



December 15, 2015

GB Real Estate Investments, LLC  
Mr. Garritt Bader  
300 N Van Buren St  
Green Bay, WI 54301

Subject: No Action Required Determination and Off-Site Liability Clarification for  
Proposed Lots 1 and 2, Main St, Green Bay, Wisconsin  
Portions of Parcel #: 21-1323-1  
BRRTS # 07-05-576376

Dear Mr. Bader

### Purpose

The Department of Natural Resources (the Department) has reviewed your request for a liability clarification and off-site liability clarification letter for Proposed Lots 1 and 2 located on Main St, Green Bay, Wisconsin. Parcel # 21-1323-1, consisting of address points 1923 – 1935 Main St, is proposed to be divided into three lots for redevelopment purposes, herein referred to as PLOT 1, PLOT 2, and PLOT 3. Please refer to the attached Figure 2: Detailed Site Plan for a site map of the proposed lot divisions.

The purpose of this letter is to provide GB Real Estate Investments, LLC (the Applicant) with clarifications as to environmental liabilities related to current environmental conditions on the property, and to determine what provisions of the off-site exemption GB Real Estate Investments, LLC presently satisfies and the conditions under which GB Real Estate Investments, LLC would satisfy all the requirements of the off-site exemption in Wis. Stat. § 292.13 for chlorinated solvent contamination that may potentially be migrating from PLOT 3. Currently, GB Real Estate Investments, LLC is the prospective purchaser of PLOTS 1 and 2. The Department received a \$700 fee for providing this letter pursuant to Wis. Stat. §§ 292.13(2) and (3), and Wis. Admin. ch. NR 749.

### Summary Determination

**PLOT 1 and PLOT 2 No Response Actions Required:** There were minimal hazardous substance discharges on PLOT 1 initially detected in soil that were not confirmed with follow-up sampling and minimal contaminants detected in groundwater below standards. There were no contaminants detected for the analyses completed for soil and groundwater on PLOT 2. Therefore, the Department has determined that no response actions are required. The Department made this determination based on the data made available to the Department and the criteria in Wis. Admin. § NR 716.05.

**PLOT 1 and PLOT 2 Off-site Liability Clarification:** Once parcel # 21-1323-1 is divided, GB Real Estate Investments, LLC acquires PLOTS 1 and 2, if soil and/or groundwater contamination that was originally discharged from the One Hour Martinizing property (PLOT 3) migrated to PLOTS 1 and 2, and

the other conditions in Wis. Stat. § 292.13 are satisfied, then GB Real Estate Investments, LLC would qualify for the off-site liability exemption.

### **Waste Determination and Other Questions**

The letter also answers several of your questions that further clarify responsibility of the future owner of PLOTS 1 and 2 and explains how the owner should make a waste determination and appropriately handle soil that may be excavated in the future as part of the redevelopment and construction.

### **Request**

On October 24, 2015, General Engineering Company requested on GB Real Estate Investments, LLC's behalf that the Department determine whether response actions are required for PLOTS 1 and 2 under the Wis. Admin. ch. NR 700 rule series and whether GB Real Estate Investments, LLC is exempt from Wis. Stat. §§ 292.11(3), (4) and (7)(b) and (c), commonly known as the "Spill Law," with respect to the existence of hazardous substances that GB Real Estate Investments, LLC believes may be migrating onto PLOTS 1 and 2 from the off-site chlorinated solvent source on PLOT 3. Wisconsin's Spill Law includes an "off-site exemption," in Wis. Stat. § 292.13 that limits the liability of a property owner. In particular, GB Real Estate Investments, LLC has requested clarification as to whether or not GB Real Estate Investments, LLC is eligible for the off-site liability exemption. GB Real Estate Investments, LLC has also asked specific questions, which are answered in this letter.

The following documents were submitted to the Department with the request:

- Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request (Form 4400-237) with requests for No Action Required, Off-site Liability Clarification, and Specific Liability Questions, General Engineering Company, October 21, 2015;
- Phase I Environmental Site Assessment, General Engineering Company, August 17, 2015; and
- Limited Phase II Environmental Site Assessment, General Engineering Company, October 20, 2015.

### **Background**

The Department considered the information listed above and the information received for the open Bureau for Remediation and Redevelopment Tracking System (BRRTS) case One Hour Martinizing, BRRTS # 02-05-217276, to make the determinations presented in this letter.

The One Hour Martinizing case was opened on March 31, 1999 due to the presence of chlorinated solvent contamination (primarily tetrachloroethylene or PCE) from former dry cleaner operations at 1923 Main St, Green Bay, Wisconsin (parcel # 21-1323-1). This site has been investigated utilizing Dry Cleaner Environmental Response Fund (DERF) monies for soil and groundwater contamination from 1999 to present. No vapor investigation has been completed to date. The former dry cleaner building was demolished in 2013 and the concrete floor and footings remained in place. Recent soil excavations were conducted in 2015 within the areas of elevated chlorinated solvent concentrations; however, no formal documentation has been received by the Department as of the date of this letter.

As a planned redevelopment, GB Real Estate Investments, LLC has proposed to divide parcel # 21-1323-1 into three lots, as shown in the attached Figure 2: Detailed Site Plan. PLOT 3 would contain the known chlorinated solvent contaminant source, leaving PLOTS 1 and 2 to be redeveloped. It is the Department's understanding that PLOT 3 will be considered for potential purchase after further cleanup is completed and a potential VPLE Certificate of Completion (COC) has been secured. In order to determine if there was undiscovered contamination on PLOTS 1 and 2 and chlorinated solvent

contamination migrating from PLOT 3, General Engineering Company conducted a Phase I Environmental Site Assessment (ESA) and Limited Phase II ESA in August and October 2015, respectively.

The Phase I ESA concluded two Recognized Environmental Conditions (RECs): 1) contamination associated with the open BRRTS case One Hour Martinizing and 2) former operation of a service garage/repair facility on the west/northwest portion of parcel # 21-1323-1.

The Limited Phase II ESA was conducted concurrently with a geotechnical evaluation. Soil fill is present and a former service garage was operated on-site. Soil was analyzed for VOCs on PLOTS 1, 2 and 3, groundwater for VOCs and PAHs on PLOT 1, and groundwater for VOCs on PLOTS 2 and 3. Other common contaminants associated with the above conditions were not investigated as part of the Limited Phase II ESA. On PLOT 1, minimal petroleum contamination initially detected below state standards in soil was not confirmed with follow up sampling. No chlorinated solvents were detected. In groundwater, minimal PAHs were detected below state standards and VOCs were not detected. On PLOT 2, VOCs were not detected in soil or groundwater. On PLOT 3, the samples, collected beyond the area of known soil and groundwater contamination for the One Hour Martinizing case, had no VOC detections in soil or groundwater. Vapor sampling was not conducted during the Limited Phase II ESA.

### **Liability Determinations**

The Wisconsin Hazardous Substance Spill Law, Wis. Stat. § 292.11 commonly called the Spills Law, requires those who cause, possess or control a hazardous substance discharge to "take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state." Wis. Stat. § 292.55 authorizes the Department to issue clarification letters concerning liability for environmental pollution.

### **PLots 1 and 2 No Response Actions Required:**

Based on information submitted to the Department, minimal petroleum and polycyclic aromatic hydrocarbon (PAH) contamination below state standards has occurred on PLOT 1 and no discharge has occurred on PLOT 2 for the analyzed contaminants. Therefore, based on the criteria in Wis. Admin. § NR 716.05(2)(a) and the criteria in Wis. Admin. §§ NR 708.09(1) and (2), the Department has determined that no response actions, including further site investigation activities, is required under the Wis. Admin. ch. NR 700 rule series to respond to these discharges.

The Department does not approve Phase I or Phase II ESAs because rules have not been established in Wisconsin to define what constitutes an adequate Phase I ESA or Phase II ESA. The Department does use as guidance the American Society for Testing and Materials ("ASTM") International Standard Guide for Environmental Site Assessments: Phase I Environmental Site Assessment Process (E1527-13) and Phase II Environmental Site Assessment Process (E1903-11).

The number and location of monitoring points, the types of media sampled, the number of samples collected, and the laboratory analysis performed are a matter of professional opinion. All areas of PLOTS 1, 2, and 3 were not assessed, the numbers of samples collected were limited based on professional judgment and financial considerations, and samples were not analyzed for all parameters. Therefore, the Department can only respond to the information and data as presented in the reports and cannot predict what might be discovered in the future and the consequences of those discoveries.

**PLots 1 and 2 Off-Site Liability Clarification:** Based on the Department's review of technical information, including the Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request (Form 4400-237) with additional requests for off-site liability clarification and specific questions submitted in accordance with Wis. Stat. § 292.13(2), as well as the case file for the One Hour Martinizing site, the Department makes the following determinations under Wis. Stat. §§ 292.13(3) and 292.55 if the presence of chlorinated solvents in soil, groundwater, and/or vapor were to be detected at PLots 1 and 2 in the future:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by GB Real Estate Investments, LLC.
2. GB Real Estate Investments, LLC did not possess or control the hazardous substances on the property on which the discharge originated.
3. GB Real Estate Investments, LLC did not cause the discharge.
4. GB Real Estate Investments, LLC will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the hazardous substance discharges, provided that GB Real Estate Investments, LLC does not take possession or control of PLOT 3 on which the discharges originated.

Because GB Real Estate Investments, LLC does not currently own PLots 1 and 2 and there is no confirmed chlorinated solvent contamination identified on PLots 1 and 2, the Department is not able at this time to issue GB Real Estate Investments, LLC a letter determining that GB Real Estate Investments, LLC qualifies for all the provisions of the off-site liability exemption. However, when GB Real Estate Investments, LLC acquires title to PLots 1 and 2, if sampling is conducted in the future that confirms there is contamination on PLots 1 and 2 that migrated from Plot 3, and the conditions in Wis. Stat. § 292.13 are satisfied, GB Real Estate Investments, LLC would qualify for the off-site liability exemption.

A person who meets all the conditions of the off-site exemption is not responsible for investigating and cleaning up environmental contamination that migrates onto his or her property from a neighboring property, with certain limitations, if the statutory conditions are met.

#### **Exemption Conditions For Off-Site Liability Clarification**

The Department's determination, as set forth in this letter, is subject to the following conditions being complied with, as specified in Wis. Stat. §§ 292.13(1) and (1m):

1. The facts upon which the Department based its determination are accurate and do not change.
2. GB Real Estate Investments, LLC agrees to allow the following parties to enter PLots 1 and 2 to take action to respond to the discharges: the Department and its authorized representatives; any party that possessed or controlled the hazardous substances or caused the discharge; and any consultant or contractor of such a party.
3. GB Real Estate Investments, LLC agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharges.
4. GB Real Estate Investments, LLC agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to the discharge.

## **Responsibilities for Continuing Obligations for Off-Site Properties**

After the contamination at the source property, PLOT 3, is remediated, the closure approval for the One Hour Martinizing case may include continuing obligations at PLOT 3 as well as at PLOTS 1 and 2. Often residual contamination remains after an approved environmental cleanup is completed. The closure approval can include requirements to properly manage and/or dispose contaminated media under applicable state rules, maintenance of institutional controls such as an impervious or pervious cover or vapor mitigation system, and/or a requirement to obtain Department approval to construct a water supply well. If the closure approval includes requirements associated with PLOTS 1 and 2, the party conducting the cleanup is required to notify the property owners of PLOTS 1 and 2 before the Department reviews the proposal. The property owners are then required to maintain the continuing obligations that are applied to their property.

## **Specific Liability Clarification Questions**

- 1) Based on the division of parcel # 21-1323-1 into PLOTS 1, 2, and 3 and the intention that GB Real Estate Investments, LLC will apply for VPLE for PLOT 3 at a later date, can the Department confirm that the future owner of PLOTS 1 and 2 would not be considered a responsible party for the One Hour Martinizing case on PLOT 3?**

As described above, future owners of PLOTS 1 and 2 would likely qualify for the off-site liability exemption. The future owners of PLOTS 1 and 2 cannot be considered a responsible party as long as they do not possess or control the sources of the hazardous substance discharge, which is proposed to be segregated on PLOT 3 unless the future owner had caused the hazardous substance discharges on PLOT 3. If the One Hour Martinizing site is granted case closure and a VPLE COC under Wis. Stat. § 292.15 is issued, the owner of PLOT 3 would also have a liability exemption.

- 2) How is a future responsible party established for the One Hour Martinizing case if the current responsible party (Rice Management, Inc.) were to dissolve?**

If Rice Management, Inc. were to dissolve, the Department would first confirm that the company has dissolved and determine if the company and/or a successor can complete the cleanup or has the ability to pay for necessary additional cleanup. The Department would also determine if there are other financially viable parties who caused, possess, or control the hazardous substance discharge. This may be implemented through the Department's environmental enforcement process.

- 3) Can the Department confirm that future owners of PLOTS 1 and 2 would not become responsible for the release on PLOT 3 since it was formerly a part of one parcel of land?**

Please refer to the section about the off-site exemption and the answer to question 1 above. As long as the future owners do not possess or control or are not the person(s) who caused the hazardous substance discharge that is on PLOT 3, the future owners of PLOTS 1 and 2 cannot become liable for cleanup of the known contamination on PLOT 3.

- 4) Would Rice Management, Inc. be responsible for future investigation for the One Hour Martinizing case on PLOTS 1 and 2?**

As defined in Wis. Admin. § NR 716.11(4), a responsible party shall extend the field investigation beyond the property boundaries of the source site as necessary to fully define the extent of the contamination. Therefore, the current responsible party, Rice Management, Inc., would be responsible for any future investigation if that is needed on PLOTS 1 and 2 for any contamination that may be migrating from PLOT 3. It does not appear however that the

contamination has migrated to PLOTS 1 and 2. In order for the future owners of PLOTS 1 and 2 to maintain the off-site liability exemption, they would need to allow Rice Management, Inc. access to their property in order to continue the investigation beyond the source property boundary, if that is requested of Rice Management, Inc. by the Department.

- 5) **Since the One Hour Martinizing case is on-going and if it is found that groundwater or vapor contamination has migrated onto PLOTS 1 and 2 through future testing, can the Department confirm that there will not be any future potential liability or financial responsibility to the owner of PLOTS 1 and 2?**

Refer to the section on off-site exemption conditions, the section on responsibilities for continuing obligations for off-site properties, and the answers to questions 1 and 4 above. If there is residual contamination on PLOTS 1 and 2 at the time the One Hour Martinizing site is closed, there may be continuing obligations that would apply to the owners of PLOTS 1 and 2.

- 6) **Would Rice Management, Inc. be financially responsible for the installation of the vapor mitigation systems for the planned buildings on PLOTS 1 and 2? If so, can DERF funds be accessed by Rice Management, Inc. under the current DERF agent agreement?**

Rice Management, Inc. is financially responsible to investigate the vapor intrusion pathway as required by Wis. Admin. § NR 716.05(1) to determine whether there are preferential pathways and/or receptors. There are currently no receptors on PLOT 3, but there are potential preferential pathway(s) (utilities) that could result in vapor migration. The preferential pathway(s) will be assessed as part of the investigation for the One Hour Martinizing case. DERF can be accessed by Rice Management, Inc. to investigate and/or remediate vapors. To date, a vapor investigation has not been completed, so it is unknown if vapors are a concern at this time. If vapors are found, the data will have to be evaluated by the Department to determine what actions are needed.

It is recommended as a precautionary measure in construction of new buildings to install passive vapor mitigation systems (which can be designed to allow for conversion to an active system if needed). Another precautionary measure that could be conducted in this case is installation of clay plugs for utilities that will connect to the future buildings. It is the financial responsibility of the developer to undertake precautionary measures since it is unknown at this time if vapors are a concern.

- 7) **Although unlikely, if soil or groundwater contaminated with chlorinated solvents is found during development of PLOTS 1 and 2, would the current responsible party (Rice Management, Inc.) be financially responsible for proper disposal. If so, can DERF funds be accessed by Rice Management, Inc. under the current DERF agent agreement?**

With the site investigation data from the One Hour Martinizing case and the additional data from PLOTS 1 and 2 that were provided to the Department, it is highly unlikely contaminated soil or groundwater will be encountered on PLOTS 1 and 2 from the One Hour Martinizing discharge. In the scenario where soil or groundwater degree and extent changes, the current responsible party would be financially responsible to investigate and remediate the soil and groundwater to the extent practicable as specified in Wis. Stat. § 292.11. DERF funds can be accessed by Rice Management, Inc. to conduct any additional investigation or remediation that would need to be conducted in the above scenario. DERF funds cannot be accessed solely for proper disposal of soil and/or groundwater generated during construction of new buildings.

**8) Can the soil that is generated during future construction on PLOTS 1 and 2 be re-used on on PLOTS 1 and 2? Can that same soil be re-used on PLOT 3 if PLOT3 becomes a VPLE site?**

If soil or other fill material is excavated, it is the responsibility of the person generating the material to make a waste determination. Clean soil from PLOT 1 and PLOT 2 can be re-used on PLOTS 1 and 2 without additional DNR approval; however, the generator of the soil would need to follow the placement requirements in Wis. Admin. § 500.08 that apply to disposal of "clean soil" and other materials. If the generator of the soil discovers contamination in the soil on PLOTS 1 and 2, the generator would need to follow Wis. Admin. § NR 718.

There are two options that can be utilized for re-use of soil generated from PLOTS 1 and 2 on-site:

- 1) Re-use the soil on PLOTS 1 & 2 in accordance with the requirements in Wis. Admin. § NR 500.08(2)(a), the locational and performance standards in Wis. Admin. §§ NR 504.04(3)(c) and (4)(a through f), Wis. Adm. Code, and Wis. Admin. § NR 718; or
- 2) The soils from PLOTS 1 & 2 can be utilized on PLOT 3; however, because you are planning to enter PLOT3 into VPLE, additional analysis of the soil to be relocated is needed by the Department to take into consideration other contaminants that could be associated with the former service garage operations and/or soil fill that is on-site since VOCs were the only parameters analyzed in soil. The draft guidance for *Identifying and Documenting Characteristics of Imported Soil and Other Fill Materials Prior to Use on VPLE Sites (RR-041)* is available at the following link:  
<http://dnr.wi.gov/news/input/documents/guidance/RR041Draft.pdf>; or

Please note that if other parameters are sampled and if results indicate that a discharge of a hazardous substance has occurred, a new BRRTS case could potentially be opened for PLOT 1 and/or PLOT 2.

### **Conclusion**

1. PLOTS 1 and 2 No Response Actions Required: No further response actions are required under Wis. Admin. NR 700 for PLOTS 1 and 2 related to hazardous substance discharges identified in the Phase II assessment based on criteria in Wis. Admin. § NR 716.05(2)(a) and the criteria in Wis. Admin. §§ NR 708.09(1) and (2).
2. PLOTS 1 and 2 Off Site Liability Exemption: Once parcel # 21-1323-1 is sub-divided, GB Real Estate Investments, LLC acquires PLOTS 1 and 2, and if contamination from the One Hour Martinizing site is detected on PLOTS 1 and 2, GB Real Estate Investments, LLC would qualify for the off-site liability exemption.
3. Proper waste determination and soil sampling and approvals should be conducted, as necessary before soil is moved.

This letter relates and refers only to those conditions described above and to information and data submitted to the Department in the request for this letter. The Department makes no determination concerning the presence or absence of hazardous substances, other than those identified in the documents and reports listed above, which GB Real Estate Investments, LLC submitted to the Department. In the future, if the Department becomes aware of new information concerning the contaminants referenced above, or the presence of other contaminants on PLOTS 1, 2, and/or 3, the Department will evaluate that data at that time to determine if any response actions are required.

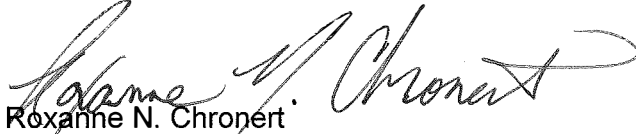
Whenever possible, the Department requires the person who caused the discharge to take the appropriate response actions.

Also, future property owners are eligible for the exemption under section 292.13, Wis. Stats., if they meet the requirements listed in that statutory section. The determinations in this letter regarding a liability exemption, however, only apply to the Applicant, and may not be transferred or assigned to other parties. The Department can provide a written determination to future owners, if such a determination is requested in accordance with the requirements of section 292.13(2), Wis. Stats and Wis. Adm. § NR 749.

The Bureau for Remediation and Redevelopment Tracking System identification number for this activity is shown at the top of this letter. The Department tracks information on all determinations such as this in a Department database that is available on the internet at: [BRRTS on the Web](#).

If you have any questions or concerns regarding this letter, please contact Tauren Beggs at (920) 662-5178, by email at [Tauren.Beggs@wisconsin.gov](mailto:Tauren.Beggs@wisconsin.gov) or at the address listed in the letterhead.

Sincerely,



Roxanne N. Chronert  
Northeast Region Team Supervisor  
Remediation & Redevelopment Program

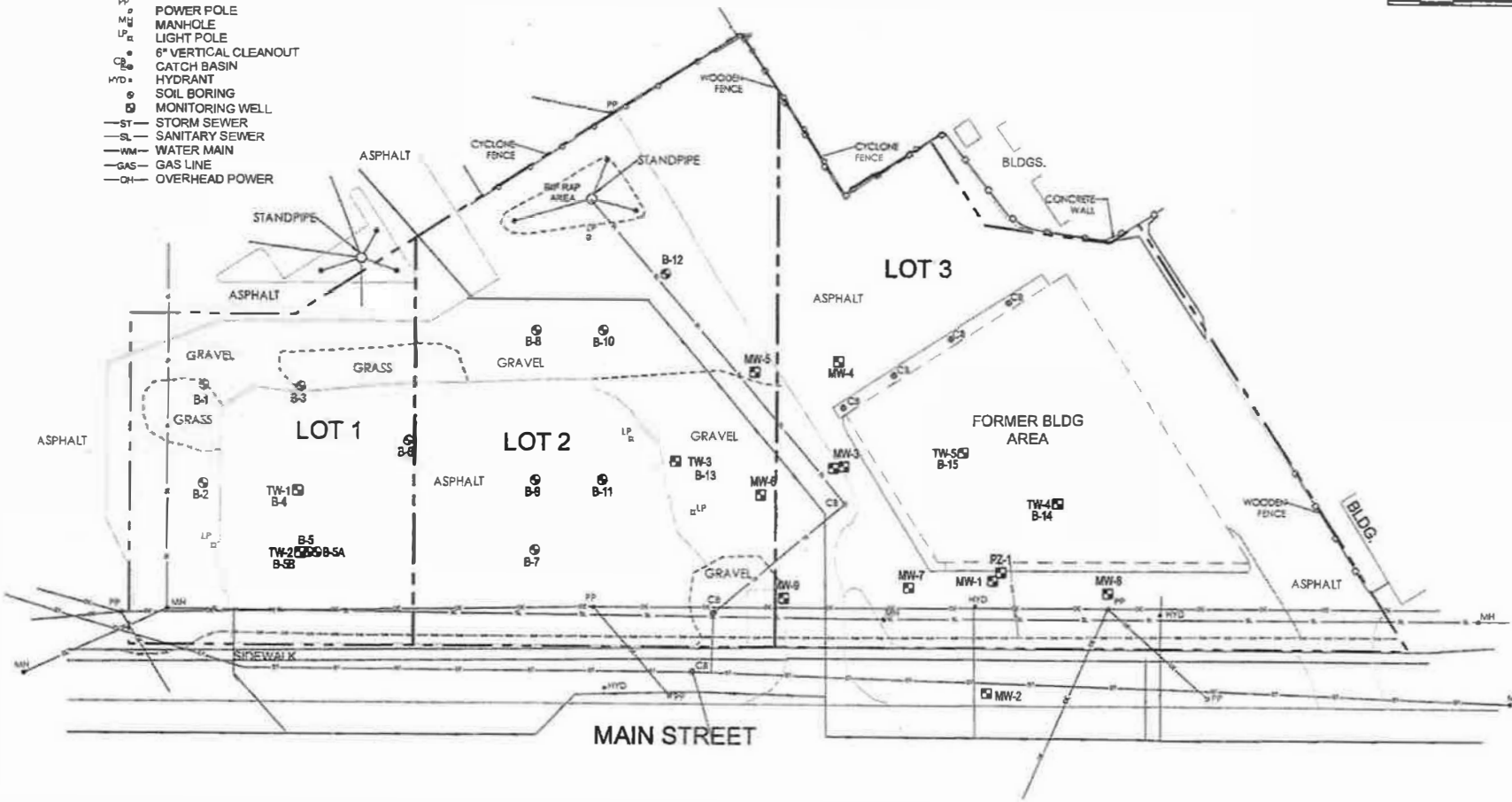
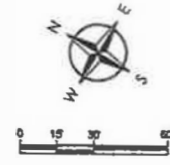
Attachments: Figure 2: Detailed Site Plan

cc: Brian Youngwirth, General Engineering Company (electronic)  
Kristen Dufresne, DNR (electronic)  
Tauren Beggs, DNR (electronic)  
Michael Prager – RR/5 (electronic)



EXPLANATION

- PP POWER POLE
- MH MANHOLE
- LP LIGHT POLE
- 6" 6" VERTICAL CLEANOUT
- CB CATCH BASIN
- HYD HYDRANT
- SB SOIL BORING
- MW MONITORING WELL
- ST STORM SEWER
- SL SANITARY SEWER
- WM WATER MAIN
- GAS GAS LINE
- OH OVERHEAD POWER



**GEC**  
 COMPANY: KP  
 DATE: 9/7/15  
 DSD/FAE NO.: 2.0014-154  
**FIGURE 2**

**DETAILED SITE PLAN**  
**GB REAL ESTATE INVESTMENTS, LLC.**  
**FORMER ONE HOUR MARTINIZING**  
 City of Green Bay  
 Brown County, WI

**General Engineering Company**  
 P.O. Box 349 • 918 Silver Lake Dr. • Portage, WI 53901  
 608-742-2140 (Office) • 608-742-2932 (Fax)  
 www.genengr.com  
This document contains confidential or proprietary information of General Engineering Company. It is intended for the use of the client only. It is not to be distributed or used for any other purpose without the written consent of General Engineering Company.

REVISIONS	NO.	BY	DATE