



February 11, 2020

Mr. Greg Buckley
City of Two Rivers
1717 East Park Street
Two Rivers, WI 54241

Subject: Lender Liability Clarification and Current Environmental Conditions for the Paragon Property, located at 606 Parkway Boulevard, Two Rivers, WI 54241
Tax Parcel Number: 053-211-102-001.08
BRRTS #: 07-36-550503; FID #: 436042310

Dear Mr. Buckley:

On January 13, 2020, the Wisconsin Department of Natural Resources (DNR) received your request, along with the required \$700 fee, for a lender liability clarification letter. The purpose of this letter is to provide the City of Two Rivers with the requested clarification of environmental liabilities related to the Paragon property, located at 606 Parkway Boulevard, Two Rivers, Wisconsin in Manitowoc County (“the Property”).

It is our understanding that the City of Two Rivers acquired the Property through the foreclosure process to enforce a security interest in the Property. You provided a court order confirming Sheriff’s Sale, dated October 23, 2019, as evidence of your acquisition of title. Attached Figure 2, *Property Layout & Surrounding Features*, which you also provided, includes a map of the Property.

Request

Your application, dated January 10, 2020, requests a determination from the DNR on whether the City of Two Rivers is eligible for the lender liability exemption identified in Wisconsin Statutes (Wis. Stat.) section (§) 292.21, with respect to the Property.

Documents Provided

The following documents were submitted with your request:

- Cover Letter, dated January 10, 2020;
- DNR Form 4400-196, Lender Liability Exemption Environmental Assessment Tracking Form;
- DNR Form 4400-237, Technical Assistance and Environmental Liability Clarification Request;
- *Phase I Environmental Assessment Report*, dated January 10, 2020, by McMahon Associates, Inc.;
- Figure 2, *Property Layout & Surrounding Features*, by McMahon Associates, Inc.;
- *Order Confirming Sale, for Delivery of Sheriff’s Deed, and for Deficiency Judgment*, dated October 23, 2019;
- *Sheriff’s Deed*, recorded November 5, 2019;
- *Foreclosure Judgment*, dated October 22, 2018; and
- Environmental Repair Program Case Documentation, Paragon Electric Co Inc, BRRTS # 02-36-000153.

Property Information

The Property is located at 606 Parkway Boulevard in Two Rivers. The Property is industrially zoned, approximately 27 acres, and is surrounded by 7th Street, Columbus Street, Buchholz Street and railroad property with residential, commercial, and industrial properties beyond. The Property was historically used as farm land and undeveloped land up until circa 1957. Manufacturing of electrical components occurred on the Property from approximately 1957 through the late 1990s. After manufacturing operations ceased, the Property was used as warehouse storage. The Property is currently unoccupied and vacant. The Property consists of one approximately 320,000 square foot industrial building, with paved parking areas, an access road, and grassy areas.

The City of Two Rivers recently acquired the Property through foreclosure on its mortgage securing a City Economic Development loan, which was in default. The judge's order confirming Sheriff's Sale, at which the City of Two Rivers was the successful bidder, was signed on October 23, 2019.

Summary of Environmental Conditions at the Property

The Phase I Environmental Site Assessment (ESA) completed on January 10, 2020, identified one Controlled Recognized Environmental Condition (CREC). The CREC is related to the residual chlorinated volatile organic compounds (CVOC) contamination.

There are two closed spill cases, one closed Environmental Repair Program (ERP) case, and a closed Voluntary Party Liability Exemption (VPLE) case on the Property, identified in the Bureau for Remediation & Redevelopment Tracking System (BRRTS) as:

- Plt – 606 Parkway Blvd, BRRTS # 04-36-039873, spill closed August 6, 1984;
- 600 Blk Parkway Blvd, BRRTS # 04-36-045266, spill closed November 20, 1990;
- Paragon Electric Co Inc, BRRTS # 02-36-000153, ERP case closed June 4, 2013; and
- Paragon Electric Co Inc (Former) (VPLE), BRRTS # 06-36-551669, VPLE case closed June 17, 2013.

The Property was investigated and remediated from 1989 to 2013. The primary contaminants found were CVOCs. The Property received case closure on June 4, 2013, with residual soil and groundwater contamination, cap maintenance, restriction to industrial land use, and potential for future vapor risk continuing obligations. A Certificate of Completion (COC) was issued on June 17, 2013, for completion of the VPLE process for the Property.

The Phase I ESA did not identify any recognized environmental conditions other than the CREC for CVOC contamination that was previously addressed at the Property. The Phase I ESA complies with the environmental condition requirements in Wis. Stat. § 292.21(1)(c)(2) and the time deadlines specified in Wis. Stat. § 292.21(1)(c)(1)(d).

Sampling of Environmental Media

No additional environmental sampling occurred at the Property, because, according to DNR's review of the environmental assessment, there were no additional environmental conditions present on the Property that triggered the sampling requirements in Wis. Stat. §§ 291.21(1)(c)(2)(h) & (i).

General Lender Liability Exemption Conditions and Limitations

Under Wisconsin's Hazardous Substance Discharge Law (the "Spill Law"), Wis. Stat. § 292.11, a person who "possesses, controls or causes" a hazardous substance discharge is liable for taking necessary investigative and cleanup actions. Wis. Stat. § 292.21 provides a liability exemption for lenders.

A lender is not subject to Wis. Stat. §§ 292.11(3), (4) or (7)(b) or (c), and is not liable under Wis. Stat. Chapters 281, 285, 289, 291, or 293 to 299, for a discharge of a hazardous substance that occurred before the lender takes title, possession or control of the Property through enforcement of a security interest in the Property, as long as statutory conditions are satisfied. Wis. Stat. § 292.55(1)(d)(1) authorizes the DNR to issue letters concerning potential liability for environmental pollution.

The lender must satisfy all conditions identified in Wis. Stat. § 292.21 to qualify for the lender liability exemption, including but not limited to the following provisions:

- The lender does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge.
- The lender notifies the DNR of any known discharge of a hazardous substance.
- The lender conducts an environmental assessment of the Property that includes all the elements identified in Wis. Stat. § 292.21(1)(c)(2). The environmental assessment is conducted not more than 90 days after the date the lender acquires title to, or possession or control of, the Property, and the lender files a complete copy of the environmental assessment with the DNR not more than 180 days after the date the lender acquires title to, or possession or control of, the Property.
- If a discharge of a hazardous substance occurs on or after the date on which the lender acquires title to, or possession or control of, the Property, the lender implements an emergency action under Wisconsin Administrative Code (Wis. Admin.) § NR 708.05 in response to the discharge of the hazardous substance.
- For a hazardous substance discharged on or after the date on which the lender acquires title to, or possession or control of, the Property, the lender does not engage in the operation of a business at the Property, complete work in progress or take other actions associated with conducting the conclusion of the borrower's business (Wis. Stat. § 292.21(1)(c)(1)).
- The lender agrees to allow the DNR and any party that possessed or controlled or caused the hazardous substance discharge, and their consultants or contractors, to enter the real Property to take action to respond to the discharge.
- The lender agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
- The lender agrees to any other condition that the DNR determines is reasonable and necessary to ensure that DNR or another person can adequately respond to the discharge.

Lender Liability Determinations Related to the Property

The DNR has reviewed the request and other documents submitted by the City of Two Rivers on January 13, 2020. Based on the information you provided, and with respect to the Property, DNR believes that the City of Two Rivers has conducted the statutorily required environmental assessment, within the appropriate timeframes, and meets the conditions of an exempt lender as identified in Wis. Stat. § 292.21 by taking title to enforce a security interest in the Property through a court order confirming sheriff's sale. Further, DNR agrees to exercise enforcement discretion at the Property under Wisconsin's Hazardous Waste Management Laws, regarding the provisions of Wis. Stat. Chapter 291 and rules promulgated under that chapter.

Based on information provided to DNR by the City of Two Rivers, the DNR makes the following site-specific liability determinations related to the Property:

1. The City of Two Rivers acquired the Property through enforcement of a security interest in the Property, via a court order confirming sheriff's sale, and conducted the required environmental assessment within the appropriate statutory timeframe.
2. The City of Two Rivers provided a copy of a statutorily sufficient environmental assessment report to DNR within 180 days after acquiring title, as evidence that there has been no known new discharge of hazardous substances at the Property.
3. The City of Two Rivers has not intentionally or negligently caused a new hazardous substance discharge at the Property.
4. The City of Two Rivers met the requirements for an environmental assessment under Wis. Stat. §§ 292.21(1)(c)(1)(d) and (1)(c)(2)(a) through (i), including the requirement that an environmental assessment be conducted not more than 90 days after the date of acquisition of the Property. This environmental assessment report was completed on January 10, 2020 and the Property was acquired on October 23, 2019.
5. If the City of Two Rivers continues to meet all of the conditions for liability exemption eligibility that are listed in Wis. Stat. § 292.21, the City of Two Rivers will not be held responsible under Wisconsin's Hazardous Substance Spill Law, Wis. Stat. § 292.11, for hazardous substance discharges which were present on the Property prior to the City of Two Rivers acquiring title to, or possession and control of, the Property. If contamination is later discovered that was not revealed by the environmental assessment, the City of Two Rivers will not be subject to Wis. Stat. §§ 292.11(3), (4), or (7)(b) or (c), and will not be liable under Wis. Stat. Chapters 281, 285, 289, 291, or 293 to 299 for a discharge of a hazardous substance on the Property as long as the City of Two Rivers continues to comply with the requirements of Wis. Stat. § 292.21(1)(c) and does not cause a new hazardous substance discharge or exacerbate an existing discharge on the Property.
6. The intent of this letter also is to clarify the City of Two Rivers' environmental liability under the state's Hazardous Waste Law, Wis. Stat. Chapter 291, if it has become an "owner" of the Property, where the soil, groundwater or both may be contaminated with hazardous waste compounds. The US EPA has granted the DNR the ability to exercise enforcement discretion under the state hazardous waste law in determining whether or not to hold a lender liable for clean-up costs, as an "owner" of a property with hazardous waste implications. The DNR may exercise this enforcement discretion if a lender takes title to a property through methods consistent with the lender exemption criteria in the state Spill Law, Wis. Stat. Chapter 292.11. In addition to meeting these statutory criteria, a lender would need to determine if any containerized material is defined as a hazardous waste, and properly manage the containerized waste.

The DNR will not hold the City of Two Rivers liable for the investigation or cleanup of the Property under either the state's Spill Law or Hazardous Waste Laws, if the following requirements are satisfied:

- The City of Two Rivers' method of acquiring title to, or possession, or control of real property is through the enforcement of a security interest;
- The City of Two Rivers properly manages any containerized hazardous waste materials in accordance with Wis. Admin. Chapter NR 660;

- The discharge of a hazardous substance was not caused by an action taken by the City of Two Rivers, or by a failure of the City of Two Rivers to act;
- The City of Two Rivers agrees that any material or environmental media generated at the Property (e.g., contaminated soil generated as part of trenching for utilities) will be managed in accordance with applicable state and federal laws;
- The City of Two Rivers complies with any continuing obligations and/or environmental monitoring and maintenance requirements associated with the Property. The Property received case closure on June 4, 2013, with residual soil and groundwater contamination, cap maintenance, restriction to industrial land use, and potential for future vapor risk continuing obligations; and
- For a hazardous substance released on or after the date on which the City of Two Rivers acquires title to, or possession or control of, the real property, the City of Two Rivers does not engage in the operation of a business at the property, completion of work in progress or other actions associated with conducting the conclusion of the borrower's business.

This response letter is based on information you provided to DNR and relates only to the state's lender liability exemption. The DNR makes no determination for other persons or entities concerning the presence or absence of hazardous substances on the Property.

The City of Two Rivers understands that a lender liability exemption and the hazardous waste enforcement discretion decision by DNR will continue throughout the City of Two Rivers' ownership of the Property, but is not transferable to future owners.

Non-Exempt Obligations Regarding Underground Storage Tanks

Please note that this letter does not exempt any lender from existing state or federal requirements for underground storage tank responsibilities at the Property, including, but not limited to, Wis. Admin. Chapter ATCP 93. If you have questions regarding these requirements, you should contact the Weights and Measures program at the Department of Agriculture Trade and Consumer Protection at (608) 224-4942 or by email to datcpweightsandmeasures@wi.gov. The program's website is located here: https://datcp.wi.gov/Pages/Programs_Services/WeightsAndMeasures.aspx.

Federal Liability Information

To determine what specific actions would satisfy the federal lender liability requirements under CERCLA, we advise that you contact either Thomas Krueger at (312) 886-0562 or by email to krueger.thomas@epa.gov, or Larry Kyte at (312) 886-4245 or by email to kyte.larry@epa.gov. Their mailing address is U.S. EPA REGION 5, Office of Regional Counsel (C-14J), 77 W. Jackson Blvd., Chicago, IL 60604-3590. The U.S. EPA should be able to provide you with guidance on whether your current and proposed actions concerning the Property are consistent with the federal CERCLA secured creditor liability exemption conditions.

Public Database of Properties

The DNR maintains a public database of information about contaminated and remediated properties that is available at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>. To view this data, go to the “BRRTS on the Web” link to access information about the Property and this activity. The BRRTS identification number for this activity is included at the top of this letter.

If you have any questions or concerns regarding this letter, please contact DNR Project Manager Tauren Beggs at 920-662-5178 or by email at Tauren.Beggs@wisconsin.gov.

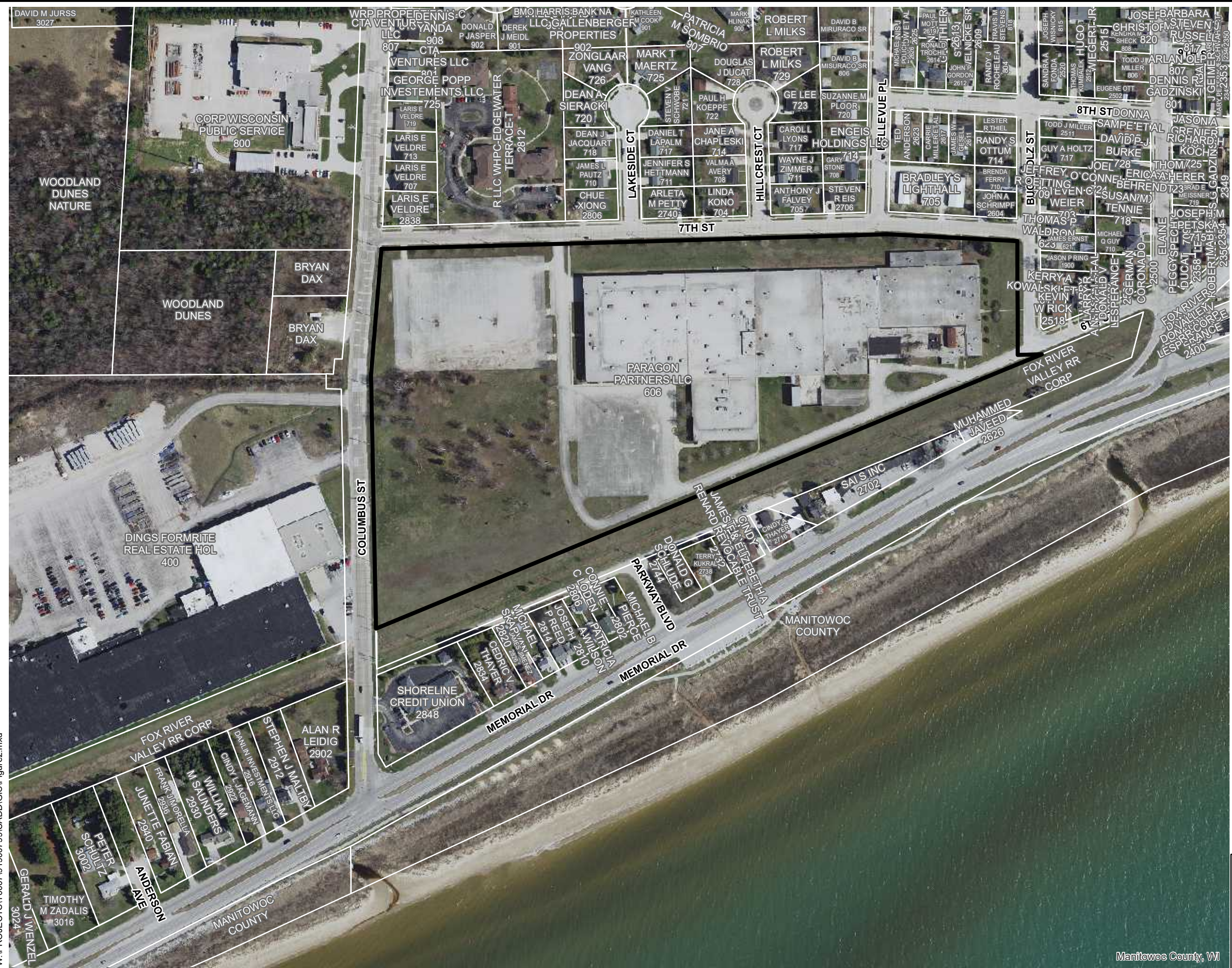
Sincerely,



Roxanne N. Chronert
Team Supervisor, Northeast Region
Remediation and Redevelopment Program

Attachment: Figure 2, *Property Layout & Surrounding Features*

cc: John Bruce, West & Dunn, LLC (jbruce@westdunn.com)
Stuart Boerst, McMahon Associates, Inc. (SBoerst@mcmgrp.com)
Molly Schmidt; DNR CO-RR/5 (MollyE.Schmidt@wisconsin.gov)



Mapped Features

- Review Area (26.7 Acres)
- Parcel Boundary

Owner Address Num

Source: Manitowoc County, 2014.

Disclaimer: The property lines, right-of-way lines, and other property information on this drawing were developed or obtained as part of the County Geographic Information System or through the County property tax mapping function. McMAHON ASSOCIATES, INC. does not guarantee this information to be correct, current, or complete. The property and right-of-way information are only intended for use as a general reference and are not intended or suitable for site-specific uses. Any use to the contrary of the above stated uses is the responsibility of the user and such use is at the user's own risk.

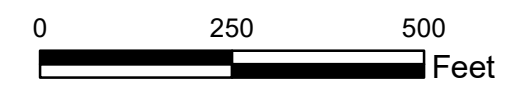


FIGURE 2
PROPERTY LAYOUT & SURROUNDING FEATURES
 PARAGON PROPERTY
 CITY OF TWO RIVERS
 MANITOWOC COUNTY, WI

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Manitowoc County, WI