

Rezoning Application & Supporting
 Documentation - Rezoning of 3880 & 3910
 East Robinson Road from GB to MFR-7
 Applicant: Rainbow Racquet Club c/o Sean
 Hopkins, Esq., Hopkins Sorgi & McCarthy
 PLLC Date: April 22, 2023



Prepared by: Sean Hopkins, Esq.
 Hopkins Sorgi & McCarthy PLLC
 5500 Main Street, Suite 343
 Williamsville, NY 14221
 Tel: 716.510-4338
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TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: _____ Acreage _____ Fee \$ _____

Address Verified by
 Assessor's Office _____
 VERIFIED BY DATE

Materials Accepted by
 Town Clerk & Fee Paid _____
 ACCEPTED BY DATE

Materials Checked by
 Building Dept. _____
 RECEIVED BY DATE

Materials Received by
 Planning Dept. _____
 RECEIVED BY DATE

Fill In
Applicable Fees

2 ACRES OR LESS \$1,250 _____

2 – 20 ACRES
 \$1,250 + \$250/acres or fraction
 thereof over 2 acres _____

20 – 30 ACRES
 \$5,700 + \$150/acre or fraction
 thereof over 20 acres _____

OVER 30 ACRES
 \$6,900 + \$75/acre or fraction
 thereof over 30 acres _____

Request for Relief of/Change to Conditions
 of Zoning Approval
 \$ 1,200 _____

AFFIDAVIT FEE FOR PUBLIC HEARING
 \$ 15.00 _____

TOTAL FEE: \$ _____

[Note: A completed Part 1 of the Full Environmental Assessment Form along with Page 5[a] and Attachment "A" is attached as Exhibit "1".]

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Rainbow Racquet Club
Address: c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221
City State Zip Code
Phone: 716.510-4338 Fax: _____
E Mail shopkins@hsmlegal.com

2. **The undersigned hereby petitions the Honorable Town Board to rezone the following described property**

From: GB District

To: MFR-7 District

3. **Street address of land to be rezoned:** (must be verified by Town Assessor's Office)

5226 & 5228 Main Street

SBL #: 3880 East Robinson Road [SBL No. 26.03-2-9.1] and
3910 East Robinson Road [SBL No. 26.03-2-8.113]

4. **Area of land to be rezoned (in acres):** Approximately 9.44 acres

5. **Owner of Land:**

Name: Rainbow Racquet Club c/o Sean Hopkins, Esq.
Address: 5500 Main Street, Suite 343 - Williamsville, NY 14221
Telephone: 716.510-4338

6. **Representative (Architect, Engineer, Landscape Architect, Surveyor or Attorney):**

Name: Sean W. Hopkins, Esq.
Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338 - E-mail: shopkins@hsmlegal.com
City State Zip Code

7. Petitioner's interest in property

_____ Option to purchase

X Owner

_____ Other (explain)

8. The following are all others having an interest in this application and join herein with the petitioner named above: (describe extent of interest; attach sheets as needed)

Not Applicable.

9. Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor. Legal description of the property to be rezoned from GB to MFR-7 attached as Exhibit "2" and the survey of the Project Site attached as Exhibit "3".

10. Said property has the following deed restrictions or Covenants: (attach copy) Not Applicable.

Liber _____

Page _____

11. Information on proposed project:

A. Description of the character of the proposed development:

See Exhibit 4.

B. Rationale for rezoning request:

1. Why was this site chosen? _____

See Exhibit 4.

2. Why cannot land be used with the existing zoning?

See Exhibit 4.

3. How will this rezoning impact surrounding properties?

See Exhibit 4.

4. How will this rezoning impact the school system?

See Exhibit 4.

12. Quantitative Data:

A. Total # of dwelling units 256

B. Distribution of dwelling units by type Residential units for lease

C. Gross Residential Density per acre 27.23 units per acre

D. Total amount of Open Space Not Applicable

E. Proposed Non-Residential Floor Area Not Applicable

[Note: A reduced size copy of the Concept Site Plan [Drawing C-100] for the proposed senior housing project is provided at Exhibit "6".]

13. Development Schedule:

Start 2026

Finish 2028

Stages (# of) 2 [Timing of build-out dependent on market conditions other relevant factors.]

14. If any portion of the proposed development is planned to be sold or leased, please describe:

The apartments will be leased.

15. **Open Space ownership and maintenance provisions (if applicable):**

Greenspace and landscaping will be privately owned and maintained.

16. **Basis for Findings (Sec. 8-3-5 of the Town Zoning Code) (Attach sheets and supplemental materials as necessary.)**

A. **The proposed zoning and development plan must be generally consistent with the policies of the Comprehensive Plan and the Town Zoning Ordinance.**

1. State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps, and/or figures in the plan that support the proposed zoning at this location (The Comprehensive Plan document is available at the Planning Department, Town Clerk's Office, Amherst libraries, or at www.amherst.ny.us). Add sheets as needed.

See Exhibit 5.

2. Pursuant to NYS Town Law Section 272a(11), "all Town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this Section." The Town Board adopted the Comprehensive Plan pursuant to NYS Town Law 272 on January 2, 2007. If the rezoning is approved, the Town Board may require the Plan to be amended, as applicable.

Cite all text, map, and / or figures that must be amended to support the proposed zoning at this location (attach pages as necessary) and provide detailed suggested amendments.

See Exhibit 5.

3. State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

See Exhibit 5.

B. Adequate Services and Utilities are available or are proposed to be made available with the construction of the development:

- 1. Sanitary Sewer _____
Yes. _____
- 2. Storm Sewer/Drainage _____
Yes. _____
- 3. Water _____
Yes. _____
- 4. Other Yes. _____

C. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

See Exhibit 5.

D. Suitability of the subject property for uses permitted by the current versus the proposed district:

See Exhibit 5.

E. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:

See Exhibit 5.

17. The petitioner encloses herewith the sum of \$ 3,265.00 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.

18. The undersigned certifies that all information required to be disclosed pursuant to Section 809 of the General Municipal Law (see below) is as follows:

The undersigned swears or affirms that all statements made herein are true, that all drawings submitted correctly show the situation involved in this petition.

Signature of Petitioner

Subscribed and sworn to before me this 22nd day of April, 20 24

Notary Public, Erie County, New York

MARIANNE BRAUTLACHT
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 01/14/20 26

N.Y.S. General Municipal Law - Section 809 Disclosure in certain applications:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provision of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state office or any office or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them
 - (a) is the applicant, or
 - (b) is an officer, director, partner or employee of the applicant, or
 - (c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
 - (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such applicant, petition or request.
3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party Officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four or section two of the election law.
4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.
5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

AUTHORIZATION

Rainbow Raquet Club, a New York Partnership, as the record owner of 3880 East Robinson Road [SBL No. 26.03-2-9.1] and 3910 East Robinson Road [SBL No. 26.03-2-8.113] in the Town of Amherst (collectively the "Project Site"), hereby authorizes Hopkins Sorgi & McCarthy PLLC and Carmina Wood Design to file land use applications in furtherance of the development of the Project Site for a multifamily project including but not limited to a Rezoning Application.

RAINBOW RAQUEST CLUB, A NEW YORK PARTNERSHIP



By: Victor L. Peterson III

Date: April 18, 2024

STATE OF NEW YORK)
 ss.:
COUNTY OF ERIE)

On this 19 day of April, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Victor Peterson III, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

IVY GRAHAM
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GR0012603
Qualified in Erie County
My Commission Expires 08-24-2027

**Exhibit 1 of Rezoning Application – Part 1 of
Full Environmental Assessment Form
Prepared pursuant to the State Environmental
Quality Review Act (“SEQRA”) with Page
5[a] and Attachment “1”**

Full Environmental Assessment Form
Part 1 - Project and Setting

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either “Yes” or “No”. If the answer to the initial question is “Yes”, complete the sub-questions that follow. If the answer to the initial question is “No”, proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project:		
Project Location (describe, and attach a general location map):		
Brief Description of Proposed Action (include purpose or need):		
Name of Applicant/Sponsor:		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:
Project Contact (if not same as sponsor; give name and title/role):		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor):		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. (“Funding” includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, or Village Board of Trustees <input type="checkbox"/> Yes <input type="checkbox"/> No		
b. City, Town or Village Planning Board or Commission <input type="checkbox"/> Yes <input type="checkbox"/> No		
c. City, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input type="checkbox"/> No		
d. Other local agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
e. County agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
g. State agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
h. Federal agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
<p>i. Coastal Resources.</p> <p><i>i.</i> Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>ii.</i> Is the project site located in a community with an approved Local Waterfront Revitalization Program? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>iii.</i> Is the project site within a Coastal Erosion Hazard Area? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The Town has adopted an approved Local Waterfront Revitalization but EAF Mapper answered this question as No.]</p>		

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? Yes No

- **If Yes**, complete sections C, F and G.
- **If No**, proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? Yes No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? Yes No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) Yes No

If Yes, identify the plan(s):

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? Yes No

If Yes, identify the plan(s):

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. Yes No
If Yes, what is the zoning classification(s) including any applicable overlay district?

b. Is the use permitted or allowed by a special or conditional use permit? Yes No

c. Is a zoning change requested as part of the proposed action? Yes No

If Yes,

i. What is the proposed new zoning for the site? _____

C.4. Existing community services.

a. In what school district is the project site located? _____

b. What police or other public protection forces serve the project site?

c. Which fire protection and emergency medical services serve the project site?

d. What parks serve the project site?

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)?

b. a. Total acreage of the site of the proposed action? _____ acres
b. Total acreage to be physically disturbed? _____ acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres

c. Is the proposed action an expansion of an existing project or use? Yes No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? Yes No
If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? Yes No

iii. Number of lots proposed? _____

iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____

e. Will the proposed action be constructed in multiple phases? Yes No

i. If No, anticipated period of construction: _____ months

ii. If Yes:

- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____

f. Does the project include new residential uses? Yes No
 If Yes, show numbers of units proposed.

	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	_____	_____	_____	_____
At completion	_____	_____	_____	_____
of all phases	_____	_____	_____	_____

g. Does the proposed action include new non-residential construction (including expansions)? Yes No
 If Yes,

i. Total number of structures _____

ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length

iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? Yes No
 If Yes,

i. Purpose of the impoundment: _____

ii. If a water impoundment, the principal source of the water: Ground water Surface water streams Other specify: _____

iii. If other than water, identify the type of impounded/contained liquids and their source.

iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres

v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? Yes No
 (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)
 If Yes:

i. What is the purpose of the excavation or dredging? _____

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.

iv. Will there be onsite dewatering or processing of excavated materials? Yes No
 If yes, describe. _____

v. What is the total area to be dredged or excavated? _____ acres

vi. What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? Yes No

ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? Yes No
 If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will the proposed action cause or result in disturbance to bottom sediments? Yes No

If Yes, describe: _____

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? Yes No

If Yes:

- acres of aquatic vegetation proposed to be removed: _____
- expected acreage of aquatic vegetation remaining after project completion: _____
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): _____
- proposed method of plant removal: _____
- if chemical/herbicide treatment will be used, specify product(s): _____

v. Describe any proposed reclamation/mitigation following disturbance: _____

c. Will the proposed action use, or create a new demand for water? Yes No

If Yes:

i. Total anticipated water usage/demand per day: _____ gallons/day

ii. Will the proposed action obtain water from an existing public water supply? Yes No

If Yes:

- Name of district or service area: _____
- Does the existing public water supply have capacity to serve the proposal? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No
- Do existing lines serve the project site? Yes No

iii. Will line extension within an existing district be necessary to supply the project? Yes No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____
- Source(s) of supply for the district: _____

iv. Is a new water supply district or service area proposed to be formed to serve the project site? Yes No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- Proposed source(s) of supply for new district: _____

v. If a public water supply will not be used, describe plans to provide water supply for the project: _____

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? Yes No

If Yes:

i. Total anticipated liquid waste generation per day: _____ gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): _____

iii. Will the proposed action use any existing public wastewater treatment facilities? Yes No

If Yes:

- Name of wastewater treatment plant to be used: _____
- Name of district: _____
- Does the existing wastewater treatment plant have capacity to serve the project? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No

• Do existing sewer lines serve the project site? Yes No
 • Will a line extension within an existing district be necessary to serve the project? Yes No
 If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? Yes No
 If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? Yes No
 If Yes:

- How much impervious surface will the project create in relation to total size of project parcel?
 _____ Square feet or _____ acres (impervious surface)
 _____ Square feet or _____ acres (parcel size)
- Describe types of new point sources. _____

- Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

 - If to surface waters, identify receiving water bodies or wetlands: _____

 - Will stormwater runoff flow to adjacent properties? Yes No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? Yes No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? Yes No
 If Yes, identify:

- Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

- Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

- Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? Yes No
 If Yes:

- Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) Yes No
- In addition to emissions as calculated in the application, the project will generate:
 - _____ Tons/year (short tons) of Carbon Dioxide (CO₂)
 - _____ Tons/year (short tons) of Nitrous Oxide (N₂O)
 - _____ Tons/year (short tons) of Perfluorocarbons (PFCs)
 - _____ Tons/year (short tons) of Sulfur Hexafluoride (SF₆)
 - _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)
 - _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? Yes No
 If Yes:
 i. Estimate methane generation in tons/year (metric): _____
 ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? Yes No
 If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? [See Traffic Impact Study prepared by Passero Associates dated April 15, 2024] Yes No
 If Yes:
 i. When is the peak traffic expected (Check all that apply): Morning Evening Weekend
 Randomly between hours of _____ to _____.
 ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____
 iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____
 iv. Does the proposed action include any shared use parking? Yes No
 v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: _____
 vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site? Yes No
 vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? Yes No
 viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? Yes No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? Yes No
 If Yes:
 i. Estimate annual electricity demand during operation of the proposed action: _____
 ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): _____
 iii. Will the proposed action require a new, or an upgrade, to an existing substation? Yes No

l. Hours of operation. Answer all items which apply.

<p>i. During Construction:</p> <ul style="list-style-type: none"> • Monday - Friday: _____ • Saturday: _____ • Sunday: _____ • Holidays: _____ 	<p>ii. During Operations:</p> <ul style="list-style-type: none"> • Monday - Friday: _____ • Saturday: _____ • Sunday: _____ • Holidays: _____
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m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? Yes No
 If yes:
 i. Provide details including sources, time of day and duration:

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? Yes No
 Describe: _____

n. Will the proposed action have outdoor lighting? Yes No
 If yes:
 i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? Yes No
 Describe: _____

o. Does the proposed action have the potential to produce odors for more than one hour per day? Yes No
 If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: _____

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? Yes No
 If Yes:
 i. Product(s) to be stored _____
 ii. Volume(s) _____ per unit time _____ (e.g., month, year)
 iii. Generally, describe the proposed storage facilities: _____

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? Yes No
 If Yes:
 i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? Yes No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? Yes No
 If Yes:
 i. Describe any solid waste(s) to be generated during construction or operation of the facility:
 • Construction: _____ tons per _____ (unit of time)
 • Operation : _____ tons per _____ (unit of time)
 ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:
 • Construction: _____

 • Operation: _____

 iii. Proposed disposal methods/facilities for solid waste generated on-site:
 • Construction: _____

 • Operation: _____

s. Does the proposed action include construction or modification of a solid waste management facility? Yes No
 If Yes:
 i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____
 ii. Anticipated rate of disposal/processing:
 • _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
 • _____ Tons/hour, if combustion or thermal treatment
 iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? Yes No
 If Yes:
 i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

 ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

 iii. Specify amount to be handled or generated _____ tons/month
 iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

 v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? Yes No
 If Yes: provide name and location of facility: _____

 If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.
 i. Check all uses that occur on, adjoining and near the project site.
 Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Aquatic Other (specify): _____
 ii. If mix of uses, generally describe:

b. Land uses and covertypes on the project site.

Land use or Covertypes	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces			
• Forested			
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)			
• Agricultural (includes active orchards, field, greenhouse etc.)			
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)			
• Non-vegetated (bare rock, earth or fill)			
• Other Describe: _____ _____			

c. Is the project site presently used by members of the community for public recreation? Yes No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? Yes No
If Yes,
i. Identify Facilities:

e. Does the project site contain an existing dam? Yes No
If Yes:
i. Dimensions of the dam and impoundment:

- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? Yes No
If Yes:
i. Has the facility been formally closed? Yes No

- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? Yes No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? Yes No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: Yes No
 Yes – Spills Incidents database Provide DEC ID number(s): _____
 Yes – Environmental Site Remediation database Provide DEC ID number(s): _____
 Neither database
ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? Yes No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

v. Is the project site subject to an institutional control limiting property uses? Yes No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? Yes No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? _____ feet

b. Are there bedrock outcroppings on the project site? Yes No
 If Yes, what proportion of the site is comprised of bedrock outcroppings? _____%

c. Predominant soil type(s) present on project site: _____ %
 _____ %
 _____ %

d. What is the average depth to the water table on the project site? Average: _____ feet

e. Drainage status of project site soils: Well Drained: _____ % of site
 Moderately Well Drained: _____ % of site
 Poorly Drained _____ % of site

f. Approximate proportion of proposed action site with slopes: 0-10%: _____ % of site
 10-15%: _____ % of site
 15% or greater: _____ % of site

g. Are there any unique geologic features on the project site? Yes No
 If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? Yes No

ii. Do any wetlands or other waterbodies adjoin the project site? Yes No
 If Yes to either *i* or *ii*, continue. If No, skip to E.2.i. [A copy of the Jurisdictional Determination issued by the USACE on January 8, 2018 is provided at Attachment "A". A new JD is being sought from the USACE.]

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? Yes No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name _____ Classification _____
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name _____ Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? Yes No
 If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? Yes No

j. Is the project site in the 100-year Floodplain? Yes No

k. Is the project site in the 500-year Floodplain? Yes No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? Yes No
 If Yes:
 i. Name of aquifer: _____

m. Identify the predominant wildlife species that occupy or use the project site: _____ _____ _____	
n. Does the project site contain a designated significant natural community? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Describe the habitat/community (composition, function, and basis for designation): _____ _____ <i>ii.</i> Source(s) of description or evaluation: _____ <i>iii.</i> Extent of community/habitat: <ul style="list-style-type: none"> • Currently: _____ acres • Following completion of project as proposed: _____ acres • Gain or loss (indicate + or -): _____ acres 	
o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Species and listing (endangered or threatened): _____ _____ _____	
p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Species and listing: _____ _____	
q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, give a brief description of how the proposed action may affect that use: _____ _____	
E.3. Designated Public Resources On or Near Project Site	
a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide county plus district name/number: _____	
b. Are agricultural lands consisting of highly productive soils present? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>i.</i> If Yes: acreage(s) on project site? _____ <i>ii.</i> Source(s) of soil rating(s): _____	
c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature <i>ii.</i> Provide brief description of landmark, including values behind designation and approximate size/extent: _____ _____ _____	
d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> CEA name: _____ <i>ii.</i> Basis for designation: _____ <i>iii.</i> Designating agency and date: _____	

<p>e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input type="checkbox"/> Historic Building or District</p> <p style="margin-left: 20px;">ii. Name: _____</p> <p style="margin-left: 20px;">iii. Brief description of attributes on which listing is based: _____</p>
<p>f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>g. Have additional archaeological or historic site(s) or resources been identified on the project site? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Describe possible resource(s): _____</p> <p style="margin-left: 20px;">ii. Basis for identification: _____</p>
<p>h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Identify resource: _____</p> <p style="margin-left: 20px;">ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____</p> <p style="margin-left: 20px;">iii. Distance between project and resource: _____ miles.</p>
<p>i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Identify the name of the river and its designation: _____</p> <p style="margin-left: 20px;">ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

F. Additional Information

Attach any additional information which may be needed to clarify your project.

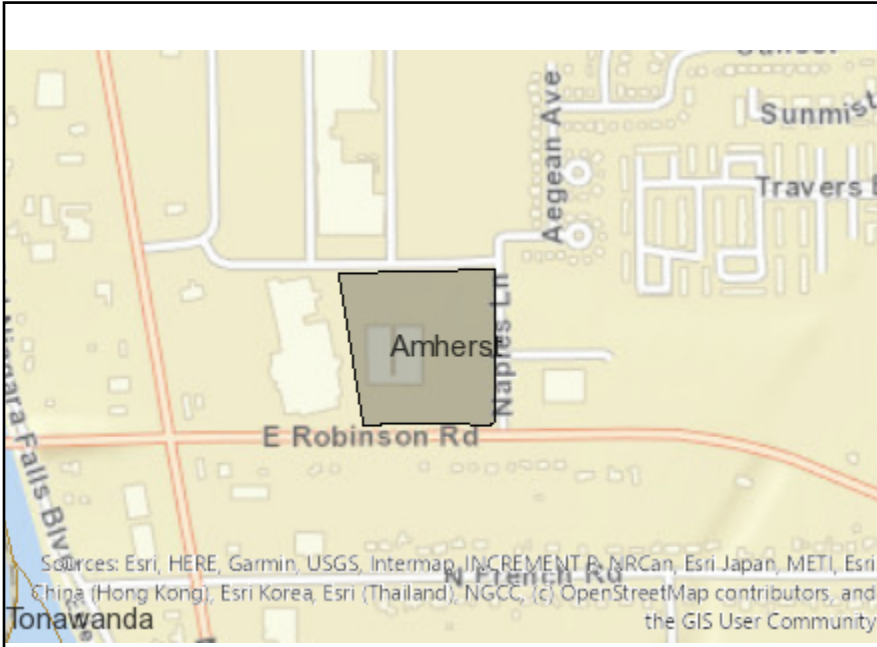
If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name _____ Date _____

Signature Sean Hopkins Title _____



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas: West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	Yes
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No

E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Rezoning of 3880 & 3910 East Robinson Road from GB to MFR-7

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

1. For each applicable category of proposed new structures, including additions to existing structures, provide the following information for all soil types on the project site (according to Soil Survey of Erie County, NY; Table 11, Building Site Development, pp 294-305):

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Raynam Silt Loam	Severe	Severe	Severe	Severe	Severe
Lawson Very Fine Sandy Loam	Moderate	Moderate	Moderate	Moderate	Moderate

2. If the Soil survey indicates either "severe" or "moderate" suitability for the proposed types of construction, a geotechnical and hydrological analysis based on one test per 3.5 acres of project area must be provided (per Town Board resolution, 3/17/03, amended 6/16/03).

_____ Geotechnical report attached x Not applicable

3. Is your property located: On Youngs Road between Dodge and Klein Roads? Yes No
 On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? Yes No

If so, the property may be within an area of the Town that is affected by a moratorium on connections to the sanitary sewer system.

4. Are there alternative locations on the site for this project? Yes No

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal:

Not Applicable.

6. Are you aware of current or future plans or intentions by others in the Town of Amherst to develop property within 1000± ft. of the present project request: Yes No

Describe: Not Applicable.

(Potential environmental impacts from adjacent or nearby projects undergoing the approval process will receive a coordinated environmental review to determine cumulative effects on common receivers (e.g. traffic and drainage corridors) and other relevant environmental concerns.)

7. Maximum number of vehicular trips to be generated per peak hour upon completion of project 72 [Weekday P.M. Peak]
Source: Traffic Impact Study prepared by Passero & Associates dated April 15, 2024.

8. Will blasting occur during construction? Yes No

9. Does the project propose to connect and be tributary to the public sanitary sewer system? Yes No

10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:
 52,800 average flow 211,200 peak flow.

(Average flows of 2,500 gpd or greater will require an Engineer's Report that includes a detailed downstream sewer capacity analysis and the identification of and commitment to required I/I offset work during peak wastewater flow conditions.)

11. Based on the Town's 2011 Reconnaissance Level Survey of Historic Resources, is your property 'blue-rated' for historic significance? Yes No

**Attachment A of Part 1 of Full EAF –
Jurisdictional Determination Issued by the
United States Army Corps of Engineers dated
January 8, 2018**



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

January 8, 2018

Regulatory Branch

SUBJECT: Acceptance of Wetland Delineation, Application No. LRB-2017-00387

Mr. Pete Peterson
M.J. Peterson Co.
200 John James Audubon Parkway
Amherst, New York 14228

Dear Mr. Peterson:

This pertains to your request for a jurisdictional determination for the property located at 3910 East Robinson Road, Town of Amherst, Erie County, New York.

The Corps of Engineers regulatory responsibilities under Section 404 of the Clean Water Act (CWA) establishes jurisdiction over the discharge of dredged or fill material into waters of the United States, including wetlands.

Based upon our evaluation of the subject property, we have determined that there is no clear surface water connection or ecological continuum between the wetland on the parcel and a surface tributary system to a navigable water of the United States. Therefore, these waters are considered isolated, non-navigable, intrastate waters and not regulated under Section 404 of the Clean Water Act. Accordingly, you do not need Department of the Army authorization to commence work in these areas.

This determination will remain valid for a period of 5 years from the date of this correspondence unless new information warrants revision of the delineation before the expiration. At the end of this period, a new delineation may be required. In addition, this delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are United States Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work. I encourage you to contact the appropriate state and local governmental officials to ensure that the proposed work complies with their requirements.

Finally, this letter contains an approved JD for the subject parcel. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the above determination, you must submit a

Regulatory Branch

SUBJECT: Acceptance of Wetland Delineation, Application No. LRB-2017-00387

completed RFA form within 60 days of the date on this letter to the Great Lakes/Ohio River Division Office at the following address:

Jacob Siegrist
Regulatory Appeals Review Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10524
Cincinnati, Ohio 45202-3222
Phone: 513-684-2699 Fax: 513-684-2460

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by March 2, 2018.

It is not necessary to submit an RFA to the Division office if you do not object to the determination in this letter.

Questions pertaining to this matter should be directed to me at 716-879-4308, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: Heather.L.Adams@usace.army.mil

Sincerely,

ADAMS.HEATHER.
LYNN.1257722933

Digitally signed by
ADAMS.HEATHER LYNN 1257722933
DN: c=US, o=US Government, ou=CEC, ou=FC,
ou=USA, cn=ADAMS.HEATHER LYNN 1257722933
Date: 2018.01.08 11:41:15 -0500

Heather Adams
Biologist

Enclosures

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: M.J. Peterson Co.		File Number: LRB-2017-00387	Date: 1/8/2018
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

● **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

● **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

● **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

● **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

● **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

● **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Heather Adams
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207
716-879-4308
Heather.L.Adams@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Jacob Siegrist
Regulatory Appeals Review Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10524
Cincinnati, Ohio 45202-3222
Phone: 513-684-2699 Fax: 513-684-2460

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
----------------------------------	-------	-------------------

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): January 8, 2018

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB-2017-00387, 3910 East Robinson Road Property

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Erie City: Amherst
Center coordinates of site (lat/long in degree decimal format): Lat. 43.03671 ° N, Long. 78.81836 ° W
Universal Transverse Mercator: 17

Name of nearest waterbody: Tonawanda Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A
Name of watershed or Hydrologic Unit Code (HUC): 04120104

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: *Click here to enter a date.*
 Field Determination. Date(s): July 10, 2017

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. *[Required]*

- Waters subject to the ebb and flow of the tide.
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: *Click here to enter text.*

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. *[Required]*

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: ± linear feet; ± width (ft) and/or ± acres.
Wetlands: ± acres.

c. Limits (boundaries) of jurisdiction based on: *Choose an item*

Elevation of established OIWM (if known): *Click here to enter text.*

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: Wetland A (0.75-acre) was determined to be isolated. The factors at 328.3(a)(i-iii) were considered and determined there is no substantial nexus to interstate or foreign commerce. The following is a summary of the physical characteristics that were reviewed for this jurisdictional determination.

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.E.

The entire perimeter of the wetland was walked during the July 10, 2017, site visit. The wetlands are completely surrounded by roads and development, there was no surface water outlet from the wetland and based on the topography it appears the wetland's hydrology is solely provided by precipitation and overland sheet flow from the surrounding area. It is unlikely that the wetland receives sufficient surface water to overcome the barriers of parking lots, roads, mowed yards, houses, driveways and distance to the nearest tributary, which is Tonawanda Creek, 0.4-mile to the west. Due to landscape position and soil characteristics, a shallow subsurface connection is unlikely. Therefore, the wetlands are unlikely to have a chemical nexus to the downstream TNW, the Tonawanda Creek. The wetland does not receive or maintain enough surface water of sufficient frequency, duration, or depth to sustain amphibian egg masses or aquatic insect larvae, for example. Therefore, the wetland's hydrological characteristics, combined with the distance between the wetland and the nearest conveyances, preclude the possibility of a biological nexus.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1, only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: *tributary to wetland*

Summarize rationale supporting determination: *tributary to wetland*

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": *tributary to wetland*

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanns* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: *tributary to wetland*

Drainage area: *tributary to wetland*

Average annual rainfall: *tributary to wetland* inches

Average annual snowfall: *tributary to wetland* inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through *tributary to wetland* tributaries before entering TNW.

Project waters are *tributary to wetland* river miles from TNW.

Project waters are *tributary to wetland* river miles from RPW.

Project waters are *tributary to wetland* aerial (straight) miles from TNW.

Project waters are *tributary to wetland* aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: *tributary to wetland*

Identify flow route to TNW⁵: *tributary to wetland*

Tributary stream order, if known: *tributary to wetland*

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

- Artificial (man-made). Explain: *Click here to enter text*
- Manipulated (man-altered). Explain: *Click here to enter text*

Tributary properties with respect to top of bank (estimate):

Average width: # feet
 Average depth: # feet
 Average side slopes: *Choose an item.*

Primary tributary substrate composition (check all that apply):

- Silts
- Sands
- Concrete
- Cobbles
- Gravel
- Muck
- Bedrock
- Vegetation. Type/% cover: *Click here to enter text.*
- Other. Explain: *Click here to enter text.*

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: *Click here to enter text.*

Presence of run/riffle/pool complexes. Explain: *Click here to enter text.*

Tributary geometry: *Choose an item.*

Tributary gradient (approximate average slope): #%

(c) Flow:

Tributary provides for: *Choose an item.*

Estimate average number of flow events in review area/year: *Choose an item.*

Describe flow regime: *Click here to enter text.*

Other information on duration and volume: *Click here to enter text.*

Surface flow is: *Choose an item.* Characteristics: *Click here to enter text.*

Subsurface flow: *Choose an item.* Explain findings: *Click here to enter text.*

Dye (or other) test performed: *Click here to enter text.*

Tributary has (check all that apply):

- Bed and banks
- OHWM⁶ (check all indicators that apply):
 - clear, natural line impressed on the bank
 - the presence of litter and debris
 - changes in the character of soil
 - destruction of terrestrial vegetation
 - shelving
 - the presence of wrack line
 - vegetation matted down, bent, or absent
 - sediment sorting
 - leaf litter disturbed or washed away
 - scour
 - sediment deposition
 - multiple observed or predicted flow events
 - water staining
 - abrupt change in plant community *Click here to enter text.*
 - other (list): *Click here to enter text.*
- Discontinuous OHWM.⁷ Explain: *Click here to enter text.*

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- High Tide Line indicated by:
 - oil or seum line along shore objects
 - fine shell or debris deposits (foreshore)
 - physical markings/characteristics
 - tidal gauges
 - other (list): *Click here to enter text.*
- Mean High Water Mark indicated by:
 - survey to available datum;
 - physical markings;
 - vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: *Click here to enter text.*

Identify specific pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width): *Click here to enter text.*
- Wetland fringe. Characteristics: *Click here to enter text.*
- Habitat for:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷ibid

- Federally Listed species. Explain findings: *not applicable*
- Fish/spawn areas. Explain findings: *not applicable*
- Other environmentally-sensitive species. Explain findings: *not applicable*
- Aquatic/wildlife diversity. Explain findings: *not applicable*

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: *acres*

Wetland type. Explain: *not applicable*

Wetland quality. Explain: *not applicable*

Project wetlands cross or serve as state boundaries. Explain: *not applicable*

(b) General Flow Relationship with Non-TNW:

Flow is: *not applicable*. Explain: *not applicable*

Surface flow is: *not applicable*

Characteristics: *not applicable*

Subsurface flow: *not applicable*. Explain findings: *not applicable*

Dye (or other) test performed: *not applicable*

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: *not applicable*

Ecological connection. Explain: *not applicable*

Separated by berm/barrier. Explain: *not applicable*

(d) Proximity (Relationship) to TNW

Project wetlands are *not applicable* river miles from TNW.

Project waters are *not applicable* aerial (straight) miles from TNW.

Flow is from: *not applicable*

Estimate approximate location of wetland as within the *not applicable* floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: *not applicable*

Identify specific pollutants, if known: *not applicable*

(iii) Biological Characteristics. Wetland supports (check all that apply):

Riparian buffer. Characteristics (type, average width): *not applicable*

Vegetation type/percent cover. Explain: *not applicable*

Habitat for:

Federally Listed species. Explain findings: *not applicable*

Fish/spawn areas. Explain findings: *not applicable*

Other environmentally-sensitive species. Explain findings: *not applicable*

Aquatic/wildlife diversity. Explain findings: *not applicable*

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: *not applicable*

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Y/N	=	Y/N	=
Y/N	=	Y/N	=
Y/N	=	Y/N	=
Y/N	=	Y/N	=

Summarize overall biological, chemical and physical functions being performed: *Click here to enter text*

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: *Click here to enter text*
2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: *Click here to enter text*.
3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: *Click here to enter text*

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

- TNWs: = linear feet = width (ft). Or, = acres.
 Wetlands adjacent to TNWs: = acres.

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: *Click here to enter text*.
- Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: *Click here to enter text*.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: = linear feet = width (ft).
 Other non-wetland waters: = acres.

Identify type(s) of waters: *Click here to enter text*.

3. Non-RPW⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: *tributaries to wetlands*

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: *tributaries to wetlands*
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: *tributaries to wetlands*

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: *tributaries to wetlands*
 Other factors. Explain: *tributaries to wetlands*

Identify water body and summarize rationale supporting determination: *tributaries to wetlands*

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: *tributaries to wetlands*
 Wetlands: acres.

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapunus.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: *Click here to enter text.*
- Other: (explain, if not covered above): *Click here to enter text.*

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): = linear feet = width (ft).
- Lakes/ponds: = acres.
- Other non-wetland waters: = acres. List type of aquatic resource: *Click here to enter text.*
- Wetlands: Wetland A (0.75-acre)

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): = linear feet = width (ft).
- Lakes/ponds: = acres.
- Other non-wetland waters: = acres. List type of aquatic resource: *Click here to enter text.*
- Wetlands: = acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: *Click here to enter text.*
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: *Click here to enter text.*
- Corps navigable waters' study: *Click here to enter text.*
- U.S. Geological Survey Hydrologic Atlas: *Click here to enter text.*
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Tonawanda East
- USDA Natural Resources Conservation Service Soil Survey. Citation: Erie County
- National wetlands inventory map(s). Cite name: USFWS
- State/Local wetland inventory map(s): *Click here to enter text.*
- FEMA/FIRM maps: *Click here to enter text.*
- 100-year Floodplain Elevation is: *Click here to enter text.* (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth, various years
- or Other (Name & Date): *Click here to enter text.*
- Previous determination(s). File no. and date of response letter: *Click here to enter text.*
- Applicable/supporting case law: *Click here to enter text.*
- Applicable/supporting scientific literature: *Click here to enter text.*
- Other information (please specify): *Click here to enter text.*

B. ADDITIONAL COMMENTS TO SUPPORT JD: *Click here to enter text.*

ADAMS.HEATHER.LY
NN.1257722933

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ADAMS HEATHER LYNN 1257722933
DN: c=US, o=US Government, ou=DoD, ou=PAI
ou=USA, cn=ADAMS HEATHER LYNN 1257722933
Date: 2018.01.08 09:55:40-05:00

January 8, 2018

Heather Adams
Project Manager

Date

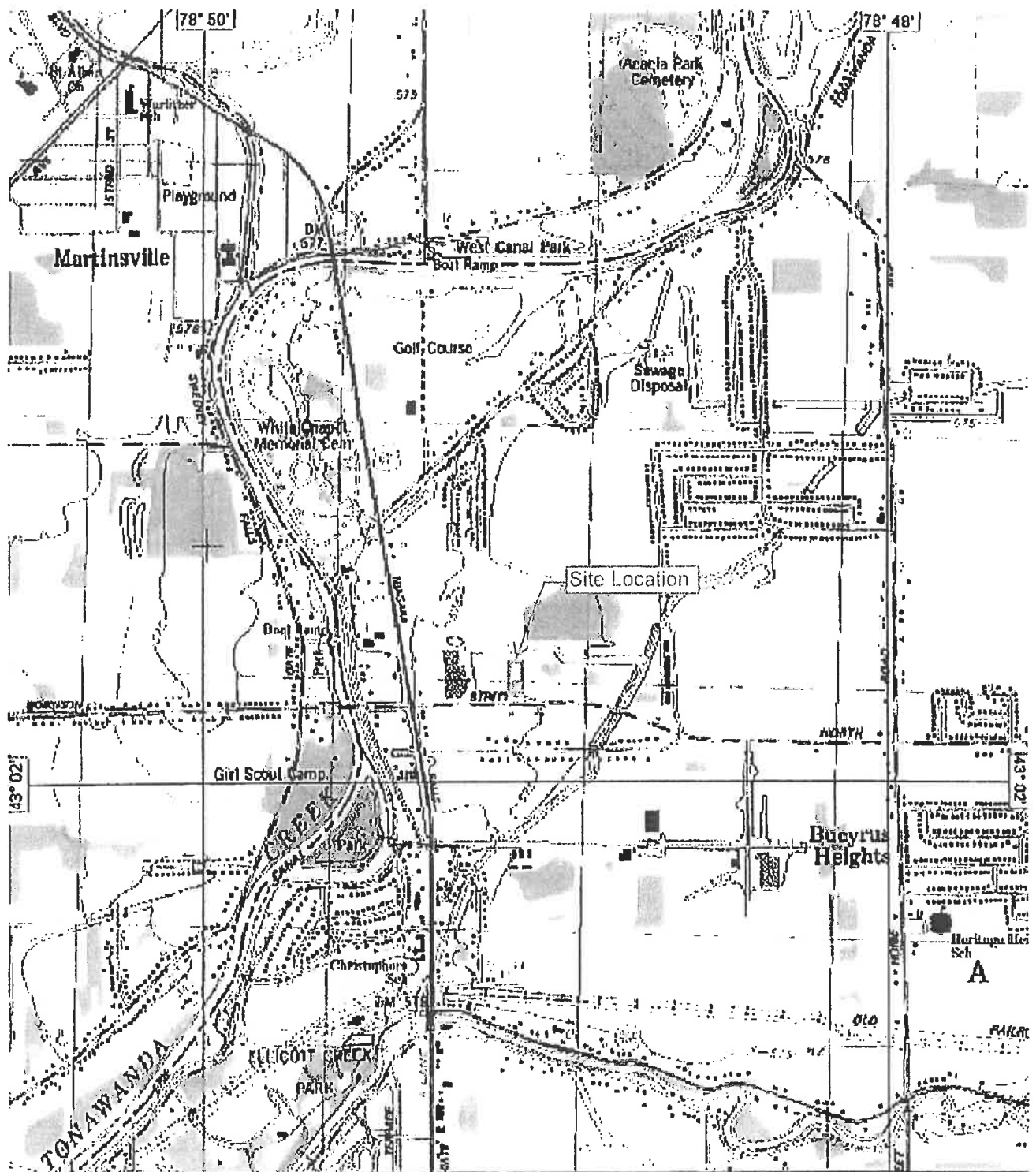
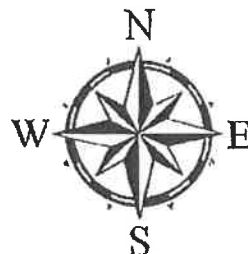


Figure 1: USGS Quadrangle Map

Tonawanda East 7.5 Minute Quadrangle

Scale 1:24,000



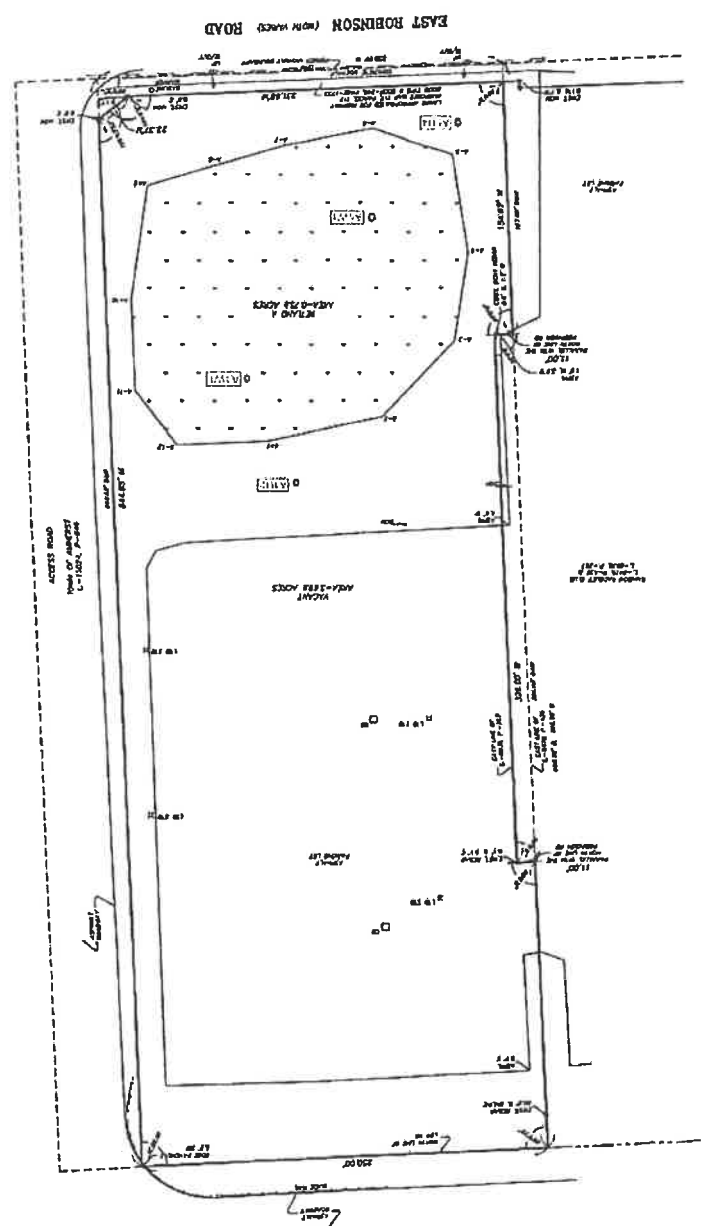
WILSON



M.J. Peterson Co.
 LRB-2017-00387
 Erie County
 Sheet 1 of 2

DATE: MARCH 7, 2017
 SHEET: 17 OF 20
 TOWN OF ARRESTE, ERIC COUNTY, NEW YORK
 OFFICE OF ENGINEERING & SURVEYING, LLC
 1000 ROUTE 28, SUITE 200
 ARRESTE, NEW YORK 12012
 518-537-1111

DATE	17/03/17
PROJECT	2017-00387
SCALE	AS SHOWN
DRAWN BY	...
CHECKED BY	...



M.J.J. Peterson Co.
 LRB-2017-00387
 Eric County
 Sheet 2 of 2

DATE: MARCH 7, 2017
 SHEET: 17 OF 20
 TOWN OF ARRESTE, ERIC COUNTY, NEW YORK
 OFFICE OF ENGINEERING & SURVEYING, LLC
 1000 ROUTE 28, SUITE 200
 ARRESTE, NEW YORK 12012
 518-537-1111

**Exhibit 2 – Legal Description of Property to
be Rezoned from GB to MFR-7**

EXHIBIT 2 OF REZONING APPLICATION

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED FROM GB to MFR-7

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, State of New York, being part of Lot 40, Township 12, Range 7 of the Holland Land Survey, bounded and described as follows:

BEGINNING at the intersection of the west line of lands conveyed to the Town of Amherst by deed recorded in the Erie County Clerk's Office in Liber 11024 of Deeds at Page 646 with the northwest line of lands appropriated by the People of the State of New York by Notice of Appropriation recorded in the Erie County Clerk's Office in Liber 11225 of Deeds at Page 4977, Map No. 117, Parcel No. 117;

THENCE: Through lands conveyed to Kenmore Realty Corporation by deed recorded in the Erie County Clerk's Office in Liber 7456 of Deeds at Page 389 and through lands conveyed to Rainbow Racquet Club by deed recorded in the Erie County Clerk's Office in Liber 8470 of Deeds at Page 435, the following six (6) courses and distances;

- 1.) Southwesterly, along the northwesterly line of said Map No. 117, Parcel No. 117 lands, having an interior angle of $125^{\circ}49'48''$, a distance of 22.38 feet to a point.
- 2.) Westerly, along the north line of said Map No. 117, Parcel No. 117 and the north line of lands appropriated by the People of the State of New York by Notice of Appropriation recorded in the Erie County Clerk's Office in Liber 11225 of Deeds at Page 4959, Map No. 114, Parcel No. 114, having an interior angle of $144^{\circ}06'08''$, a distance of 242.17 feet to a point.
- 3.) Northerly at right angles with the previous course, a distance of 4.27 feet to a northeast corner of said Map No. 114, Parcel No. 114 lands.
- 4.) Westerly at right angles with the previous course, along a northerly line of said Map No. 114, Parcel No. 114 lands, a distance of 238.47 feet to a northwest corner of said Map No. 114, Parcel No. 114 lands.
- 5.) Southerly at right angles with the previous course, a distance of 4.27 feet to a northerly line of said Map No. 114, Parcel No. 114 lands.
- 6.) Westerly, along a northerly line of said Map No. 114, Parcel No. 114 lands, having an interior angle of $90^{\circ}13'59''$, a distance of 75.05 feet to the west line of said Rainbow Racquet Club lands by aforesaid deed.

THENCE: Northerly, along the said west Rainbow Racquet Club lands, having an interior angle of $99^{\circ}13'25''$, a distance of 664.41 feet to the north line of Lot 40;

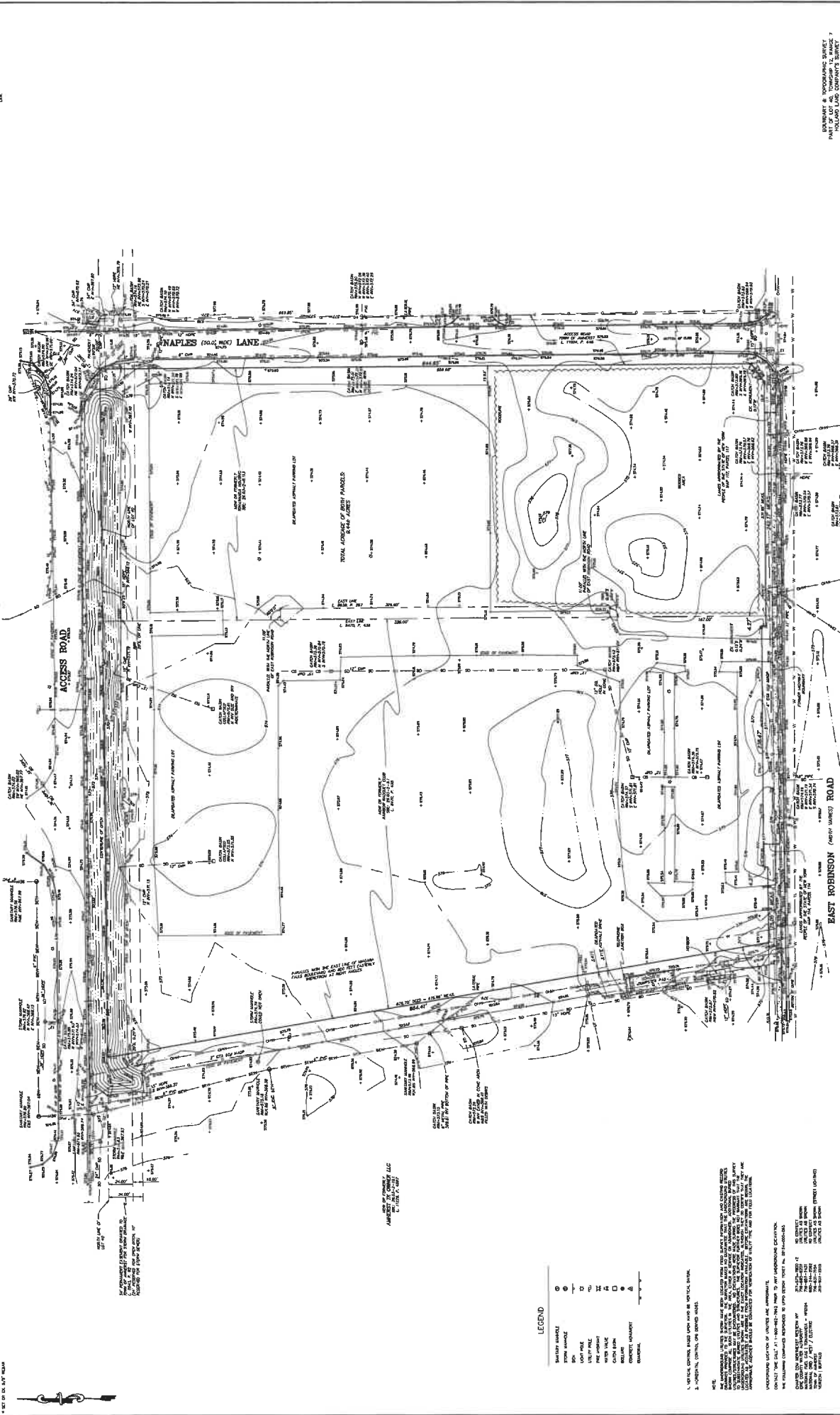
THENCE: Easterly, along the said north line of Lot 40, having an interior angle of $80^{\circ}46'09''$, a distance of 682.21 feet to the west line of said Town of Amherst lands by Liber 11024 of Deeds at Page 646;

THENCE: Southerly, along the said west line of Town of Amherst lands, having an interior angle of $89^{\circ}50'31''$, a distance of 644.65 feet to the POINT OR PLACE OF BEGINNING, having an area of 9.44 acres be the same more or less.

**Exhibit 3 – Reduced-Size Copy of Survey of
the Project Site**

THE ENGINEER HAS REVIEWED THIS PLAN AND APPROVES IT AS A CORRECT REPRESENTATION OF THE SURVEY DATA PROVIDED TO HIM BY THE SURVEYOR.

THIS SURVEY WAS CONDUCTED UNDER THE CLOSE SUPERVISION OF THE ENGINEER.



STATEMENT & TOPographic SURVEY
 HOLLAND LAND COMPANY'S SURVEY
 TOWN OF MANHATTAN, ERIE COUNTY, NEW YORK
 SURVEYED BY
GEORGE J. HARRIS, INC.
 1000 WEST 14TH STREET
 ALBANY, NEW YORK 12206
 TEL. 585-5000

JOB NO. 4332 DATE: FEBRUARY 12, 2004
 TAC No. 26.00-2-113 & 81
 Scale: 1" = 40'

LEGEND

○	BOUNDARY MARKER
□	STONE MARKER
△	SPOT
▽	WATER
⊙	UTILITY POLE
⊞	PIPE
⊚	WIRE
⊛	CONCRETE PIER
⊜	WELL
⊝	CONCRETE FOUNDATION
⊞	GENERAL

1. VERTICAL CURVES BASED UPON THE VERTICAL CURVE.
2. HORIZONTAL CURVES ARE SHOWN AS DASHED LINES.

NOTE:
 THIS SURVEY WAS CONDUCTED UNDER THE CLOSE SUPERVISION OF THE ENGINEER.
 THE ENGINEER HAS REVIEWED THIS PLAN AND APPROVES IT AS A CORRECT REPRESENTATION OF THE SURVEY DATA PROVIDED TO HIM BY THE SURVEYOR.
 THE SURVEYOR HAS CONDUCTED THIS SURVEY IN ACCORDANCE WITH THE REQUIREMENTS OF THE SURVEYING PROFESSION.
 THE SURVEYOR HAS CONDUCTED THIS SURVEY IN ACCORDANCE WITH THE REQUIREMENTS OF THE SURVEYING PROFESSION.
 THE SURVEYOR HAS CONDUCTED THIS SURVEY IN ACCORDANCE WITH THE REQUIREMENTS OF THE SURVEYING PROFESSION.

DATE	REVISION/TITLE

**Exhibit 4 – Responses to Question No. 11 of
the Rezoning Application**

EXHIBIT 4

REZONING OF 3880 & 3910 EAST ROBINSON ROAD FROM GB TO MFR-7

Question 11(A): Description of the character of the proposed development:

Response to

Question 11(A): The proposed project consists of the development of approximately 9.4 acre of property located at 3880 and 3910 East Robinson Road (collectively the “Project Site”) as a senior housing project as a senior housing consisting of six buildings [two 4-story buildings with 116 units each], three 2-story with 8 units each [total of 256 senior apartments for lease] as well a community building. The project layout includes 245 parking spaces [30 garage spaces]. A reduced-size copy of the Concept Site Plan [Drawing C-100] is provided at **Exhibit “6”** and a full size copy is also attached.¹

The project purpose is to develop the Project Site for senior housing units for lease at a location with easy access to many nearby amenities including grocery stores, restaurants, etc.

Question 11(B)(1): Rationale for rezoning request: 1. What was this site chosen?

Response to

Question 11(B)(1): The Project Site is an appropriate location for the requested rezoning from GB to MFR-7 since the requested zoning classification is consistent with Figure 6-A of the Comprehensive Plan, which designates the property on the property on the west side of Niagara Falls Boulevard including the Tops Plaza and the Wegmans Plaza as a “Suburban Center” [Designation Area No. 1 on Figure 6-A]. A color copy of Figure 6-A of the Comprehensive Plan is attached as **Exhibit “7”**.

¹ A reduced-size copy of the survey of the Project Site depicting the property to be rezoned from GB to MFR-7 is provided at **Exhibit “3”**.

Suburban Centers are defined on Page 3-38 of the adopted Bicentennial Comprehensive

Plan as follows:

Centers come in varying scales, but at their largest they are the most intense type of commercial or mixed-use development in Amherst. Large suburban centers are typically located away from single-family homes, along major roadways, at higher volume intersections, or near interstate interchanges. The parcels located in these centers are typically large and deep. Parcels can also be combined for substantial redevelopment projects. Given these large parcel sizes, and their distance from surrounding residential areas, buildings can reach up to 8 stories in height. There are a couple of existing buildings taller than 8 stories located along the Interstate 290, however, buildings up to 8 stories or taller should only be permitted where they already exist or in designated locations along the Interstate 290 or within the Boulevard Mall area. Tenant spaces in this scale of center are typically the largest and are intended to serve a regional market. (Amended 9-3-19; BCPA-2017-01A)

The majority of suburban centers in Town fall into a slightly less intense scale of development. These centers will have many of the same characteristics of the larger center scale—large parcels, located on major roadways and at higher volume intersections— but buildings may be up to 5 stories in height. Some of these less intense centers abut residential areas and need to be scaled down to lower heights to fit within the surrounding context, including the use of building setbacks above a certain height as a method to scale down building mass.

It is also important to mention that Figure 6 of the Comprehensive Plan designates the Project Site as “Commercial/Mixed-Use”. A marked-up copy of Figure 6 of the Comprehensive Plan is provided at **Exhibit “8”**. Commercial/Mixed Use is described on Page 3-33 of the Comprehensive Plan as follows:

A strong commercial base is necessary to support Amherst's quality of life and to provide community amenities. The maps and graphics in this section illustrate the Town's commitment to strengthening commercial and mixed-use opportunities in appropriate areas. In the future, Amherst's commercial and mixed use centers must be revitalized and complement their surroundings. Form, type, and scale of development form the basis for organizing and guiding commercial and mixed-use center revitalization.

The success of a commercial or mixed-use center is increasingly related to access (which includes modes beyond automobiles), and quality of place. In addition, typical approaches to retailing are being significantly impacted by on-line shopping with free delivery. Due to these accelerating shifts in the market, zoning must focus

more significantly on the built form in each of Amherst's commercial and mixed-use centers. (Amended 12-11-17; BCPA-2017-01)

Amherst’s centers vary by scale and function. Their location also plays a significant role in shaping the size and character of buildings and parking areas, and providing satisfactory transitions to surrounding areas. Amherst’s commercial and mixed-use centers fall within two forms of development which are described in the Comprehensive Plan.

The adopted Comprehensive Plan discusses the need for senior housing and housing forms other than single-family homes on individual lots and Table 2 of the Comprehensive Plan [copy below] recognizes the need for multifamily housing projects based on only a small percentage of land in the Town being designated as appropriate for multifamily units for lease at a density consistent with the proposed project.

Table 2. Proposed Land Use

Category	Acreage	Percentage
Agriculture	1,787	5.2%
Commercial / Mixed-Use	2,287	6.7%
Commercial – Office	962	2.8%
Industrial – Office	1,102	3.2%
Rural Residential	1,548	4.5%
Single Family Residential	13,857	40.5%
Mixed Residential	1,219	3.6%
Medium Residential	801	2.3%
Special Use Center	343	1.0%
Recreation & Open Space	7,687	22.5%
Community Facilities	506	1.5%
Educational Campus	1,334	3.9%
Transportation	788	2.3%

Source: Figure 6, Conceptual Land Use Plan
(Amended 9-3-19; BCPA-2017-01A)

Question 11(B)(2): Why cannot land be used with the existing zoning?

Response to

Question 11(B)(2): The Project Site could be developed as a commercial plaza or buildings with a height of up to 65 ft. based on its existing GB zoning classification but there is not demand for new retail space that would occupy the approximately 9.4 acre Project Site, which does not have any frontage on Niagara Falls Boulevard. The requested MFR-7 zoning is more appropriate for the Project Site than the existing GB zoning classification since there is demand for senior housing and the infill location in close proximity to many commercial uses is an excellent location for a new senior housing project in the northwest portion of the Town.

Question 11(B)(3): How will this rezoning impact surrounding properties?

Response to

Question 11(B)(3): The requested rezoning of the Project Site from GB to MFR-7 to accommodate the proposed senior housing project will not result in any potentially significant adverse impacts on surrounding properties. The predominant land uses in the vicinity of the Project Site consist of commercial uses including the large retail plazas with a grocery stores, restaurants, etc. A completed Part 1 of the Full Environmental Assessment Form with Page 5[a] as prepared pursuant to the State Environmental Quality Review Act (“SEQRA”) is provided at **Exhibit “1”** of this Rezoning Application.

Question 11(B)(4): How will this rezoning impact the school system?

Response to

Question 11(B)(4): The proposed senior housing project will have positive impacts on the Sweet Home School District since the project will generate annual property taxes that will be substantially higher than the current annual school taxes without creating demand for educational services.

**Exhibit 5 – Responses to Question 16 of the
Rezoning Application**

EXHIBIT 5

REZONING OF 3880 & 3910 EAST ROBINSON ROAD FROM GB TO MFR-7

Question 16(A)(1): **State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps and/or figures in the plan that support the proposed zoning at this location.**

Response to

Question 16(A)(1): The Town of Amherst adopted the Bicentennial Comprehensive Plan in January of 2007 after completing a lengthy planning process that included numerous public meetings and public hearings involving the Comprehensive Plan Advisory Committee, the Planning Board and the Town Board.¹ On December 14, 2020, the Town Board most recently adopted amendments to the Bicentennial Comprehensive Plan. The proposed senior housing project and the requested MFR-7 zoning classification are consistent with the Comprehensive Plan including Figure 6-A, which designates the property on the west side of Niagara Falls Boulevard including the Tops Plaza and the Wegmans Plaza as a “Suburban Center” [Designation Area No. 1 on Figure 6-A]. A color copy of Figure 6-A of the Comprehensive Plan is attached as **Exhibit “7”**.

Suburban Centers are defined on Page 3-38 of the adopted Bicentennial Comprehensive Plan as follows:

Centers come in varying scales, but at their largest they are the most intense type of commercial or mixed-use development in Amherst. Large suburban centers are typically located away from single-family homes, along major roadways, at higher volume intersections, or near interstate interchanges. The parcels located in these centers are typically large and deep. Parcels can also be combined for substantial

¹ A copy of the resolution adopted by the Town Board for the purpose of adopting the Bicentennial Comprehensive Plan pursuant to Town Law Section 272-a is included at the beginning of the Comprehensive Plan. This resolution recites the lengthy planning history that incorporated numerous opportunities for public input as well as a coordinated environmental review pursuant to SEQRA that involved the preparation a Generic EIS and the issuance of a Findings Statement.

redevelopment projects. Given these large parcel sizes, and their distance from surrounding residential areas, buildings can reach up to 8 stories in height. There are a couple of existing buildings taller than 8 stories located along the Interstate 290, however, buildings up to 8 stories or taller should only be permitted where they already exist or in designated locations along the Interstate 290 or within the Boulevard Mall area. Tenant spaces in this scale of center are typically the largest and are intended to serve a regional market. (Amended 9-3-19; BCPA-2017-01A)

The majority of suburban centers in Town fall into a slightly less intense scale of development. These centers will have many of the same characteristics of the larger center scale –large parcels, located on major roadways and at higher volume intersections– but buildings may be up to 5 stories in height. Some of these less intense centers abut residential areas and need to be scaled down to lower heights to fit within the surrounding context, including the use of building stepbacks above a certain height as a method to scale down building mass.

There are already substantial commercial uses located within Designation Area No. 1 on Figure 6-A of the Comprehensive Plan and the proposed senior housing project will add residential units for lease into this area at an appropriate infill location in close proximity to many nearby amenities including grocery stores, restaurants, etc.

Question 16(A)(2): Cite all text, map, and/or figures that must be amended to support the proposed zoning at this location and provide detailed suggested amendments.

Response to

Question 16(A)(2): The proposed senior housing project is consistent with the Comprehensive Plan and such there is not a need to amend the Comprehensive Plan to accommodate the proposed mixed-use redevelopment project.

Question 16(A)(3): State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

Response to

Question 16(A)(3): Section 1-2-1 of the Zoning Code is titled “Purpose” and it states as follows:

“The purpose of this Zoning Ordinance and the intent of the legislative authority in its adoption is to promote the environment of the town and its public health, safety, convenience, comfort, prosperity and the general welfare by regulating the use of buildings, other structures and land for residences, open space,

public facilities, business, services, industry or other purposes; by regulating and restricting the bulk, height, design, building coverage and location of structures; by regulating and limiting population density; and for the aforesaid purposes, to divide the land within the limits of the town into districts of such number and dimensions generally consistent with the policies of the Comprehensive Plan and to provide procedures for the administration and amendment of said Zoning Ordinance.”

The proposed rezoning of the Project Site from GB to MFR-7 to accommodate the proposed senior housing project is consistent with the “Purpose” of the Zoning Code. Section 1-2-2 of the Zoning Code sets forth the objectives of the Zoning Code. This section of the Zoning Code lists thirteen (13) objectives that are discussed below as follows:

- A. To protect the character and values of residential, institutional and public uses, business, commercial and manufacturing uses and to insure their orderly and beneficial development;**

Response: The proposed rezoning of the Project Site will be consistent with the objective of protecting the character and value of existing land uses. The proposed rezoning will allow the Project Site to be redeveloped as a senior housing project with ample greenspace at an appropriate location, which represents orderly and beneficial development.

- B. To provide adequate open spaces for light, air and outdoor uses to include public, common and private open space areas;**

Response: The proposed rezoning of the Project Site will not be inconsistent with this objective.

- C. To prevent overcrowding of land;**

Response: The proposed project will not result in the overcrowding of land since the Project Site is large consisting of 9.4 acres. The project is consistent with the type of development designated as appropriate for the Project Site per the adopted Comprehensive Plan.

D. To prevent excessive concentration of population and to prevent sparse and uncoordinated development;

Response: The proposed rezoning of the Project Site will not result in excessive concentration of population and the residential project represents an example of coordinated development.

E. To regulate and control the location and spacing of buildings on the lot and in relation to the surrounding property generally consistent with the policies of the Comprehensive Plan.

Response: The responses to the Questions in Section 16 provided above sets forth the reasons the proposed rezoning is consistent with the policies of the Comprehensive Plan.

F. To protect persons and property from damage and injury due to fire or flood;

Response: The Site Plan Application review process will trigger the need for an Engineer's Report to be prepared by a licensed engineer to be prepared for review and approval by the Town's Engineering Department. The project will not increase the likelihood of damage and injury due to fire and flood. The proposed buildings consisting of attached residential units for lease will be constructed per the stringent requirements of the NYS Building Code including the fire safety standards contained therein.

G. To preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only.

Response: The proposed rezoning and the proposed project will not be inconsistent with this objective. There are not any protected significant natural features located on the Project Site. A completed Part 1 of the Full Environmental Assessment Form prepared pursuant to SEQRA is attached as **Exhibit "1"**.

H. To assure that structure and land use arrangements are aesthetically harmonious with nearby areas and structures.

Response: The redevelopment of the Project Site in a manner consistent with the Concept Site Plan [Drawing C-100] will be aesthetically harmonious with nearby areas and structures.

I. To regulate the location of buildings and intensity of uses in relation to streets according to plans so as to cause the least interference with and be damaged least by traffic movements and hence result in lessened street congestion and improved public safety.

Response: The proposed project will have vehicular access to North French Road and Naples Lane, which connects to the nearby commercial plaza on Niagara Falls Boulevard. A Traffic Impact Study has been prepared by Passero Associates dated April 15, 2024 which demonstrates the senior housing project will not result in any potentially significant traffic impacts.

J. To establish zoning patterns that insure economical extensions for sewers, water supply waste disposal and other public utilities, as well as development of recreation, schools and other public facilities;

Response: The Project Site has access to sanitary sewer and water lines as well as necessary public utilities to service the proposed project.

K. To guide the future development of the town so as to being the gradual conformity of land, structures and uses generally consistent with the policies of the Comprehensive Plan.

Response: The proposed rezoning of the Project Site is consistent with this objective since the proposed use is consistent with the policies contained in the Comprehensive Plan.

L. To accomplish the specific intents and goals set forth in the introduction to the respective sections.

Response: The proposed rezoning of the Project Site is consistent with this objective.

M. To protect the community from visual pollution resulting from the unregulated use of signs and other advertising devices.

Response: The proposed rezoning and the proposed project will not be inconsistent with this objective.

Question 16(C): **Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:**

Response to

Question 16(C): The proposed rezoning of the Project Site is compatible with the present zoning and conforming uses of nearby properties and the character of the neighborhood which consists predominantly of a mixture of nearby commercial uses.

Question 16(D): **Suitability of the subject property for uses permitted by the current versus the proposed district:**

Response to

Question 16(D): While the Project Site is suitable for uses permitted by the existing GB zoning classification and the proposed MFR-7 zoning classification of the Project Site, it is more suitable for senior housing given its location on North French Road and the lack of demand for retail uses on property zoned GB.

Question 16(E): **Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:**

Response to

Question 16(D): The proposed change in the zoning classification of the Project Site from GB to MFR-7 to accommodate the proposed senior housing project will have positive impacts on the balance of uses in the Town by providing senior housing units for lease within a portion of the Town that has been designated as appropriate for this use by the Town Board per the adopted Comprehensive Plan.

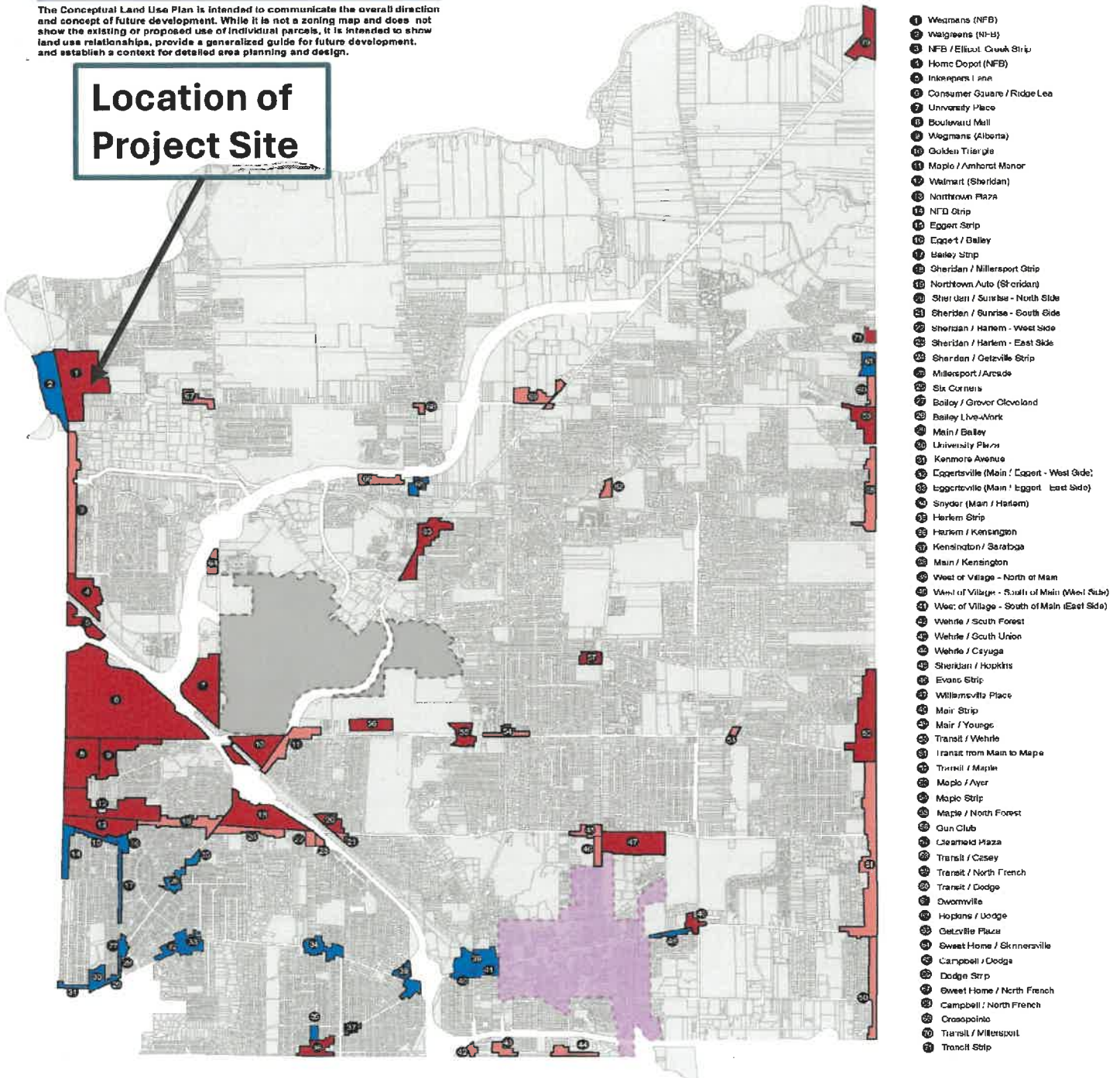
**Exhibit 6 – Reduced-Size Copy of the
Concept Site Plan [Drawing C-100]**

**Exhibit 7 – Marked-Up Copy of Figure 6-A of
the Comprehensive Plan**

Town of Amherst Bicentennial Comprehensive Plan 2018

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.

Location of Project Site



- 1 Weismans (NFB)
- 2 Waigreens (NFB)
- 3 NFB / Ellicott Creek Strip
- 4 Home Depot (NFB)
- 5 Inkeepers Lane
- 6 Consumer Square / Ridge Lea
- 7 University Place
- 8 Boulevard Mall
- 9 Wegmans (Alberta)
- 10 Golden Triangle
- 11 Maple / Amherst Manor
- 12 Walmart (Sheridan)
- 13 Northtown Plaza
- 14 NFD Strip
- 15 Eggen Strip
- 16 Egert / Bailey
- 17 Bailey Strip
- 18 Sheridan / Millersport Strip
- 19 Northtown Auto (Sheridan)
- 20 Sheridan / Sunrise - North Side
- 21 Sheridan / Sunrise - South Side
- 22 Sheridan / Harlem - West Side
- 23 Sheridan / Harlem - East Side
- 24 Sheridan / Getzville Strip
- 25 Millersport / Arcade
- 26 Six Corners
- 27 Bailey / Grover Cleveland
- 28 Bailey Live-Work
- 29 Main / Bailey
- 30 University Plaza
- 31 Kenmore Avenue
- 32 Eggersville (Main / Egert - West Side)
- 33 Eggersville (Main / Egert - East Side)
- 34 Snyder (Main / Harlem)
- 35 Harlem Strip
- 36 Harlem / Kensington
- 37 Kensington / Saratoga
- 38 Main / Kensington
- 39 West of Village - North of Main
- 40 West of Village - South of Main (West Side)
- 41 West of Village - South of Main (East Side)
- 42 Wehrle / South Forest
- 43 Wehrle / South Union
- 44 Wehrle / Cayuga
- 45 Sheridan / Hopkins
- 46 Evans Strip
- 47 Williamsville Place
- 48 Mair Strip
- 49 Mair / Young
- 50 Transit / Wehrle

Commercial and Mixed-Use Designations

- Suburban Center
- Suburban Corridor
- Traditional Areas
- Village of Williamsville
- University at Buffalo

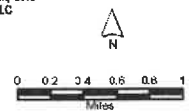
SOURCE NOTES:

Original Source Data Provided by the Town of Amherst Information Technology Department, UMS Corporation and Wallace Roberts & Todd, LLC

Map Compiled by the Town of Amherst Planning Department

Date: December 2020

FIGURE 6-A

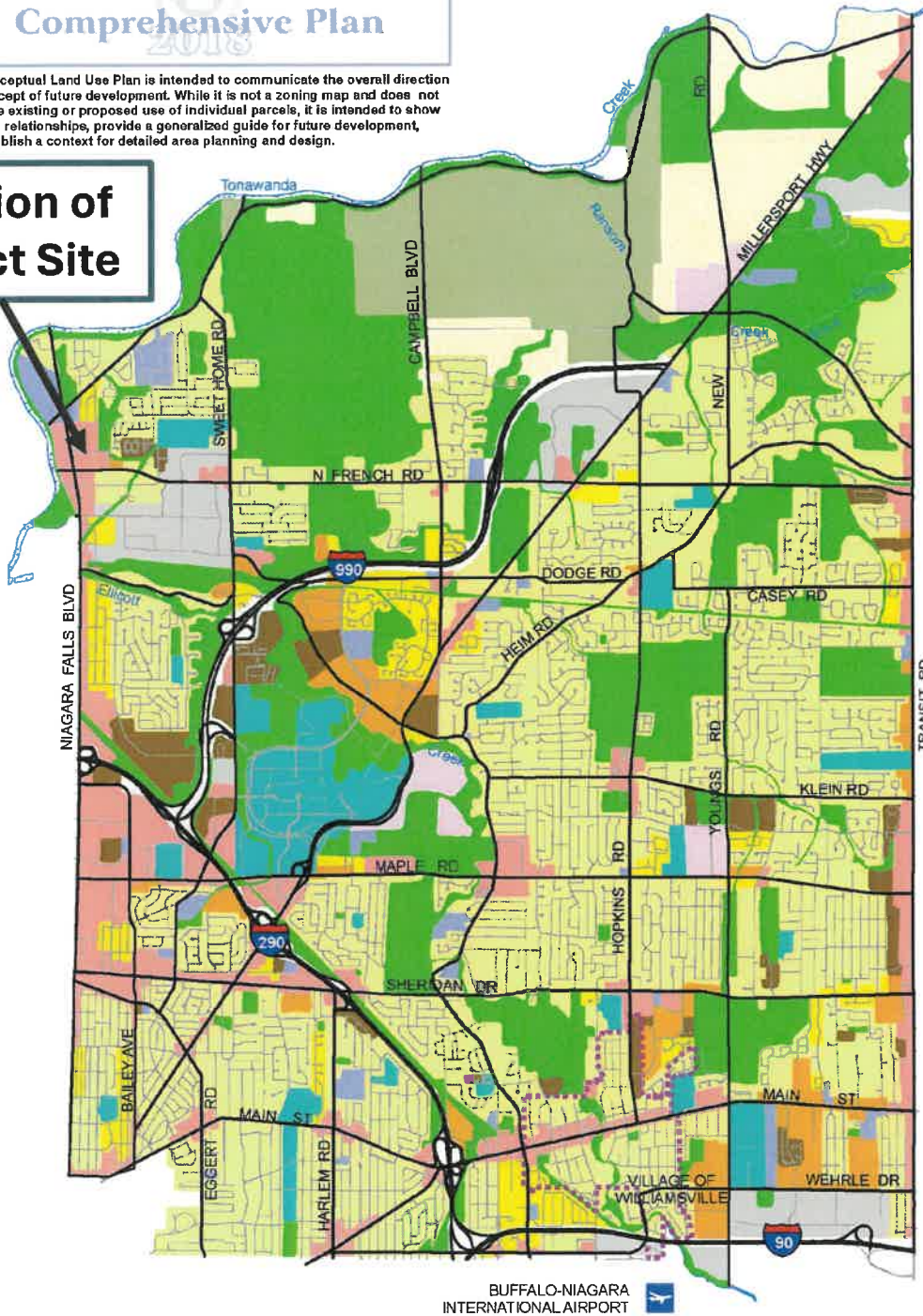


**Exhibit 8 - Marked-Up Copy of Figure 6 of
the Comprehensive Plan**

Town of Amherst Bicentennial Comprehensive Plan

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.

Location of Project Site



Conceptual Land Use Plan

Rural Residential	Special Use Center	Recreation, Open Space & Greenways
Single Family Residential	Commercial - Office	Agriculture
Mixed Residential	Industrial - Office	Transportation
Medium Residential	Community Facilities	Surface Water
Commercial / Mixed Use*	Educational Campus	Village of Williamsville Boundary

SOURCE NOTES:

Original Source Data Provided by the Town of Amherst Information Technology Department, URS Corporation and Wallace Roberts & Todd, LLC

Map Compiled by the Town of Amherst Planning Department

Date: December 2020

* See Map Figure 6-A for Additional Designations

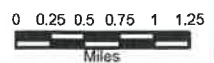


FIGURE 6