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November 2, 2012

James K. Morrell, Chairman
City of Buffalo Planning Board
Rm. 901, Buffalo City Hall
Buffalo, New York 14202

Dear Mr. Morrell:

Thank you for the opportunity to provide comments on the gas station facility that has been proposed by Tops at 333 Amherst Street. Over the last several months, Riverkeeper has evaluated the proposal, reviewed technical supporting documents, and conferred with regional water quality experts and engineers regarding the potential impacts of this proposal on Scajaquada Creek and the surrounding environs.

In light of the renewed community interest in a healthy, publicly-accessible Scajaquada Creek, the on-going projects to restore water quality and ecological health to this part of the Niagara River Watershed, and the sensitivity of this particular site, Buffalo Niagara Riverkeeper does not feel that building a gas station at this location represents the highest and best use for this site.

Scajaquada Creek is a major tributary to the Niagara River, an officially designated US “Area of Concern”, and also serves as a major fresh water supply for thousands of people and businesses in Western New York. The creek corridor is a thin ribbon of greenspace in a densely populated urban environment, serving an important aesthetic and recreational role for the communities it touches. The segment of Scajaquada Creek potentially impacted by the proposed gas station is officially designated as a New York State “Class B Stream”, and as such is protected for contact recreation, including bathing, fishing, fish propagation and survival, and aesthetics.

In addition, the creek is also part of the globally significant Niagara River Important Bird Area, supporting a rich diversity and abundance of migrating waterfowl, shorebirds, and songbirds in their spring and fall migration. Protected birds regularly seen on Scajaquada Creek include Black-Crowned Night Heron, Great Blue Heron, and Great Egret. At least 12 species of fish have been documented in Scajaquada Creek, including Yellow Perch, Large Mouth and Small Mouth Bass, and several animals protected by New York State including Snapping Turtles, Beaver, and Mink.

For the past two decades, Scajaquada Creek has been the focus of an intense community effort at revitalization – of both the creek itself and the communities that surround it. In 1999, more than 19,000 cubic yards of contaminated sediment were dredged from the creek in the stream segment between Tops and downstream to West Avenue. Invasive species removal and new native plantings along the creek banks have taken place to protect and restore the natural ecology of the creek. Mural art, new playing fields, and bi-yearly clean-ups have improved community use of the creek. And just this year, the Buffalo Sewer Authority kicked-off its new green initiative to control combined sewer overflows by undertaking a project to keep contaminated sewage out of CSO 60, just adjacent to the project area.



The proposal by Tops to install a gas station at its store located at Grant and Amherst streets requires careful evaluation. The proposed location lies within the historic water bed of Scajaquada Creek, an area that is part of the creek's living "hyporheic zone" necessary to support conditions for aquatic life in the Creek. (A hyporheic zone is the interface of both groundwater aquifers and rivers or creeks, and allows for the mixing of creek water with groundwater.)

There are three specific issues of concern for Riverkeeper relative to our mission of "protecting and restoring water quantity and quality while connecting people to our local waterways":

1. Impacts on stream ecology potentially associated with underground storage tanks;
2. Impacts on water quality from stormwater loadings from the parking lot and service areas;
3. Impacts on the community's access to the Scajaquada Creek corridor, including the Jesse Kregal Pathway.

1. Impacts on stream ecology associated with underground storage tanks

The construction related to, as well concerns regarding leaking or failure of, the underground fuel storage tanks at this location present the greatest risk to Scajaquada Creek, and by extension, risk to the people and wildlife that utilize the creek. The proposed underground storage tank location is approximately 100 feet away from the existing creek's top of bank. The location is also within the historical creek water bed in an area largely made up of unconsolidated loose fill. A geotechnical report, commissioned by Tops in 2003, calls the subsurface conditions for this project "marginally suitable" (Pulley Engineering Study dated 2/22/2003, page 8). An updated geotechnical report completed for Tops by EmpireGEO Services, Inc. in 2012 confirms this assessment. Both reports emphasize the importance of accurately gauging the groundwater conditions on site and point out that the geotechnical analyses done to date did not include any groundwater testing.

Underground inputs to the creek in the hyporheic zone are not yet understood or characterized. Additionally, without groundwater characterization as described in Tops' own reports, it will be difficult to determine the appropriate engineering for the underground construction proposed at this unique geologic location.

If the gas station proposal does go forward, proper tank installation and long-term monitoring would be critical given the unique geotechnical conditions at this site (i.e.: the amount of fill located on top of an historic creek bed). Standard construction methods for the underground storage tank vault would not be adequate for this location. To provide reasonable risk protection from the construction itself, as well as from fuel storage tank leaks or failures, Riverkeeper would strongly request that the City require the following:

- **A hydrogeological assessment of the groundwater ecology of this site must be conducted.** Until a thorough hydrogeological site characterization is completed, Tops cannot clearly state how the proposed project may affect the relationships between the presence of stormwater, springwater, and critical recharge rates of groundwater and underground ecology. Riverkeeper is currently working with the US Army Corps of Engineers to develop an integrated surface water/subsurface groundwater study in the lower Creek watershed that will provide a model of how the underground springs affect the hyporheic zone of the Creek as well as Creek re-charge. We understand that Tops' project timeline is much shorter and they may not want to wait until the completion of this study. An alternative to waiting for the outcome of this study would be for Tops'



consultants to define the scale and scope of a similar but independent site-specific hydrogeologic study and we strongly suggest they reach out to the Army Corps of Engineers-Buffalo District for guidance.

- **Groundwater testing, as recommended in the previous geotechnical reports, should be conducted.** In addition to the hydrogeological assessment referenced above, additional groundwater analysis must be taken in order to help gauge an accurate reading of the groundwater quality, levels, and flow prior to final design and construction permits being issued. This will help assess hydrological and baseline groundwater conditions at this site and if the proposed concrete vaults and bio-infiltration can be engineered relative to the unique geology at this site.
- **Prior to final construction permits being issued and before construction is underway, representatives of the Top's design and construction team would meet with the City of Buffalo officials responsible for permitting and inspections, the Director of Environmental Affairs for the City of Buffalo, DEC staff as appropriate, and interested third-party community groups.** This would allow for the transparent review of the construction plans and permits and ensure clear and open communication. It is our understanding that Tops is open to this suggestion.
- **The highest and most stringent tank monitoring, as recommended by the NYS DEC.** This includes the installation of a leak detection system, inventory reconciliation and monitoring, and tank tightness monitoring. While DEC regulations currently call for these monitoring tasks be undertaken and reported every 5 years, Riverkeeper would urge that this monitoring and reporting tasks take place every year due to the sensitive nature of the site, and that these reports not only be filed with the DEC, but are also filed with the City of Buffalo's Director of Environmental Affairs, the Buffalo Environmental Management Commission, and the Common Council Member representing this site. It is our understanding that Tops is willing to comply with this monitoring.
- **Annual monitoring of the site-specific outfall into Scajaquada Creek for water quality parameters including Polycyclic Aromatic Hydrocarbons (PAHs) and Total Suspended Solids (TSS).** The results reported to the City of Buffalo's Director of Environmental Affairs, the Buffalo Environmental Management Commission, and the Common Council Member representing this site. Protocols for an acceptable monitoring program should be made available for interested third-party review. It is our understanding that Tops may be willing to undertake this enhanced monitoring.

2. Impacts from stormwater loadings entering the Creek from Tops' parking lot and service area

The parcel of land that is proposed for the new gas station facility is currently part of a separated sewer system. Therefore, all surface water run-off from the site is currently discharged directly into Scajaquada Creek and there is no storage, filtration, or treatment of this stormwater. All gas stations and most parking lots generate some expected amount of surface gas and oil runoff due to the unregulated behaviors of the customers or drivers. It is understood that Tops' addition of a fueling station to this site as well as the anticipated increase in traffic to this location, will increase the contaminant loading from stormwater discharges into the creek.

According to the New York State Department of Environmental Conservation's Stormwater Design Manual, parking lots can be expected to generate a TSS pollutant



concentration level in stormwater of 27 mg/liter, as compared with gas stations where the expected pollution concentration level is 31 mg/liter. It should also be noted that fueling stations generate significant additional run-off of heavy metals, including lead.

To date, Tops has offered the following mitigation method:

- Installation of an oil/water separator that would utilize a coalescing media to remove hydrocarbon particulates to a rate of 5 parts per million. This run-off treatment would be installed in the area around the fueling island itself.

While the proposed use of this technology is a good first step, Riverkeeper would request that the City require additional mitigation and Creek protection measures, including:

- Tops install a second oil/water separator or a larger overall system that would allow it to capture and treat the run-off from the entire Tops' public parking lot site, including the remainder of the parking lot outside of the fueling station zone, given the expected increase in overall traffic. It is our understanding that Tops may be willing to do this, and is exploring ways to put such a system in place, though Riverkeeper has not seen updated plans which reflect such a system.
- Rather than direct the "post-separator flow" into the stormwater pipe system that discharges directly into the Creek, Tops should work with the Buffalo Sewer Authority to determine the feasibility of piping treated stormwater into an underground infiltration trench to be located underneath the parking lot surface. This would allow the treated water to naturally infiltrate back into the groundwater system. Tops has indicated a willingness to meet with the Buffalo Sewer Authority and Riverkeeper to discuss this option further.

3. Potential impacts on the Jesse Kregal Pathway

The Jesse Kregal Pathway runs immediately adjacent to this site and will be impacted by the additional traffic that is targeted by this development. The Jesse Kregal Pathway is a major link between the Niagara River Greenway (known as the "Riverwalk" in the City of Buffalo) and the Olmsted Park System. As such, it has been a major focus of engagement and investment by local community groups, the City of Buffalo, Erie County, the Niagara Greenway Commission, the Olmsted Parks Conservancy, and Buffalo Niagara Riverkeeper.

When the parking lot at this site was expanded, the community lost a valuable green space. With the loss of this green buffer area, the Jesse Kregal Pathway existed as just a narrow strip directly adjacent to the parking lot. The creation of a gas station at this location could serve to even more negatively impact this part of the Pathway, in terms of both odors and aesthetics. The Planning Board has required Tops to modify its parking layout and include an increased green buffer at this location. In addition to the Planning Board's recommendation, Riverkeeper would recommend that the City require the following actions to mitigate the effects of automobile traffic near the Pathway:

- Creation of additional green buffer spaces and re-design of the connection between the store and the bike path as indicated on Attachment B. It is our understanding that Tops may be amenable to making this site change although Riverkeeper has not seen revised plans that would reflect this change;
- The establishment of an ad hoc community design advisory group that would work with Tops to design the planting schemes such that they meet the community needs for safety, aesthetic improvement, and traffic buffering prior to final Planning Board site design approval.



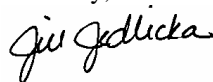
In conclusion, any proposal to develop adjacent to the Creek, whether it is industrial, recreational, commercial or ecological in nature, should be presented and designed to be a part of the solution and improvement for the Creek. The projects that do move forward should not have a significant contribution to water quality degradation, decreased aesthetics, negatively impact the community's access to and enjoyment of the Creek or Pathway.

Riverkeeper does not believe that building a gas station at this location meets the aforementioned criteria. However, should the Planning Board decide to allow this project to move forward, Riverkeeper points to the conditions outlined in this letter to ensure a better outcome for the impact on Scajaquada Creek

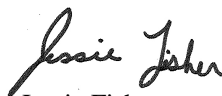
In the fall of 2011, Riverkeeper spearheaded a collaboration now known as the "Scajaquada Creek Initiative Working Group" dedicated to further advancing the protection and restoration of the Creek. This Group has quickly grown to over 60 members, and provides a forum in which stakeholders like the City of Buffalo, Forest Lawn Cemetery, Olmsted Parks Conservancy, the Army Corps of Engineers, the NYS Department of Environmental Conservation, Erie County, the US Fish and Wildlife Service, and community members can coordinate and communicate. We encourage Tops and any other interested stakeholder to become engaged in this working group.

Thank you for your attention to this very important matter. If you have any concerns or questions, please feel free to contact us at anytime. Riverkeeper would like to be a resource to this project, helping to create the best possible outcome for our creek and community.

Sincerely,



Jill Jedlicka
Executive Director



Jessie Fisher
Director, Greenway Projects and Programs

Cc: Councilmember Joseph Golombeck
Nadine Marrero, City of Buffalo, Director of Environmental Affairs
Joseph Gardella, Buffalo Environmental Management Commission
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