGARA FALLS, NEW YORK PREPARED FOR NF-3rd ASSOCIATES, LLC</p></div>
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DATE: JUNE 2020
DRAFTED BY: AJM



SITE PLAN

PERIODIC REVIEW REPORT
2250 FACTORY OUTLET BOULEVARD SITE
NIAGARA FALLS, NEW YORK
PREPARED FOR
NF-3rd ASSOCIATES, LLC

FIGURE 2

APPENDIX A

INSTITUTIONAL & ENGINEERING CONTROLS CERTIFICATION FORM



Enclosure 2
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Site Management Periodic Review Report Notice
Institutional and Engineering Controls Certification Form



Site Details

Box 1

Site No. **C932127**

Site Name 2250 Factory Outlet Boulevard Site

Site Address: 2250 Factory Outlet Boulevard Zip Code: 14304

City/Town: Niagara Falls

County: Niagara

Site Acreage: 1.810

Reporting Period: June 14, 2015 to June 14, 2020

YES NO

1. Is the information above correct?

☒ ☐

If NO, include handwritten above or on a separate sheet.

2. Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment during this Reporting Period?

☐ ☒

3. Has there been any change of use at the site during this Reporting Period (see 6NYCRR 375-1.11(d))?

☐ ☒

4. Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property during this Reporting Period?

☐ ☒

If you answered YES to questions 2 thru 4, include documentation or evidence that documentation has been previously submitted with this certification form.

5. Is the site currently undergoing development?

☐ ☒

Box 2

YES NO

6. Is the current site use consistent with the use(s) listed below?
Commercial and Industrial

☒ ☐

7. Are all ICs/ECs in place and functioning as designed?

☒ ☐

**IF THE ANSWER TO EITHER QUESTION 6 OR 7 IS NO, sign and date below and
DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

A Corrective Measures Work Plan must be submitted along with this form to address these issues.

Signature of Owner, Remedial Party or Designated Representative

Date

Box 2A

YES NO

8. Has any new information revealed that assumptions made in the Qualitative Exposure Assessment regarding offsite contamination are no longer valid?

☐☒

If you answered YES to question 8, include documentation or evidence that documentation has been previously submitted with this certification form.

9. Are the assumptions in the Qualitative Exposure Assessment still valid?
(The Qualitative Exposure Assessment must be certified every five years)

☒☐

If you answered NO to question 9, the Periodic Review Report must include an updated Qualitative Exposure Assessment based on the new assumptions.

SITE NO. C932127**Box 3****Description of Institutional Controls**

Parcel

145.20-1-1

Owner

NF-3rd. Associates, LLC

Institutional Control

Ground Water Use Restriction
Landuse Restriction
Site Management Plan

The following controls apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for restricted commercial and/or industrial use as long as the following long term engineering controls are employed:

(l) Soils and fill materials encountered during any construction or development activity must be handled in accordance with provisions of the Site Management Plan. Prior notification and prior approval of NYSDEC is required in accordance with the Site Management Plan for this Controlled Property. Excavated soil must be managed, characterized, and properly disposed in accordance with NYSDEC regulations and directives.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated November 2007 ("SMP"). The SMP describes obligations that Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring and/or operating a treatment system on the Controlled Property, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The Department may change the SMP for the Controlled Property from time to time on the basis of requests or information submitted by Grantor, and modifications in applicable statutes, regulations, guidance, or site conditions. The Department reserves a unilateral right to modify the SMP. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Regional Remediation Engineer
Region 9
NYS Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

or

Site Control Section
Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233

B. The Controlled Property may not be used for a higher level of use such as unrestricted or restricted residential use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance dating to the Controlled property shall state in at least fifteen-point bold-faced type:

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

D. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls

and giving access to such Controlled Property to evaluate continued maintenance of such controls.

Box 4

Description of Engineering Controls

None Required

Not Applicable/No EC's

Box 5

Periodic Review Report (PRR) Certification Statements

1. I certify by checking "YES" below that:

a) the Periodic Review report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

b) to the best of my knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and the information presented is accurate and complete.

YES NO

☒ ☐

2. If this site has an IC/EC Plan (or equivalent as required in the Decision Document), for each Institutional or Engineering control listed in Boxes 3 and/or 4, I certify by checking "YES" below that all of the following statements are true:

(a) the Institutional Control and/or Engineering Control(s) employed at this site is unchanged since the date that the Control was put in-place, or was last approved by the Department;

(b) nothing has occurred that would impair the ability of such Control, to protect public health and the environment;

(c) access to the site will continue to be provided to the Department, to evaluate the remedy, including access to evaluate the continued maintenance of this Control;

(d) nothing has occurred that would constitute a violation or failure to comply with the Site Management Plan for this Control; and

(e) if a financial assurance mechanism is required by the oversight document for the site, the mechanism remains valid and sufficient for its intended purpose established in the document.

YES NO

☒ ☐

**IF THE ANSWER TO QUESTION 2 IS NO, sign and date below and
DO NOT COMPLETE THE REST OF THIS FORM. Otherwise continue.**

A Corrective Measures Work Plan must be submitted along with this form to address these issues.

Signature of Owner, Remedial Party or Designated Representative

Date

IC CERTIFICATIONS
SITE NO. C932127

Box 6

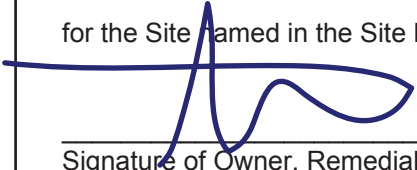
SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE

I certify that all information and statements in Boxes 1,2, and 3 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I Adam Harris at 570 Delaware Ave, Buffalo, NY 14202,
print name print business address

am certifying as NF-3rd Associates, LLC (Owner or Remedial Party)

for the Site named in the Site Details Section of this form.


Signature of Owner, Remedial Party, or Designated Representative
Rendering Certification

7/9/20
Date

IC/EC CERTIFICATIONS

Box 7

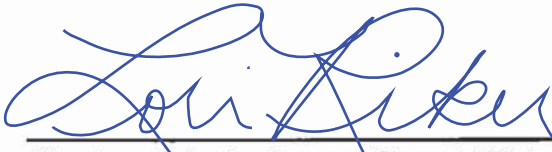
Signature

I certify that all information in Boxes 4 and 5 are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I Lori E. Riker, P.E. at Benchmark Environmental Engineering & Science, PLLC
2558 Hamburg Turnpike, Buffalo, NY 14218
print name print business address

am certifying as a for the Owner

(Owner or Remedial Party)


Signature of , for the Owner or Remedial Party,
Rendering Certification



Stamp
(Required for PE)

06/29/2020
Date

APPENDIX B

SITE PHOTOLOG

SITE PHOTOGRAPHS

Photo 1:



Photo 2:



Photo 3:



Photo 4:



Photo 1: Exterior Site condition (looking north)

Photo 2: Exterior Site conditions from front walkway (looking northeast)

Photo 3: Exterior Site conditions from front walkway - asphalt and concrete surfaces (looking northwest)

Photo 4: Exterior Site conditions from front walkway - asphalt, concrete, and landscaped areas (looking southwest)

SITE PHOTOGRAPHS

Photo 5:



Photo 6:



Photo 7:



Photo 8:



Photo 5: Exterior Site conditions – asphalt parking lot (looking southeast)

Photo 6: Exterior Site conditions – asphalt parking lot and vegetated area (looking northwest)

Photo 7: Exterior Site conditions – asphalt parking lot (looking northeast)

Photo 8: Exterior Site conditions – concrete surfaces from rear of building (looking northwest)

SITE PHOTOGRAPHS

Photo 9:



Photo 10:



Photo 11:



Photo 12:



- Photo 9: Exterior Site condition from eastern Site entrance (looking west)
- Photo 10: Exterior Site conditions from eastern Site entrance showing landscaping (looking north)
- Photo 11: Exterior Site conditions from eastern side of building showing asphalt and concrete surfaces (looking southwest)
- Photo 12: Exterior Site conditions from western side of building showing asphalt, concrete and landscaped areas (looking east)

SITE PHOTOGRAPHS

Photo 13:



Photo 14:



Photo 15:



Photo 16:



Photo 13: Exterior Site condition – rear of building (looking southeast)

Photo 14: Interior Site conditions from front entrance of building showing closure

Photo 15: Interior Site conditions from rear of building

Photo 16: Interior Site conditions from east side of building