

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Agenda – 541st Meeting
Friday, June 16, 2023-8:30 am

James J. Allen Boardroom
Agency Offices – 4287 Main Street, Amherst, NY 14226

1. Roll Call of Members
2. Reading and Approval of Minutes
3. Bills & Communications
 - I. Town of Amherst – AIDA 2023 PILOT Report
4. Treasurer’s Report
5. Public Comment
 - a. Speakers Limited to Three (3) Minutes
6. Executive Director’s Report
7. Committee Reports
8. Unfinished Business
9. New Business
 - I. Authorization Resolution
 - a) Amherst Portfolio Equities
LLC (415 Lawrence Bell Drive)
 - II. Bonadio & Company, LLP – Proposed Audit
Fees 2023-2026
10. Adjournment

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

**Minutes of the 540th Meeting
Friday, March 17, 2023 – 8:36 am
James J. Allen Boardroom
Agency Offices, 4287 Main Street**

PRESENT: Carlton N. Brock, Jr.
William Tuyn
Anthony Agostino
Timothy Drury
Frank LoTempio, III
Jacqueline Berger, TOA Councilperson
David S. Mingoia, Executive Director
Kevin J. Zanner, Hurwitz & Fine PC

ABSENT: Hadar Borden
Nicole Gavigan

GUESTS : AIDA Staff
David Tytko

Chairman Carlton Brock called the meeting to order and reminded everyone the meeting was being video recorded and live-streamed.

MINUTES

Upon a motion by Frank LoTempio, seconded by Anthony Agostino and unanimously carried, the minutes of the February 2023 meeting were approved as presented.

BILLS & COMMUNICATIONS

There were no Bills & Communications presented at this meeting.

TREASURER’S REPORT

Treasurer Agostino reviewed the highlights of the Treasurer’s Report for February 2023.

Upon a motion by William Tuyn, seconded by Frank LoTempio and unanimously carried, the Treasurer’s Report for December 2022 was approved as presented.

PUBLIC COMMENT

There was no Public Comment at this meeting.

EXECUTIVE DIRECTOR’S REPORT

Attached to the minutes is the Executive Director’s Report.

COMMITTEE REPORTS

Governance Committee - The Governance Committee recommended the approval of the 2022 Mission Statement and Measurement Report as presented. Frank LoTempio made a motion to approve the 2022 Mission Statement and Measurement Report. Anthony Agostino seconded the

motion. Votes of aye were cast by Brock, Tuyn, Agostino, Drury and LoTempio. Motion to approve passed 5-0.

UNFINISHED BUSINESS

There was no Unfinished Business presented at this meeting.

NEW BUSINESS

There was no New Business presented at this meeting.

9:05 am – Frank LoTempio made a motion to adjourn the meeting. Anthony Agostino seconded the motion. The motion to adjourn passed unanimously.



TOWN OF AMHERST
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Daryl C. Bramer
Town Comptroller
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EXAMINATION REPORT
Town of Amherst Industrial Development Agency
Payment In Lieu of Taxes

04/18/2023

Background:

On February 4th, 2008, the Town Board adopted Resolution 2008-193, “Full Accounting of Amherst IDA PILOT Program Payments”.

The Town of Amherst Industrial Development Agency (AIDA) is a public benefit corporation created in 1973 in accordance with Article 18-A of New York State General Municipal Law. The Town of Amherst is the sole member of the corporation and the AIDA is a discretely presented component unit of the Town of Amherst.

The AIDA enters into contractual arrangements with client companies that have outstanding industrial development revenue bonds. The client companies make payments to the AIDA in lieu of taxes. Special District taxes are on the property tax bill sent out by the Town Clerk. The AIDA then collects and remits these payments to the various taxing jurisdictions.

PILOT payments for properties located in the Town of Amherst include the tax rates from the General Fund, Central Alarm, and Highway Fund. For properties located within the Village of Williamsville, the tax rates include the General Fund (Village’s Share) and Central Alarm.

Scope:

The scope of our exam was to review that the Town of Amherst is receiving in full the PILOTS that are due, the accuracy of such payment calculations, including contractual agreements, and that such PILOT’s assessed value agrees with the Town Assessor’s records. We reviewed the 2023 AIDA PILOT payments.

The Office of the Town Comptroller in the scope of the work performed did not audit and does not express an opinion on the assessed values of properties in the Town of Amherst.

The Office of the Town Comptroller in the scope of the work performed does not express an opinion on the contractual agreements entered into with client companies and the AIDA.

Steps and Procedures Performed:

1. We read the 2022 Audited Financial Statements of the AIDA.
2. Obtain the PILOT listing for the current year from the AIDA.
3. Obtain the RPS Assessor Data Base listing of exemption code 18020 from the Assessor's Department.
4. We selected a sample of PILOT properties for 2023 and performed the following:
 - a. Re-calculated the PILOT and compared the results with the AIDA calculations.
 - b. Compared the assessed value used by the AIDA to the Assessor's RPS listing.
 - c. Traced the PILOTS payments to the cash receipts received by the Town of Amherst.
 - d. Reviewed the contracts/property file of AIDA properties in our sample and compared the tax abatement percentage used in the calculation of taxes to the contract/property file.
5. Compared the PILOT listing from the AIDA with the Assessor's RPS listing for completeness.
6. Reviewed and reconciled all cash receipts with the AIDA listing.

Findings:

There was one property 2150 Wehrle Drive, SBL #81.02-1-16, which was still in the process of paying their PILOT. The amount owed to the Town is \$6,164.92 plus penalties.

96.51% or \$671,266.23 of the \$695,523.60 total PILOTS due were collected by the February 15th due date. The balance consisting of \$24,257.37; \$18,092.45 was collected past the due date with interest and \$6,164.92 is still in process. (86.85% or \$784,534.43 of the \$903,322.95 for 2022, the balance of \$118,788.52 was collected past the due date with interest).

Conclusion:

It appears that Amherst Industrial Development Agency is calculating the PILOTS correctly based on the contractual requirements and assessed values of record with the Town of Amherst, and are remitting the proper amounts to the Office of the Town Comptroller, except as noted above.

Recommendation:

The Office of the Town Comptroller, on an annual basis, will perform the steps and procedures (as per above) of all new PILOTS added in the current year and a random sample of ten (10) existing PILOTS.

Other:

The workpapers of this examination are open for review in the Office of the Town Comptroller.

**PROJECT PROFILE:
415 LWB DEVELOPMENT
\$7,500,000
June 16, 2023**



ELIGIBILITY

- Commercial Project under NYS Law
- Eligible Project under Countywide Eligibility Policy

COMPANY INCENTIVES (EST.)

- Property Tax = \$611,072
- Sales Tax = \$241,500
- Mortgage Tax = \$56,250

PROJECT BENEFITS (EST.)

- Property Taxes = \$578,578
- Income Taxes = \$1,214,363
- Sales Taxes = \$413,221

EMPLOYMENT

- 50 Construction and Supply Related Jobs Created
- 30 Full-Time Direct Positions Created, 42 Indirect Positions Created

PROJECT SCHEDULE (EST.)

- Work begins July 2023
- Project completion June 2024

Project Address:

415 Lawrence Bell Drive
Williamsville, New York 14221
(Williamsville School District)

Investment:

Construction: \$6,900,000
Soft/Other Costs: \$600,000



Project Description:

Amherst Portfolio Equities is a New York Liability company formed in 2015. It currently owns and operates 293,000 square feet of flex space across 12 buildings in the Town of Amherst. The company is managed by Francis Greenburger and Robert Kantor, the CEO and President of Time Equities, Inc. (TEI), which is a diversified investment, development, asset and property management and energy company formed in 1966. TEI currently has a portfolio of approximately 41.8 million square feet, 1 million square feet of pending acquisitions and 1 million square feet of various property types in stages of development in 35 states and around the world.

The company proposes to demolish an existing 37,949 square foot flex building and build a new 60,000 square foot state-of-the-art warehouse on that site. A majority of the existing building has been vacant since the applicant took ownership in 2015, most notably 20,000 square feet of office space. COVID-19 and the general decline in office space demand further diminished demand for the space, which hasn't had a tour of available space in over three-years.

The applicant intends to transition the use on the property to a product that is lacking in the marketplace with the construction of the warehouse facility. AIDA incentives are necessary to offset not only rising construction, material and labor costs, but also the cost to demolish the existing building and prepare the site for redevelopment. The project will maintain the existing taxes collected on the building, roughly \$46,350, and create new economic value to the community through new taxable assessment, increased property taxes and employment.

PROJECT PROFILE:
415 LWB DEVELOPMENT
\$7,500,000

AIDA COMPANY HISTORY:

None

MATERIAL TERMS:

1. Investment of not less than \$6,375,000 at the project location as noted in the application.
2. Creation of 25.5 full-time equivalent jobs and maintenance of those jobs throughout the PILOT term.
3. Compliance with the Agency's Local Labor Policy in connection with the construction of the Project.

AIDA Project Evaluation Criteria - Warehouse/Distribution

Wage Rates:	Anticipated Annual Salary of \$50,000
Regional Wealth Creation:	Unknown at this time.
In Region Purchases:	Applicant indicates use of local representation, A&E, and intention to source building materials
Research & Development Activities:	Project is currently planned as a speculative development
Investments in Energy Efficiency:	NYS Building Code Adherence
Locational Land Use Factors:	In an existing industrial area replacing a vacant/underutilized obsolescent office/flex building
LEED/Renewable Resources:	None
Retention/Flight Risk:	Project is currently planned as a speculative development
Workforce Access/Public Transportation:	NFTA bus stop about 1/4 mile from project site

Town of Amherst Industrial Development Agency

MRB Cost Benefit Calculator



Date: June 1, 2023
 Project Title: 415 LWB Development - Warehouse Redevelopment
 Project Location: 415 Lawrence Bell Drive, Williamsville 14221

Economic Impacts

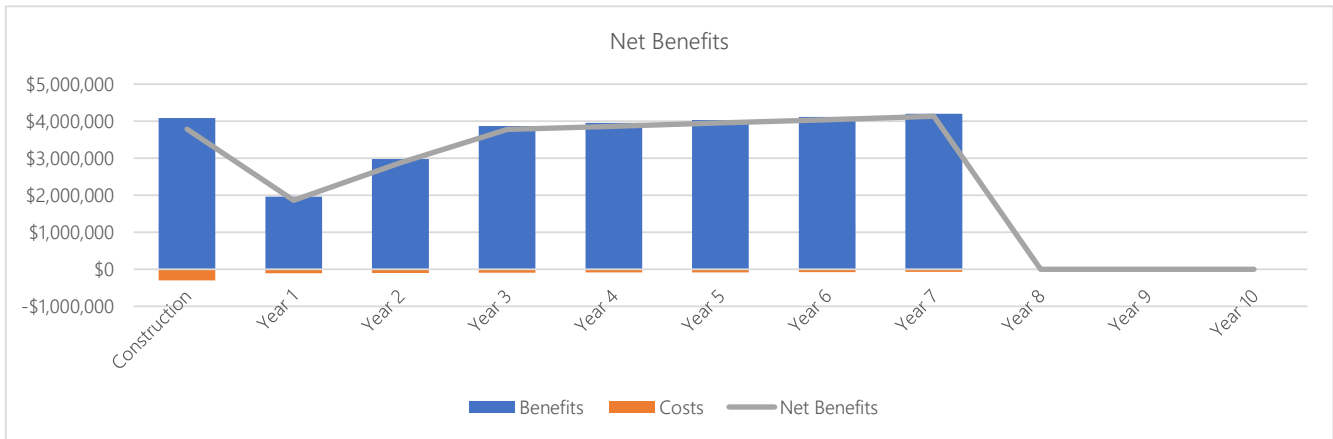
Summary of Economic Impacts over the Life of the PILOT

Project Total Investment
 \$7,500,000

		Temporary (Construction)		
		Direct	Indirect	Total
Jobs		26	24	50
Earnings		\$2,481,221	\$1,369,026	\$3,850,247
Local Spend		\$6,000,000	\$4,247,978	\$10,247,978

		Ongoing (Operations)		
		Direct	Indirect	Total
Jobs		30	42	72
Earnings		\$9,706,060	\$13,429,544	\$23,135,604

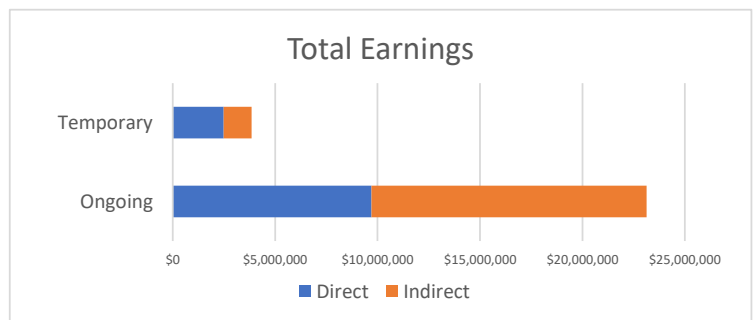
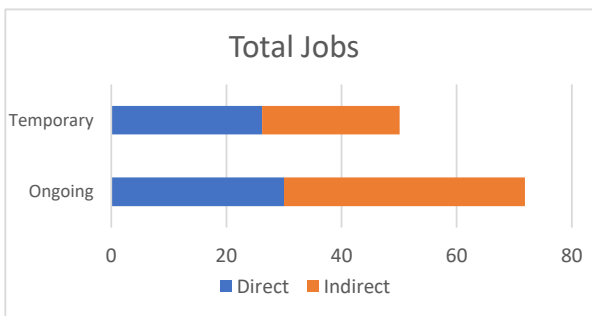
Figure 1



Net Benefits chart will always display construction through year 10, irrespective of the length of the PILOT.

Figure 2

Figure 3



Fiscal Impacts



Cost-Benefit Analysis Tool powered by MRB Group

Estimated Costs of Exemptions

	Nominal Value	Discounted Value*
Property Tax Exemption	\$611,072	\$567,775
Sales Tax Exemption	\$241,500	\$241,500
Local Sales Tax Exemption	\$131,100	\$131,100
State Sales Tax Exemption	\$110,400	\$110,400
Mortgage Recording Tax Exemption	\$56,250	\$56,250
Local Mortgage Recording Tax Exemption	\$18,750	\$18,750
State Mortgage Recording Tax Exemption	\$37,500	\$37,500
Total Costs	\$908,822	\$865,525

State and Local Benefits

	Nominal Value	Discounted Value*
Local Benefits	\$27,788,749	\$25,824,356
To Private Individuals	\$26,985,851	\$25,083,708
Temporary Payroll	\$3,850,247	\$3,850,247
Ongoing Payroll	\$23,135,604	\$21,233,461
Other Payments to Private Individuals	\$0	\$0
To the Public	\$802,898	\$740,648
Increase in Property Tax Revenue	\$578,578	\$532,140
Temporary Jobs - Sales Tax Revenue	\$32,005	\$32,005
Ongoing Jobs - Sales Tax Revenue	\$192,315	\$176,503
Other Local Municipal Revenue	\$0	\$0
State Benefits	\$1,403,264	\$1,304,353
To the Public	\$1,403,264	\$1,304,353
Temporary Income Tax Revenue	\$173,261	\$173,261
Ongoing Income Tax Revenue	\$1,041,102	\$955,506
Temporary Jobs - Sales Tax Revenue	\$26,952	\$26,952
Ongoing Jobs - Sales Tax Revenue	\$161,949	\$148,634
Total Benefits to State & Region	\$29,192,013	\$27,128,709

Benefit to Cost Ratio

	Benefit*	Cost*	Ratio
Local	\$25,824,356	\$717,625	36:1
State	\$1,304,353	\$147,900	9:1
Grand Total	\$27,128,709	\$865,525	31:1

*Discounted at 2%

Additional Comments from IDA

Prepared by DM

Does the IDA believe that the project can be accomplished in a timely fashion? Yes

RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING A PROJECT CONSISTING OF THE DEMOLITION OF AN APPROXIMATELY 37,949 SQUARE FOOT BUILDING AND THE CONSTRUCTION AND EQUIPPING OF AN APPROXIMATELY 60,000 S.F. INDUSTRIAL WAREHOUSE BUILDING BY AMHERST PORTFOLIO EQUITIES LLC TO BE LOCATED AT 415 LAWRENCE BELL DRIVE, AMHERST, NEW YORK, FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO AMHERST PORTFOLIO EQUITIES LLC, THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENT AND/OR INSTALLMENT SALE CONTRACT, A PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.

WHEREAS, the Town of Amherst Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Amherst Portfolio Equities LLC, for itself or for related individuals or entities (the “Company”), has submitted an application to the Agency requesting the Agency to undertake a certain project (the “Project”) consisting of: (i) the acquisition of a leasehold interest in certain property located at 415 Lawrence Bell Drive in Amherst, New York (SBL # 81.02-3-42.1)(the “Premises”); (ii) the demolition of an existing 37,949+/- square foot building on the Premises and construction of an approximately 60,000 square foot warehouse building for leasing to prospective businesses with distribution or warehousing needs, and related site improvements (collectively, the “Improvements”); and (iii) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the “Equipment”); and

WHEREAS, the Company submitted an application and other materials and information (collectively, the “Application”) to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the demolition of an existing underutilized 37,949+/- square foot flex building and construction of a new, state-of-the-art 60,000 square foot industrial warehouse building for leasing to prospective businesses with distribution or warehousing needs and related site improvements located at 415 Lawrence Bell Drive, Amherst, New York for commercial and industrial purposes, all at a cost of approximately \$7,500,000.00; that the Company anticipates that thirty (30) new full-time equivalent jobs will be created as a result of the Project at the end of two (2) years of operation thereof; that (i) the Project

will retain provide substantial employment and substantial capital investment; (ii) that if Agency financing is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing is necessary to encourage the Company to proceed with the Project; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on June 1, 2023, and has considered all oral and written presentations made at or in connection with said public hearing; and

WHEREAS, the Agency has reviewed the Application, prepared a cost-benefit analysis with respect to the Project and evaluated the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

WHEREAS, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

WHEREAS, the Company is expected to undertake and complete the Project by obtaining a conventional loan from a third party, and the Company has requested that the Agency execute any and all documents required by the parties, including any collateral mortgages on the Project given to secure a loan(s) obtained by the Company to finance the cost of the Project; and

WHEREAS, the Town of Amherst Planning Board (the “Planning Board”) served as lead agency pursuant to the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617) (“SEQRA”) for the Company’s project. The Agency was duly identified as an involved agency in Part 1 of a long-form Environmental Assessment Form (“EAF”) which was completed for the Project, a copy of which was provided to the Agency and is attached hereto as part of Exhibit A; and

WHEREAS, it is anticipated that the Planning Board at its June 15, 2023 meeting will issue a negative declaration pursuant to SEQRA that the project is not expected to have a significant adverse effect on the environment.

NOW, THEREFORE, THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. Based upon the Agency’s review of the Company’s Application, the EAF and the SEQRA findings issued by the Planning Board, the Agency hereby: (a) consents to and affirms the status of the Planning Board as lead agency within the meaning of, and for all purposes of complying with, SEQRA; (b) determines that the proceedings undertaken by the Planning Board as lead agency under SEQRA with respect to the acquisition, construction and equipping of the Project satisfy the requirements of SEQRA, and ratifies and confirms such proceedings by the Planning Board as lead agency; and (c) determines that all of the provisions of SEQRA that are

required to be complied with as a condition precedent to the approval of the Financial Assistance (as defined herein) contemplated by the Agency with respect to the Project and the participation by the Agency in undertaking the Project have been satisfied.

Section 2. The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith include: an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$2,760,000.00, an exemption from mortgage recording taxes for a mortgage having a principal amount not to exceed \$7,500,000.00 and an abatement from real property taxes in accordance with the Agency's seven (7) year payment in lieu of tax schedule (collectively, the "Financial Assistance"). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the Financial Assistance is made subject to the agreement by the Company throughout the period during which the Company is receiving Financial Assistance from the Agency (the "Compliance Period") to comply with the following covenants and agreements, each of which shall constitute a "Material Factor":

- (a) Investment of no less than \$6,375,000.00 at the Project location as noted in the Application;
- (b) Creation of twenty-five and one-half (25.5) full-time equivalent jobs and maintenance of those jobs throughout the Project's PILOT term; and
- (c) Compliance with the Agency's Local Labor Policy in connection with the construction of the Project.

Section 3. The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further determines that the Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York ("State") to another area of the State, or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State. The Project Documents (as herein defined) shall include a provision requiring the Company to cause its tenant(s) to complete a tenant eligibility questionnaire provided by the Agency, in order for the Agency to confirm the eligibility of the Company's tenant(s) under the Act.

Section 4. The Agency hereby authorizes the Company, as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in any Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

Section 5. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation

with the Company.

Section 6. The Company is authorized, as agents of the Agency, to initiate the construction of a building or building addition constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$2,760,000.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

Section 7. The Agency is hereby authorized to enter into a Project Agreement with respect to the provision of the Financial Assistance authorized herein (the “Project Agreement”) and to acquire an interest in the Project site and construct a facility thereon, and the execution and delivery of a lease by the Lessee to the Agency (the “Company Lease”), an Agency Lease Agreement (the “Agency Lease Agreement”) or Installment Sale Contract (the “Installment Sale Contract”) between the Agency and the Company, a Payment in Lieu of Tax Agreement between the Agency and the Company (the “PILOT Agreement”), and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the “Project Documents”), in form satisfactory to Agency counsel, are hereby authorized. The PILOT Agreement shall provide for payments in accordance with the Agency’s seven (7) year payment in lieu of tax schedule. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

Section 8. In the event the Company obtains one or more conventional loans to finance the cost of the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure such loans (“Mortgage Agreement”), and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel provided that the aggregate amount of such mortgages shall not exceed \$7,500,000.00. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary are each authorized to execute such collateral mortgages and to make or approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

Section 9. Any such action heretofore taken by the Company initiating the acquisition,

installation and construction of the Project is hereby ratified, confirmed and approved.

Section 10. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

Section 11. In the event a lease is not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest.

In addition to the foregoing, in the event the Agency determines that Company is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst within the time period during which the Company is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-

contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement, (y) any exemption from real estate taxes received by reason of the Agency's leasehold interest in the Project and/or (z) any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

Section 12. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 13. Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

Section 14. No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Mortgage Agreement, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

Section 15. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 16. This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 10 and 11 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company and Lessee to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency's fee schedule.

Section 17. This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: June 16, 2023

ACCEPTED AND AGREED TO: _____, 2023

Amherst Portfolio Equities LLC

By: _____

Name:

Title:

Exhibit A

Environmental Assessment Form

See attached.

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		
i. Coastal Resources. <ul style="list-style-type: none"> <li data-bbox="121 829 1485 861">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 <li data-bbox="121 892 1485 924">ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? <input type="checkbox"/> Yes <input type="checkbox"/> No <li data-bbox="121 924 1485 955">iii. Is the project site within a Coastal Erosion Hazard Area? <input type="checkbox"/> Yes <input type="checkbox"/> No 		

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:
 i. 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)
 ii. Describe types of new point sources. _____

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

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

 iii. 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:
 i. 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
 ii. 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 Hydroflouorocarbons (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? 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.
 i. During Construction:
 • Monday - Friday: _____
 • Saturday: _____
 • Sunday: _____
 • Holidays: _____
 ii. During Operations:
 • Monday - Friday: _____
 • Saturday: _____
 • Sunday: _____
 • Holidays: _____

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.

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.

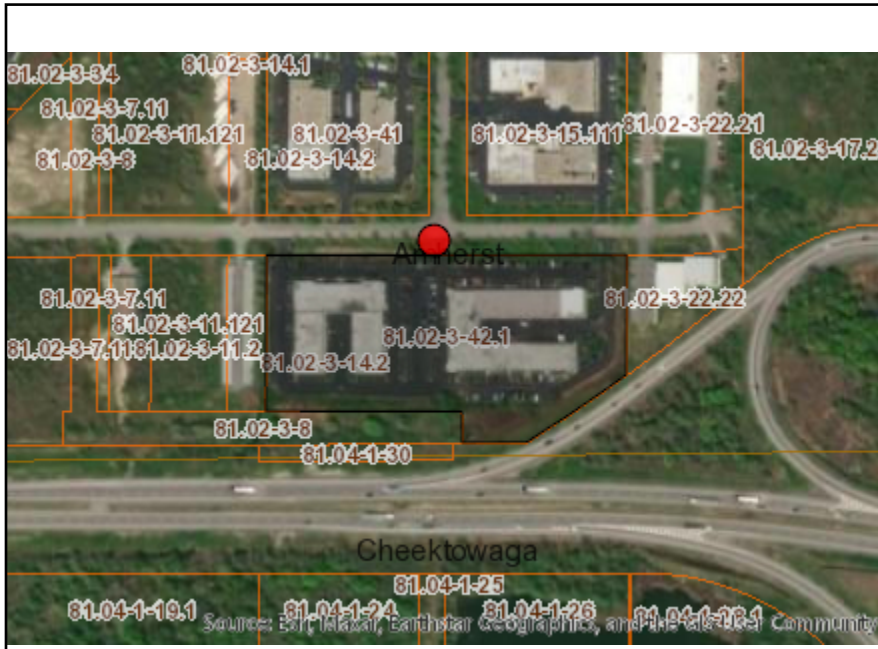
If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

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

Applicant/Sponsor Name _____ Date _____

Signature _____ 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]	Yes
E.1.h.iii [Within 2,000' of DEC Remediation Site - DEC ID]	915043
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]	Yes
E.2.h.v [Impaired Water Bodies - Name and Basis for Listing]	Name - Pollutants - Uses:Ellicott Creek, Lower, and tribs – Nutrients;Silt/Sediment – Aquatic Life
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]	Yes
E.3.d [Critical Environmental Area - Name]	Wetlands
E.3.d.ii [Critical Environmental Area - Reason]	Significant & sensitive recharge area
E.3.d.iii [Critical Environmental Area – Date and Agency]	Agency:Cheektowaga, Town of, Date:8-30-79
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

**Attachment 1 of Part 1 of Full Environmental Assessment Form
415 Lawrence Bell Warehouse**

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Impact on Flooding	4
Impact on Air Quality	5
Impact on Plants and Animals	5
Impact on Agricultural Resources	5
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Impact on Historic and Archaeological Resources	5
Impact on Open Space and Recreation	5
Impact on Critical Environmental Areas	5
Impact on Transportation	6
Impact on Energy	6
Impact on Noise, Odor, and Light	6
Impact on Human Health	7
Consistency with Community Plans	7
Consistency with Community Character	7

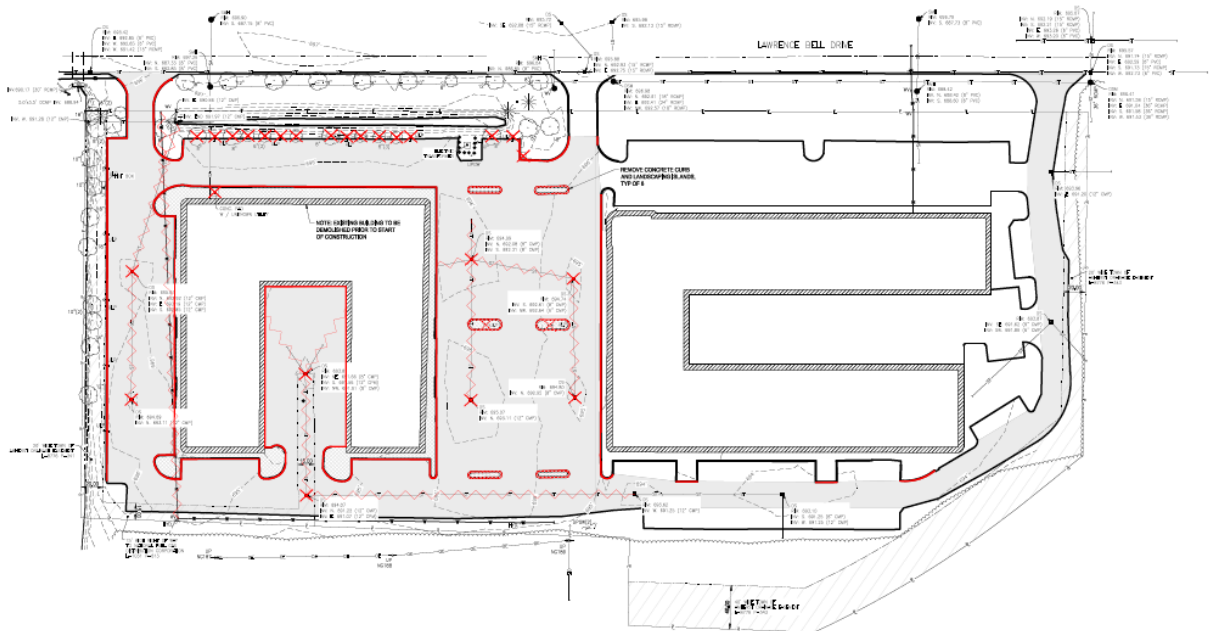
Introduction to Report Format

The following information supplements the Full Environmental Assessment Form (FEAF) Part 1 for the warehouse project located at 415 Lawrence Bell Drive in Amherst, NY. The information is presented in the order of the FEAF Part 2 (*Identification of Potential Project Impacts*) and in a format of an expanded FEAF Part 3 (*Evaluation of the Magnitude and Importance of Project Impacts and Determination of Significance*). We have provided supplemental information on all FEAF Part 2 topic areas regardless of whether any such impact would result from the project. The conceptual design and additional information provide enough detail to allow the Town of Amherst to conduct a thorough SEQR analysis in accordance with 6NYCRR Part 617 State Environmental Quality Review.

Project Description and Action

The project is located at 415 Lawrence Bell Drive in Amherst, and consists of the demolition of the existing 35,000 square foot office building, construction of a 60,000 square foot warehouse, and associated site improvements.

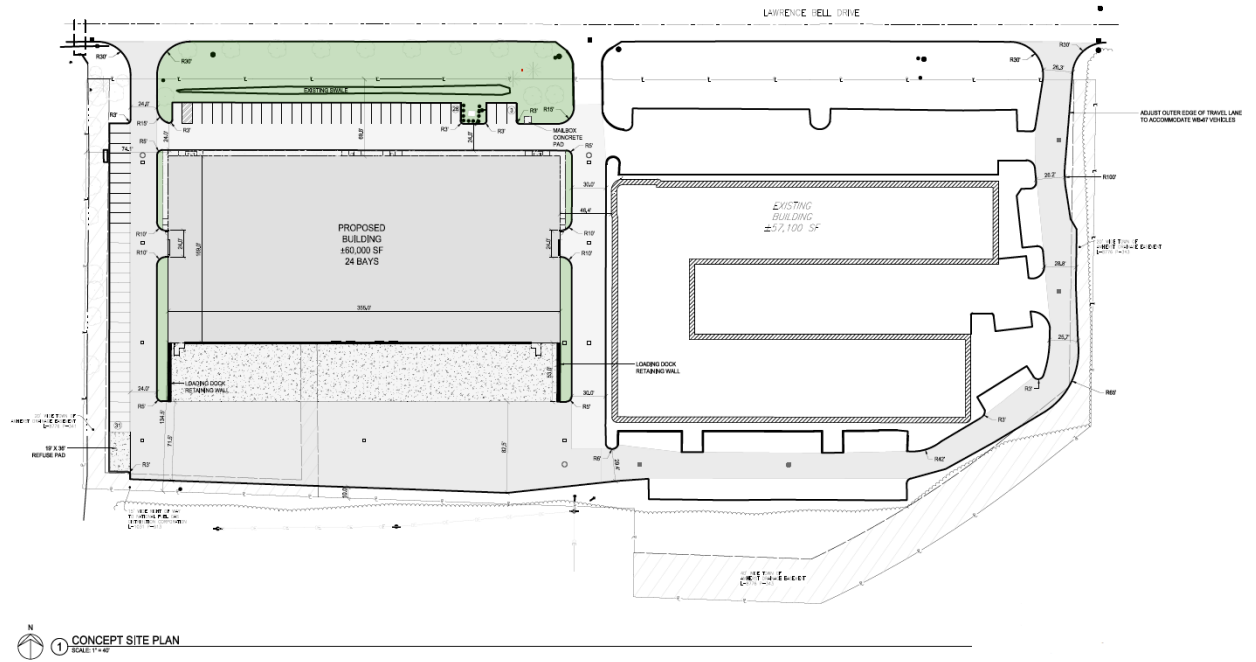
Existing Conditions and Site Demolition Plan:



1 EXISTING CONDITIONS & SITE DEMOLITION PLAN
SCALE: 1"=20'



Concept Site Plan:



Rendering of Exterior of Proposed New Building:



Additional Project Information

Impact on Land

The project (as described in this document and the EAF) involves several components that will change the land, but none of these changes will result in significant impacts. The most notable changes to the site will include the demolition of the existing building at 415 Lawrence Bell Drive and the construction of the new 60,000 square foot warehouse.

Excavation will be required on this site for foundation removal and installation, site preparation, grading, etc. The construction of the project will utilize best management practices and will be in accordance with erosion control requirements of the Town of Amherst and New York State.

Impact on Geological Features

There are no unique geological features located within or near the project site.

Impact on Surface Water

There is a class C stream that along the western, southern, and eastern boundaries of the project site. A small portion of the site is located within the State Regulated Wetland Checkzone. The following image was taken from the NYSDEC Environmental Resource Mapper in March 2023:



March 5, 2023

1:4,514
0 0.04 0.08 0.16 mi
0 0.05 0.1 0.2 km

Esri, HERE, Garmin, (c) OpenStreetMap contributors, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

NYS Department of Environmental Conservation
Not a legal document

Furthermore, hydric soils—namely Ilion silt loam, which has a hydric rating of 90—have been identified on the project site. The off-site wetlands will not be directly impacted by the project.



All construction activities will take place in areas that may have been disturbed during previous/current use of the site. Sediment and erosion control best practices/standards will be followed during construction to ensure that all nearby surface waters are protected from siltation or degradation. The proposed area of disturbance of ±4.6 acres will require submittal of a General State Pollution Discharge Elimination System (SPDES) permit application and a Stormwater Pollution Prevention Plan (SWPPP).

Impact on Ground Water

There are no identified groundwater resources located on or near the Project Site. The project site is not located over a principal aquifer. The proposed action will not result in any impacts to existing residential or commercial water supply wells, nor will new water supply wells be constructed on site.

All wastewater (100% sanitary wastewater) will be discharged to the Amherst Water Pollution Control Facility on Tonawanda Creek Road in Amherst, NY. Existing sewer or water connections will be replaced, and no additional volume will be added.

No chemical or petroleum products will be stored in bulk on site. The proposed action will not involve the application of any pesticides or herbicides.

Impact on Flooding

The project site is located within the 100-year and 500-year floodplains. Please see attached National Flood Hazard Layer FIRMette from FEMA. The proposed action does not alter hydrology and therefore will not impact the floodplains.

Impact on Air Quality

Air quality related impacts will be minimal. While the project may generate additional truck traffic, this is characteristic of the facilities on Lawrence Bell Drive.

During construction, earth moving equipment will be present on-site, primarily running on diesel or gasoline. In addition, during construction, gasoline powered generators may be used on site. Construction-related air emissions will cease once the project is completed.

Impact on Plants or Animals

The project site does not contain a designated significant natural community, any species of plant or animal that is listed by the federal government or New York State as endangered or threatened, any areas identified as habitat for an endangered species, or any species of plant or animal that is listed by New York State as rare or as a species of special concern.

The project does not involve clearing of any vegetation or destruction of existing habitat. The proposed action will not involve, or increase the need for, the use of herbicides or pesticides.

Impact on Agricultural Resources

There are no agricultural lands located on or near the project site, nor is the project site located in or near an Erie County agricultural district. The proposed action will not impact agricultural resources or farming operations.

Impact on Aesthetic Resources:

There are no aesthetic resources located within or near the project site.

Impact on Historic and Archaeological Resources

There are no designated historic or archaeological resources located within the project site. However, the project is located within an archaeological buffer area. As such, the project was submitted to NYSOPRHP for their review; NYSOPRHP found that “no properties, including archaeological and/or historic resources ... will be impacted by this project.” Please see attached letter dated March 2, 2023.

Impact on Open Space and Recreation

The project will not have an impact on open space and recreation, as the site is not currently used for those purposes.

Impact on Critical Environmental Areas

The project site is not within a Critical Environmental Area (CEA). There is a CEA located on the south side of I-90, which will not be impacted by this project. The following image was taken from the DEC Info Locator Map in March 2023:



March 5, 2023

1:9,028
0 0.05 0.1 0.2 mi
0 0.07 0.15 0.3 km
Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community. Source: Esri, Maxar, Earthstar Geographics, and the GIS User
NYS Department of Environmental Conservation
Not a legal document

Impact on Transportation

The project will have a minimal impact on transportation. There may be more heavy-duty trucks traveling to and from the site, but the local transportation network, which includes Transit Road and Wehrle Drive, have sufficient capacity to accommodate any increase in truck traffic that may result from the proposed action. Wehrle Drive has an annual average daily traffic (AADT) of over 16,000 vehicles per day, including over 450 trucks per day, according to the NYS Traffic Data Viewer. Transit Road has an AADT of over 41,000 vehicles per day, including over 1,900 trucks per day. The site is conveniently located near the Transit Road interchange of the I-90 and trucks are not expected to use any residential side streets to access the site.

The project will also decrease the number of parking spaces on the property, from 302 to 204, which is 15 more than what is required by the Town's zoning code.

Impact on Energy

The annual electricity demand for the new building has not been calculated, but the service size required for the facility is 500kVA. Electricity will be supplied by the local grid/utility and a new or upgraded substation will not be required as a result of the project.

Impact on Noise, Odor, and Light

The proposed action will not result in any permanent increases in noise or odors. Outdoor lighting will be in conformance with Town of Amherst standards to minimize impacts to adjacent properties. During construction, earth moving and foundation equipment will be present on-site. These pieces of

machinery may temporarily generate noises that rise above ambient levels. Construction will be completed during daylight hours, generally between 7 a.m. and 5 p.m., Monday through Friday, and any increases in noise levels will be temporary. No odors will be generated during construction. The construction period is expected to last approximately 12 months.

Impact on Human Health

The project will not expose visitors to new or existing sources of contaminants. There is a remediation site (the Pfohl Brothers Landfill) located within 2,000 feet of the site, but according to the DEC Environmental Site database, “remediation at this site is complete” and “residual contamination in soil and groundwater is being managed under a Site Management Plan.” Air monitoring of the site has not shown any threats to human health. According to the DEC Spills Incidents database, there are no spills reported at the site.

Consistency with Community Plans

The site is zoned Industrial, which allows warehousing and distribution uses by right.

The Town of Amherst’s Comprehensive Plan, adopted in 2007 and amended in 2007, shows the project site as “Industrial – Office” in its Conceptual Land Use Plan. Furthermore, the Comprehensive Plan notes that “the southeastern corner of the Town near the Buffalo-Niagara International Airport (Wehrle Industrial Park)” is where existing industrial land is concentrated. Therefore, the project is consistent with both the existing and proposed/desired land use and development patterns of the Town.

Consistency with Community Character

The proposed warehouse is consistent with other uses in the area and is not expected to have an impact on the character of the area, which is an industrial park. The closest residences are located on the north side of Wehrle Drive and will not be impacted. There will be no need for municipal expansion of fire, police, or medical facilities as a result of the proposed project.

May 25, 2023

Mr. David Mingoia
Amherst Industrial Development Agency
4287 Main Street
Amherst, New York 14226

Dear Dave:

As requested, this letter is to inform you of our proposed fees for the Amherst Industrial Development Agency's (the Agency) and Town of Amherst Development Corporation's (the Corporation) 2023-2026 audit engagements. For purposes of this discussion, the "audit engagement" includes the Agency's financial statement audit, as well as the Development Corporation's financial statement audit and tax filings.

Based on historical experience with your organization, our professional experience, and the anticipated time required to complete the audit and reporting requirements, our fee estimates for the audit engagements for the following years ending December 31 are:

	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Agency	\$ 15,940	\$ 16,750	\$ 17,600	\$ 18,480
Development Corp	<u>10,620</u>	<u>11,150</u>	<u>11,700</u>	<u>12,285</u>
Total	<u>\$ 26,560</u>	<u>\$ 27,900</u>	<u>\$ 29,300</u>	<u>\$ 30,765</u>

These fees are based on the current scope of services and requirements of the auditing profession. To the extent there are changes in either the scope of services requested, or in the regulations under which we operate, we will discuss these changes with you and arrive at a new fee estimate, if appropriate.

We are available to discuss this in further detail at your convenience and look forward to the opportunity to continue to work with you and the Agency in the coming years. If you have any questions, please do not hesitate to contact me.

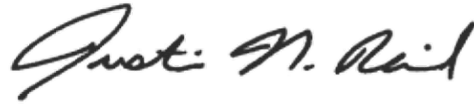
171 Sully's Trail
Pittsford, New York 14534
p (585) 381-1000
f (585) 381-3131

www.bonadio.com

Very truly yours,
BONADIO & CO., LLP



Randy Shepard
Partner



Justin Reid
Partner

ACKNOWLEDGMENT:

I agree to engage Bonadio & Co., LLP to perform the audit of the Agency and Development Corporation as of and for the years ending December 31, 2023-2026 under the terms and conditions above, subject to the execution of an engagement letter on an annual basis.

Signature

Date