

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of
Corrective Action for a Hazardous Waste
Management Facility, pursuant to Article 27,
Title 9 and ECL Article 71, Title 27 of the
Environmental Conservation Law of the
State of New York by:

SECOND INTERIM
ORDER ON CONSENT
File No. 03-73

Tecumseh Redevelopment, Inc.

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL"). This Order is issued pursuant to the Department's authority under that law, including ECL 3-0301, ECL Article 27, Title 9, and ECL Article 71, Title 27.

2. Tecumseh Redevelopment, Inc. ("Respondent"), a subsidiary of Mittal Steel USA, Inc., owns and operates property located along the west side of Route 5, Lackawanna, New York ("Facility"), a portion of which will be the subject of this Order.

3. Respondent's predecessor in interest at the Facility, Bethlehem Steel Corporation ("Bethlehem"), conducted operations that subject the Facility to ECL Article 27, Title 9, and the 6 NYCRR regulations promulgated pursuant thereto. The Facility is a hazardous waste management facility, as that term is defined at 6 NYCRR 370.2(b)(89), and is subject to the New York State laws and regulations governing hazardous waste.

4. The Department maintains that the Facility is subject to interim status and corrective action pursuant to the Federal Resource Conservation and Recovery Act ("RCRA") and the regulations promulgated thereunder. The Department received final delegation of

RCRA authority from EPA as of May 29, 1986.

5. On November 18, 1980, a Part A hazardous waste application under RCRA was submitted to the United States Environmental Protection Agency ("EPA") by Bethlehem. The Facility has not received a Part B permit and is considered an interim status facility for purposes of 6 NYCRR 373-1.3.

6. On August 13, 1990, the EPA issued to Bethlehem an Administrative Order on Consent Docket No. II RCRA 90-3008(h)-0201, pursuant to Section 3008(h) of RCRA, which required Bethlehem and its successors to conduct a RCRA Facility Investigation ("RFI").

7. On Oct. 15, 2001 Bethlehem filed for protection under the United States Bankruptcy Code and, pursuant to an Asset Purchase Agreement that was approved by the United States Bankruptcy Court for the Southern District of New York on April 23, 2003 (Case No. 01-15288 (Jointly Administered)), sold certain assets, including its Lackawanna facility, to ISG Acquisition Inc.. ISG Acquisition Inc. caused Bethlehem to convey the Facility to Respondent pursuant to a Bargain and Sale Deed With Covenants Against Grantor's Acts dated May 6, 2003.

8. As part of its cleanup obligations, Respondent completed and submitted the RFI to the Department and EPA on January 7, 2005. On August 21, 2006, the EPA notified Respondent that its obligations under the RFI Order were terminated. The results of the RFI confirm that there has been a release of hazardous waste or constituents into the environment and a Corrective Measures Study must be performed.

9. The Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See e.g., ECL 3-0301(1)(I)

10. Pursuant to ECL Section 71-2727(3), the Commissioner of the Department may issue orders requiring corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any Area of Concern (AOC) or solid waste management unit (SWMU) at any treatment, storage or disposal facility which is either permitted or seeking a permit under Title 7 or 9 of Article 27 of the Chapter, or which has interim status according to regulations adopted thereunder, regardless of the time at which the waste was placed in the unit.

11. The Department and Respondent agree that the goal of this Order is for Respondent to implement the Smokes Creek Interim Corrective Measures (ICM) Work Plan to perform dredging of the lower reach of Smokes Creek which will remove contaminated sediment and return Smokes Creek to its original design elevations. Final remedy selection for Smokes Creek will not occur until after the CMS is complete.

12. Respondent consents to the issuance of this Order to fulfill part of its obligation under ECL Article 27, Title 9 and ECL 71-2727(3)(b) to perform corrective action at the Facility and agrees to be bound by its terms. The Department intends to issue a final order(s) relative to the performance of corrective action at the entire Facility, including that portion of Smokes Creek within the Facility. Respondent reserves all rights and defenses it may have regarding liability or responsibility for conditions at the Facility, except that Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to enforce this Order, except as provided in Section VI.C., and agrees not to contest the validity of this Order or its terms. Respondent has consented to the issuance of this Order in good faith without trial or adjudication of any issue of fact or law.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Corrective Action

Respondent shall implement the May 2007 Smokes Creek ICM Work Plan, as revised in September 2008 and approved by the Department on September 24, 2008, which is attached to this Order and is incorporated herein in accordance with its terms. Nothing in this Order shall be construed to require Respondent to conduct any work, or to take any action, other than as set forth in the Smokes Creek ICM Work Plan.

II. Enforcement and Force Majeure

Respondent shall neither suffer any penalty under this Order nor be subject to any proceeding or action, and shall not be deemed to be in violation of this Order, if it cannot comply with any requirement of this Order because of the action of a national, state, or local government body or court, an act of God, war, strike, riot, catastrophe, fire, or any other fact or circumstance beyond Respondent's reasonable control (a "Force Majeure Event"). Respondent shall, within 15 days of when it obtains knowledge that a Force Majeure Event will prevent or delay compliance with this Order, notify the Department in writing. Failure to give such notice within the 15 day period constitutes a waiver of any claim that Respondent's failure to comply is attributable to a Force Majeure Event. Written notification shall be sent to the Regional Hazardous Materials Engineer and the Director, Bureau of Hazardous Waste and Radiation Management at the respective addresses provided in Paragraph X. Respondent shall include in such notice, to the extent known at the time, the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of

this Order. Respondent shall have the burden of demonstrating by a preponderance of the evidence that a force majeure event has occurred and, consequently, is a defense to compliance with this Order. The Department shall not unreasonably deny or delay such approval.

III. Stipulated Penalties

A. Respondent's failure to comply with any term of this Order, constitutes a violation of this Order and the ECL. If Department staff determines that Respondent has failed to comply with this Order, the Department staff shall notify Respondent in writing. Payment of any penalty shall not in any way alter Respondent's obligation to comply with any term of this Order or to complete performance under the terms of this Order. The payment of stipulated penalties as set forth below shall not limit the Department's right to seek such other relief as may be authorized by law.

B. If Respondent fails to comply with the Smokes Creek ICM Work Plan, then Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of any term or condition of this Order. All penalties begin to accrue on the first day Respondent is in violation of a term or condition of this Order and continue to accrue through the final day of correction of any violation. Unless disputed as set forth below, such sums shall be due and payable within fifteen days after receipt of notification from the Department assessing the penalties. If such payment is not received within fifteen days after Respondent receives such notification from the Department, interest shall be payable at the rate specified by the New York Civil Practice Law and Rules for interest on a judgment on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by check or money order made payable to "New York State Department of Environmental Conservation" and shall be

delivered personally or by certified mail, return receipt requested, to Regional Attorney, N.Y.S.D.E.C., 270 Michigan Avenue, Buffalo, NY 14203-2915. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. The payment of stipulated penalties as set forth above shall not limit the Department's right to seek such other relief as may be authorized by law. Stipulated penalties shall be due and payable according to the following schedule:

<u>PERIOD OF NONCOMPLIANCE</u>	<u>PENALTY PER DAY</u>
1st day through 15th day	\$ 250
16th day through 30th day	\$ 1,000
31st day and each day thereafter	\$ 5,000

IV. Submissions

A. All reports and submissions required by this Order shall be made to the Regional Hazardous Materials Engineer and the Director, Bureau of Hazardous Waste and Radiation Management at the respective addresses provided in Paragraph X. Respondent shall be responsible for the content of any submissions made pursuant to this Order.

B. The Department shall review each of the submissions Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submission was done, in accordance with the Smokes Creek ICM Work Plan and this Order, and with generally accepted technical/scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of each submission. All Department-approved submissions shall be incorporated into and become an enforceable part of this Order. Approval by the Department shall not be unreasonably withheld or delayed by the Department.

C. If the Department disapproves a submission, it shall so notify Respondent in writing and specify the reasons for its disapproval. Within sixty days, unless the notice specifies a different deadline, after receiving written notice that Respondent's submission has been disapproved, Respondent shall make a revised submission to the Department that addresses all of the Department's stated reasons for disapproving the first submission. After receipt of the revised submission, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submission, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submission, the Department and Respondent will conduct good faith negotiations to resolve the issues between them during the course of the next twenty-one days. If the issues are not resolved to the Department's satisfaction, the Department shall so notify Respondent in writing within such twenty-one day period and Respondent shall be in violation of this Order, unless it has invoked the dispute resolution mechanism set forth below in Paragraph VI within thirty days of receipt of the Department's written notice that issues have not been resolved.

D. Respondent shall modify and/or amplify and expand a submission upon the Department's direction to do so if the Department reasonably determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Reservations of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities including, but not limited to nor exemplified by, the right to recover natural resource damages against any party, including Respondent and Respondent's defenses thereto.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or the Commissioner's designee from exercising any summary abatement powers pursuant to ECL 71-0301.

C. Except as specifically set forth herein, nothing in this Order shall be construed as a waiver by Respondent of any rights, claims, defenses, or agreements it now has or may have in the future regarding the Facility.

VI. Dispute Resolution

A. The Parties shall use their reasonable best effort and negotiate in good faith to resolve any disputes regarding this Order.

B. If any dispute shall arise between Respondent and the Department regarding the implementation or interpretation of any provision of this Order or any revised submittal, Respondent may invoke the dispute resolution procedures contained in this Section.

C. In order to invoke these procedures, within 30 days of receipt of notice of the Department's action or determination, Respondent must submit a written request to meet with the Director of the Division of Solid and Hazardous Materials ("the Director") to discuss the Department's action or determination. The Director or the Director's designated agent must contact Respondent to schedule a meeting within 14 days thereafter. At the meeting, Respondent shall be given an opportunity to present its response to the Department's action or determination, and the Director shall have the authority to modify and/or withdraw such action or determination. The Director shall notify Respondent, in writing, of his or her specific comments as soon as reasonably practicable after the meeting.

D. Upon receipt of such notification, Respondent shall take whatever action is required under this Order as modified by the Director's comments (if any) pursuant to a

schedule determined following the meeting with the Director. If Respondent fails to take the required action, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

E. The invocation of dispute resolution procedures under this Paragraph shall not, of itself, extend, postpone, or affect in any way any obligation of Respondent under this Order, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute pursuant to this Paragraph. Notwithstanding the stay of payment set forth above, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Order. In the event Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph III above. The Director, in his or her sole discretion, may waive stipulated penalties when Respondent does not prevail on the disputed issue if the Director determines that Respondent had a reasonable basis for believing it would prevail on the disputed issue.

F. The Director's written specific comments shall be the Department's final decision. Nothing in this Order shall diminish or otherwise affect Respondent's statutory rights of appeal with respect to the Department's final decision.

VII. Entry Upon Facility

Respondent hereby consents to the entry upon the Facility and upon areas in the vicinity of the Facility that are under the control of Respondent upon reasonable notice and at times reasonable under the circumstances by any duly designated employee, consultant, contractor, or agent of the Department or any State Agency having jurisdiction for purposes of inspection, sampling, and testing to ensure Respondent's compliance with this Order. The Department

shall abide by the health and safety rules in effect at the Facility. The Department may be accompanied by an employee, consultant, contractor, or agent of Respondent. Upon request, Respondent shall provide the Department with reasonably suitable office space at or near the Facility, including access to a telephone, and shall permit the Department full access to all non-privileged records relating to matters addressed by this Order and to job meetings held in connection with the work performed under this Order.

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and its representatives and employees harmless for all claims, suits, actions for damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent's employees, servants, agents, successors, and assigns.

IX. Modification

A. The terms of this Order constitute the complete and entire Order the Department issued to Respondent covering implementation of the Smokes Creek ICM Work Plan. No term, condition, understanding, or Order purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submissions shall be construed as relieving Respondent of its obligation to obtain such formal approvals as may be required by this Order.

B. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Department setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Regional Hazardous Materials Engineer, the Regional Attorney, and the Director of the Bureau

of Hazardous Waste and Radiation Management of the New York State Department of Environmental Conservation at the respective addresses provided in Paragraph X.

X. Communications

All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or by hand delivery.

1. Communication from Respondent shall be sent to:

Regional Hazardous Materials Engineer
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2915

Director, Bureau of Hazardous Waste and Radiation Management
Division of Solid & Hazardous Materials
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7258

Regional Attorney
270 Michigan Avenue
Buffalo, New York 14203-2915

2. Communications to Respondent shall be sent to:

Mr. Keith A. Nagel
General Manager
Tecumseh Redevelopment, Inc.
3250 Interstate Drive, 2nd Floor
Richfield, Ohio 44286-9000

and to

Mr. Paul H. Werthman
TurnKey Environmental Restoration, LLC
726 Exchange Street, Suite 624
Buffalo, New York 14210

and to

Dale E. Papajcik, Esq.
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114

B. The Department and Respondent reserve the right to designate additional or different addresses for communication on written notice to the other given in accordance with this Section.

XI. Termination and Satisfaction

Respondent's obligations under this Order shall be deemed satisfied and shall terminate upon their own terms upon Respondent's completion of the Smokes Creek ICM Work Plan and the payment of any Stipulated Penalties due pursuant to Section III. For the avoidance of doubt, for purposes of this Paragraph Respondent's obligation under the Smokes Creek ICM Work Plan shall not include any post closure care monitoring, financial assurance, or other obligations and completion thereof not specified in the Smokes Creek ICM Work Plan. The need for additional post-closure care monitoring, and post-closure financial assurance, while independently enforceable by the Department, shall not be a prerequisite to termination of this Order.

XII. Miscellaneous

A. Respondent hereby certifies that it has fully and accurately disclosed or made available to the Department all relevant information known to Respondent and all relevant information known to be in the possession or control of its officers, directors, employees, contractors, and agents that relates to, identifies or describes contamination at the Facility relative to Smokes Creek.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within thirty days after the Effective Date of this Order or their selection by Respondent, whichever is later. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. Such approval shall not unreasonably be withheld, and shall be deemed granted if Respondent has not received from the Department a written notice of disapproval within fifteen days. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent pursuant to this Order, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling, tests or other data generated by Respondent with respect to implementation of this Order or conducted independently by Respondent. Respondent shall have the right to obtain split samples, duplicate samples, or both of all substances and materials sampled by the Department, and the Department shall make available to Respondent the results of all sampling, tests or other data generated by the Department with respect to this Order.

D. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform its obligations under this Order.

E. Respondent, Respondent's successors (including successors-in-title) and assigns

shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Order. Respondent shall require that its employees, servants, and agents comply with the relevant provision of this Order in the performance of their designated duties on behalf of Respondent.

F. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

G. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

H. All references to days in this Order are to calendar days unless otherwise specified. If a deadline falls on a weekend or holiday, such deadline shall automatically be extended until the next business day.

I. The Paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

J. The Effective Date of this Order shall be the date that the Commissioner or his designee signs the Order. The Department will provide Respondent (or Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or his designee signs it.

K. In the event of an inconsistency between the provisions of any attachment or appendix of this Order and any term, condition, or provision contained in Paragraph I through XII of this Order, the term, condition, or provision contained in that Paragraph, and not that in any attachment or appendix of this Order, shall control.

L. Respondent and Respondent's and corporate successors and assigns hereby affirmatively waive any right they had, have, or may have to make a claim against New York State pursuant to Article 12 of the Navigation Law with respect to the Facility, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have with respect to the Facility.

M. The terms of any Orders on Consent Respondent has previously entered into with DEC pertaining to the Facilities shall continue in full force and effect unless they conflict with or are otherwise addressed by the terms of this Order, in which case terms of this Order shall control.

Dated: Oct 29, 2008
Buffalo, New York

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Abby M. Snyder
By: Abby M. Snyder
Regional Director

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: *Keith Nagel*

Title: *DIR. ENVIR. AFFAIRS*

Date: *10/20/08*

STATE OF *Ohio*)
)

COUNTY OF *Summit*

On the *20th* day of *October*, in the year *2008*, before me, the undersigned, personally appeared *Keith Nagel*, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Susan E. Dick
NOTARY PUBLIC

Commission expires:
October 29, 2012

Interim Corrective Measure Work Plan

Smokes Creek Environmental Dredging &
Floodway Restoration

*Former Bethlehem Steel Works
Lackawanna, New York*

May 2007
REVISED Sept 2008

0071-007-130

Prepared For:

Tecumseh Redevelopment, Inc.
Richfield, Ohio

Prepared By:



In Association With:



INTERIM CORRECTIVE MEASURE WORK PLAN

SMOKES CREEK ENVIRONMENTAL DREDGING & FLOODWAY RESTORATION

**FORMER BETHLEHEM STEEL WORKS
LACKAWANNA, NEW YORK**

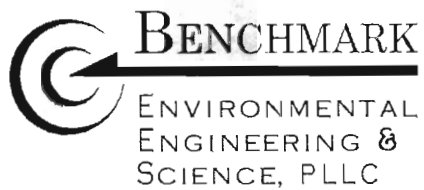
June 2007
REVISED Sept 2008

0071-007-130

Prepared for:

Tecumseh Redevelopment, Inc.

Prepared by:



In association with:



REMEDIAL INVESTIGATION WORK PLAN
Phase I Business Park Area

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REMEDIAL INVESTIGATION WORK PLAN

Phase I Business Park Area

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1.0 INTRODUCTION

1.1 Site Background and Property Ownership

Tecumseh Redevelopment, Inc. ("Tecumseh") owns approximately 1,100 acres of property located along the west side of NYS Route 5, Lackawanna, New York (the "Tecumseh Property" or "Tecumseh Site") comprising a significant portion of the former Bethlehem Steel Corporation – Lackawanna Facility (the "former BSC Property" or "former BSC Site") that was the subject of an Administrative Order on Consent (the "AOC") entered into between Bethlehem Steel Corporation ("BSC") and the United States Environmental Protection Agency (USEPA), dated August 13, 1990. Site regional and vicinity maps are provided in Figures 1 and 2, respectively.

Subsequent to the entry of the Order, BSC filed for protection under the United States Bankruptcy Code and Tecumseh acquired the Tecumseh Property pursuant to an Asset Purchase Agreement that was approved by the United States Bankruptcy Court for the Southern District of New York on April 23, 2003 (Case No. 01-15288 (Jointly Administered)). Tecumseh thereafter assumed the related cleanup obligations at the Tecumseh Property. Tecumseh, however, is not the owner of several portions of the former BSC Lackawanna Facility that were included in the scope of the Order, including the manufacturing operations formerly owned by BSC on the east side of NYS Route 5 (now owned in part by Mittal Steel USA, Tecumseh's parent corporation, and in part by Republic Engineered Products, Inc.) and approximately 232 acres of property on the west side of NYS Route 5 that were sold by BSC prior to the April 23, 2003 asset purchase agreement and which, upon information and belief, are currently owned by Gateway Trade Center, Inc. and Genesee & Wyoming, Inc. Figure 3 shows the former Bethlehem Steel Corporation-Lackawanna Facility and current ownership of subparcels.

1.2 RCRA Corrective Measure Program Status

Under terms of the 1990 USEPA Administrative Order on Consent (Docket No. II RCRA-90-3008(h)-0201), Bethlehem Steel agreed to perform a RCRA Facility Investigation (RFI) to identify the nature and extent of any release(s) of hazardous constituents from 104 Solid Waste Management Units (SWMUs) identified by USEPA on the property. The

potential impacts on water and sediment quality in six surface water bodies (watercourses) located on or adjacent to the former BSC-Lackawanna Facility were also to be addressed in the RFI. As the RFI Report was incomplete when Tecumseh acquired (most of) the former BSC-Lackawanna Facility in 2003, Tecumseh immediately initiated efforts to expeditiously complete the RFI. The Final RCRA Facilities Investigation Report submitted to USEPA in January 2005 recommended 38 SWMUs and three watercourses (i.e. Smokes Creek, Blasdell Creek, and the South Return Water Trench) for further evaluation with a Corrective Measures Study (CMS).

In a letter dated May 17, 2006, USEPA identified five additional SWMUs and two additional watercourses for further evaluation in the CMS. All of the other SWMUs identified by USEPA in the 1990 Order were determined by USEPA to require no further assessment as they do not pose a significant potential risk to human health or the environment. Later, in September 2006, USEPA deemed the provisions of the 1990 Order to be satisfied and Tecumseh's obligations under the Order terminated. Tecumseh is currently negotiating an Order on Consent with the New York State Department of Environmental Conservation to perform a RCRA Corrective Measures Study to define and evaluate alternative remedial (corrective) measures at each of the SWMUs and watercourses as recommended by the USEPA and further detailed in the CMS Order.

1.3 Smokes Creek Floodway

Smokes Creek flows east to west across the center of the Site and discharges into Lake Erie along the western property boundary. Within the Site, the Creek's average dimensions are approximately 100 feet wide (at the top of bank) by approximately 28 feet deep (from the top of bank) with vertical to 2:1 (horizontal: vertical) bank slopes. Local topography is fairly flat, resulting in a low hydraulic gradient and corresponding low velocity. Nominal discharge of the Creek averages 32 million gallons per day (MGD) at the Route 5 bridge. This flow is supplemented by Site non-point runoff, groundwater discharge and several MGD of point discharge from the Mittal Steel galvanizing mill non-contact cooling water (from Lake Erie) as well as effluent discharged from the Erie County Sewer District No. 6 wastewater treatment facility, all of which enters Smokes Creek downstream of Route 5.

As part of the U.S. Flood Control Act of 1960 (Public Law No. 86-645), the USACE in the 1960s undertook channel improvements in Smokes Creek from its outlet to Lake Erie across the entire nearly 1-mile lower reach of the Creek on the former Bethlehem Steel-Lackawanna (now Tecumseh) Property and further upstream to beyond the confluence of the North and South Branches in the City of Lackawanna. The lower 2,600 linear feet of the Smokes Creek flood improvements were constructed by Bethlehem Steel in accordance with its Land Patent Agreements with the Federal and State governments, as this lower 2,600 ft portion of Smoke's Creek and the adjacent lands were reclaimed from Lake Erie by placement of slag fill. Bethlehem Steel was also obligated by the Land Patent Agreements to operate and maintain the Smokes Creek flood channel along the lower 2,600 linear feet in accordance with an Operation and Maintenance Manual issued by the USACE in May 1972. However, little if any maintenance of the Creek was performed by Bethlehem since the steel plant closed over 20 years ago. Tecumseh, as successor and assign to Bethlehem Steel on this property, has effectively assumed the maintenance obligations for this portion of the Smokes Creek flood channel. The NYSDEC has responsibility to operate and maintain the balance of the Smokes Creek flood channel including approximately 2,600 linear feet on the former Bethlehem Steel property upstream of the Land Patent lands.

Sediment that has accumulated in the lower reach of Smokes Creek has recently been determined by the USACE to be reducing the hydraulic flood flow and contributing to the expansion of the 100-year flood plain in the City of Lackawanna First Ward. Creek soundings performed by the USACOE in 1991-1992 showed approximately 42,000 cubic yards of sediment accumulation in the lower reaches of the Creek. HEC-2 flood models performed by the USACOE has further determined that dredging the lower 2,600 foot reach of the Creek to restore its original design flow capacity would eliminate the 100-year floodplain from the Tecumseh property and most of the First Ward.

1.4 Interim Corrective Measure

Interim Corrective Measures (ICMs) are remedial measures that are undertaken at one or more SWMUs before or during performance of a Corrective Measures Study in order to control or mitigate the release of hazardous constituents into the environment and/or to reduce the potential for human or biological exposure. Generally, an ICM may be implemented to affect partial short-term remedies while more comprehensive corrective

measures are being evaluated or an ICM may be implemented as fast-tracked permanent remedies at high priority SWMUs. Under either circumstance the ICM is a valuable tool to “speed up” the remedial process when the need for remedial action and/or the remedy selection is readily apparent. Several such ICMs have been undertaken or are planned to be undertaken by Tecumseh at the Site.

Tecumseh has proposed this ICM to promptly dredge the lower approximately 2,600 feet reach of Smokes Creek (from the sheet pile outlet at Lake Erie upstream to the first bridge at Highway 9 on the Tecumseh Site) to restore Creek base design elevations and cross-sections thereby mitigating the expansion of the 100-year flood plain in the City of Lackawanna First Ward and fulfilling Tecumseh’s Creek maintenance obligations under the Land Patent Agreement. Much of the sediment to be dredged contains contaminants that are believed to have migrated from three SWMUs (i.e. the Acid Tar Pit SWMUs S-11 and S-22 and the Agitator Sludge SWMU S-24) located adjacent to the Creek (see Figure 4). Hence, in order to avoid recontamination of the Creek sediment after dredging, another separate ICM is proposed to excavate and consolidate the agitator sludge residuals into the Acid Tar Pits coupled with construction of a containment system (i.e. slurry wall and geosynthetic membrane cover system) around the Acid Tar Pits to mitigate the continued migration of contaminants to the Creek via groundwater discharge and surface water flow.

1.5 Purpose and Scope

This Work Plan delineates the proposed Smokes Creek ICM in sufficient detail to secure approval of the NYSDEC for implementation. This Work Plan is intended to be appended to and thus become an integral part of an Order on Consent between Tecumseh and the NYSDEC for implementation of the Smokes Creek ICM. A summary of previous surface water and sediment characterization data collected during the RFI is provided in Section 2.0. A description of the major design elements and proposed implementation methods for the Smokes Creek ICM is provided in Section 3.0. The overall project schedule, including the separate ICM Acid Tar Pits and Agitator Sludge SWMUs, is provided in Section 4.0.

2.0 SUMMARY OF PREVIOUS INVESTIGATIONS

Numerous surface water and sediment samples were collected from the lower reach of Smokes Creek and characterized in the RFI. Samples collected from Smokes Creek showed several VOCs (most notably benzene) detected in most surface water samples and two sediment samples at low concentrations. SVOCs and metals were also detected in the surface water and sediment at most sampling locations in Smokes Creek. Concentrations of SVOCs in Smokes Creek surface water samples were generally less than 1 ug/l, but ranged from 70 ug/kg to 190 mg/kg in the sediments. In general, the concentrations of most parameters detected in Smokes Creek surface water and sediment samples across the Site were comparable to the upstream or background samples, except for one sampling location immediately downstream from the ATPs that had significantly elevated SVOC concentrations.

3.0 PROPOSED INTERIM CORRECTIVE MEASURE

3.1 General

This proposed ICM for Smokes Creek entails dredging the lower approximately 2,600 linear feet of channel from the mouth at Lake Erie upstream to the first bridge (Site Highway #9), thus restoring the original design flood capacity of 5,200 cfs to this critical portion of the floodway. As the centerline and cross-section of this reach of the Creek has changed slightly since initial construction due to bank erosion, flood scour and sediment deposition, the proposed dredging and bank configuration will vary slightly from the original design while retaining the same 32-foot wide bottom width, same bottom elevation and slope (i.e. 1 ft. per 1,000 ft.), and same cross-sectional area of the floodway channel as the original design. Based upon the bathymetric survey performed by TurnKey in April 2007, approximately 40,000± cubic yards of sediment is planned for removal as part of this ICM. Disturbance to the Creek banks shall be minimal except in some depositional areas and transition areas (e.g. adjacent to the existing sheet piling section and/or the bridge). Figure 5 shows the existing and original (as designed) floodway channel in the lower reach of the Creek. Figure 6 shows the design profile of the Creek and typical (original design) cross-section.

3.2 Dredging Methods and Spoils Management

Sediment removal from below the water surface may be accomplished by hydraulic and/or mechanical means. Acceptable hydraulic dredging methods would include shallow-draft shrouded horizontal auger (e.g. "Mudcat"-type) machines that would pump the sediment slurry to either the USACOE Confined Dredge Spoil Disposal Facility (CDF No. 4) located along the northern Tecumseh property line (see Figure 4). The USACOE CDF No. 4 is currently utilized by the Corps for management of dredge spoils from the Buffalo River and Buffalo Harbor. CDF No. 4 is the preferred location for management of sediments removed from Smokes Creek, and authorization by the USACOE has been requested. No dewatering of hydraulically-dredged sediment would be required in conjunction with CDF No. 4 other than that naturally occurring within that facility.

Mechanical dredging of Creek sediment and creek bank grading and excavation would be accomplished by conventional and/or "long-stick" tracked excavators operating along the north and south Creek banks. Dewatering of mechanically dredged sediment would be accomplished by spreading excavated sediment to drain by gravity and evaporation within temporary dewatering areas established at least ten feet away from the top of bank and enclosed by silt fencing to contain the sediment from flowing back into the Creek. After all free flowing liquid has drained or evaporated from the sediment in the dewatering areas and the moisture content has been reduced sufficiently to allow the dewatered sediment to be loaded into trucks and transported to the CDF No. 4.

Dredging will begin at Site Highway #9 bridge and progress downstream to the mouth at Lake Erie to avoid redeposition of impacted sediment in dredged portions of the Creek. Silt curtains will be deployed immediately downstream of active dredging activities in the Creek to mitigate migration of impacted sediment from the work areas. No dredging will be performed during April or May when walleye and other fish typically migrate into the Creek from the Lake for spawning. Dredging activities will also be temporarily suspended and silt curtains temporarily removed during high flow events during and following significant storm events.

3.2.1 Documentation

A post-dredging bathymetric survey stamped by a professional engineer or licensed land surveyor will be performed to document that design elevations have been achieved along the entire lower reach of the Creek.

3.3 Post-Dredging Sediment Sampling

Post-dredging sediment sampling will document the chemical composition of shallow bottom sediments in Smokes Creek after completion of the planned ICM dredging to original floodway design depths. This data will be used to gauge the effectiveness of the ICM and to form a basis to determine if further corrective measures in the Smokes Creek water body need be evaluated in the planned RCRA Corrective Measures Study (CMS) to be performed by Tecumseh.

The post-dredging sediment samples in the lower reach of the Creek will be collected from the same ten (10) locations that were utilized for the characterization sediment sampling program in June 2007 (please refer to Figure 7). At each location (designated PDL Sed-1 through PDL Sed-10) a barge-mounted drill rig will be employed with 2-inch split spoons to collect samples of the upper 6-inches of dense sediment below the creek design bottom elevation. The same compositing of each adjacent pair of sediment cores will be performed for semi-volatile organic and metals analyses and as was recently done with the pre-dredging sediment characterization for consistency when comparing the data. Volatile organic analyses will be performed on discrete samples from each sampling location to avoid handling losses.

The NYSDEC will be notified several days in advance of the sampling so a Department representative may observe sampling activities.

3.3.1 Sample Analyses

Each of the sediment composite samples will be analyzed by USEPA Method SW 846 for:

- TCL Semi- Volatile Organic Compounds
- RCRA Metals
- PCBs
- Cyanide
- Total Organic Carbon

Each of the discrete sediment samples will be analyzed for:

- TCL Volatile Organic Compounds

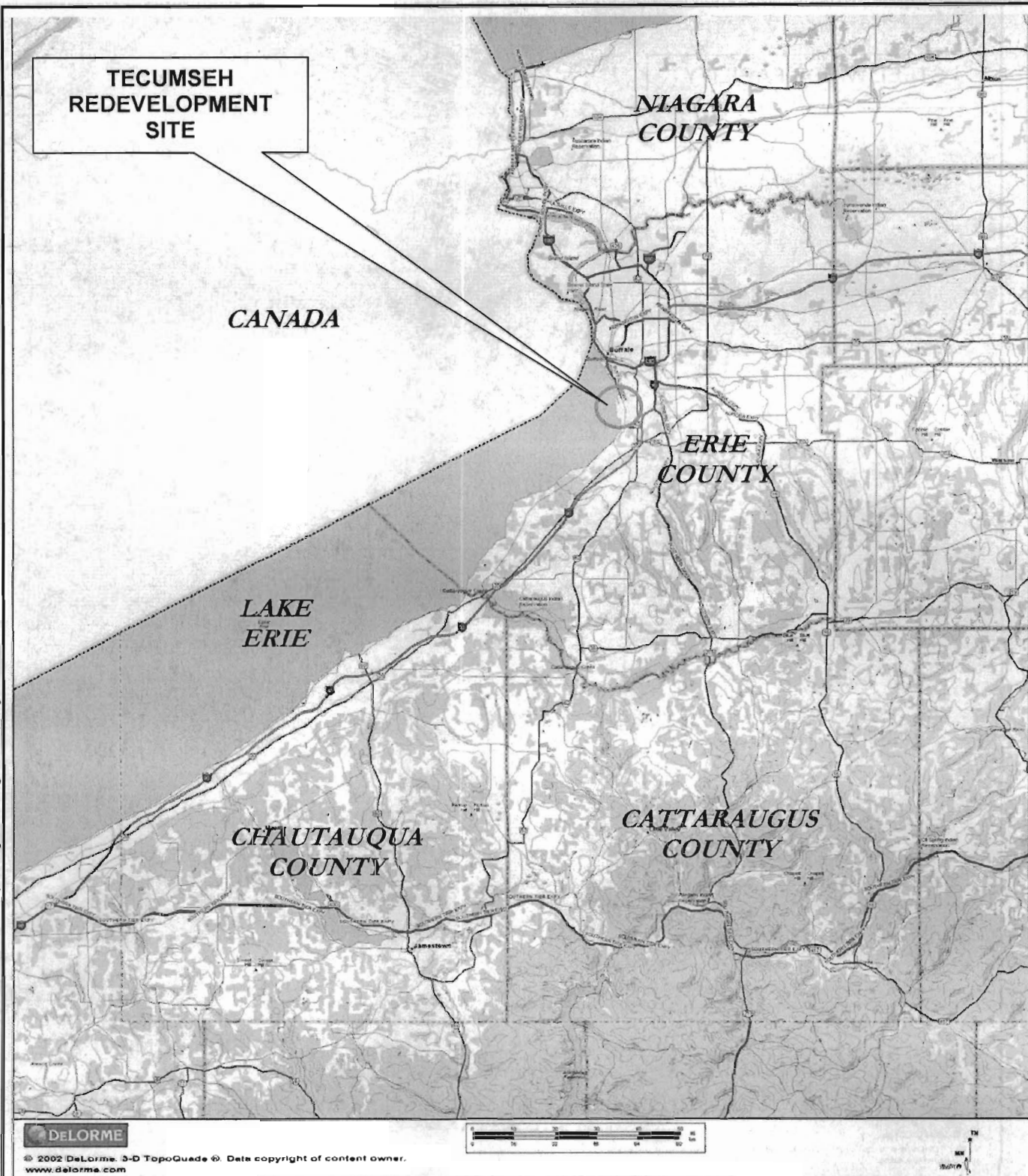
One blind duplicate analysis and a matrix spike/matrix spike duplicate will also be performed for quality control purposes. Analytical results will be tabulated in spreadsheet format and submitted to the NYSDEC in letter report format.

4.0 PROJECT SCHEDULE

The proposed Smokes Creek ICM project is scheduled to begin in October following receipt of the dredging permit from the USACOE and following execution of the ICM Order on Consent by NYSDEC and Tecumseh. The ICM is scheduled for completion by December 31, 2008.

FIGURES

FIGURE 1



726 EXCHANGE STREET
SUITE 624
BUFFALO, NEW YORK 14210
(716) 856-835

PROJECT NO.: 0071-007--130
DATE: MAY 2007
DRAFTED BY: BCH

REGIONAL MAP
INTERIM CORRECTIVE MEASURE WORK PLAN
TECUMSEH LACKAWANNA SITE
LACKAWANNA, NEW YORK

PREPARED FOR
TECUMSEH REDEVELOPMENT, INC.

FILEPATH\\ncad\\turnkey\\tecumseh redevelopment\\smokes creek\\ten order & work plan\\figure 1\\regional map.dwg

FIGURE 2



726 EXCHANGE STREET
SUITE 624
BUFFALO, NEW YORK 14210
(716) 858-835

PROJECT NO.: 0071-007--130

DATE: MAY 2007

DRAFTED BY: BCH

SITE LOCATION AND VICINITY MAP

INTERIM CORRECTIVE MEASURE WORK PLAN

TECUMSEH LACKAWANNA SITE
LACKAWANNA, NEW YORK

PREPARED FOR
TECUMSEH REDEVELOPMENT, INC.

DATE: MAY 2007
DRAFTED BY: BOH

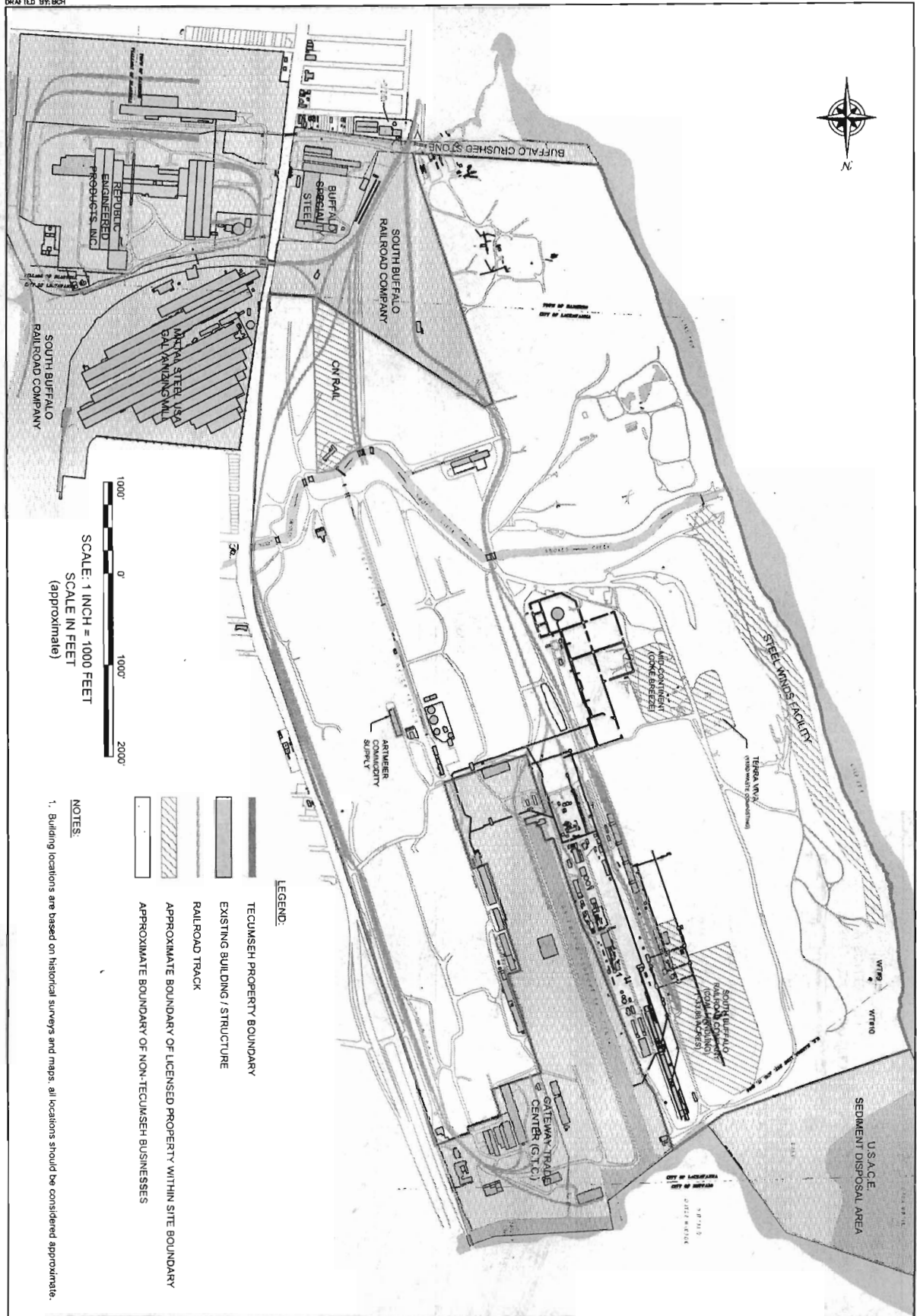


FIGURE 3

LICENSED & NON-TECUMSEH PARCELS
INTERIM CORRECTIVE MEASURE WORK PLAN

TECUMSEH LACKAWANNA SITE
LACKAWANNA, NEW YORK

PREPARED FOR
TECUMSEH REDEVELOPMENT, INC.



726 EXCHANGE STREET
SUITE 824
BUFFALO, NEW YORK 14210
(716) 856-0635

JOB NO.: 0071-007-130

DATE: MAY 2007
DRAFTED BY: BCH

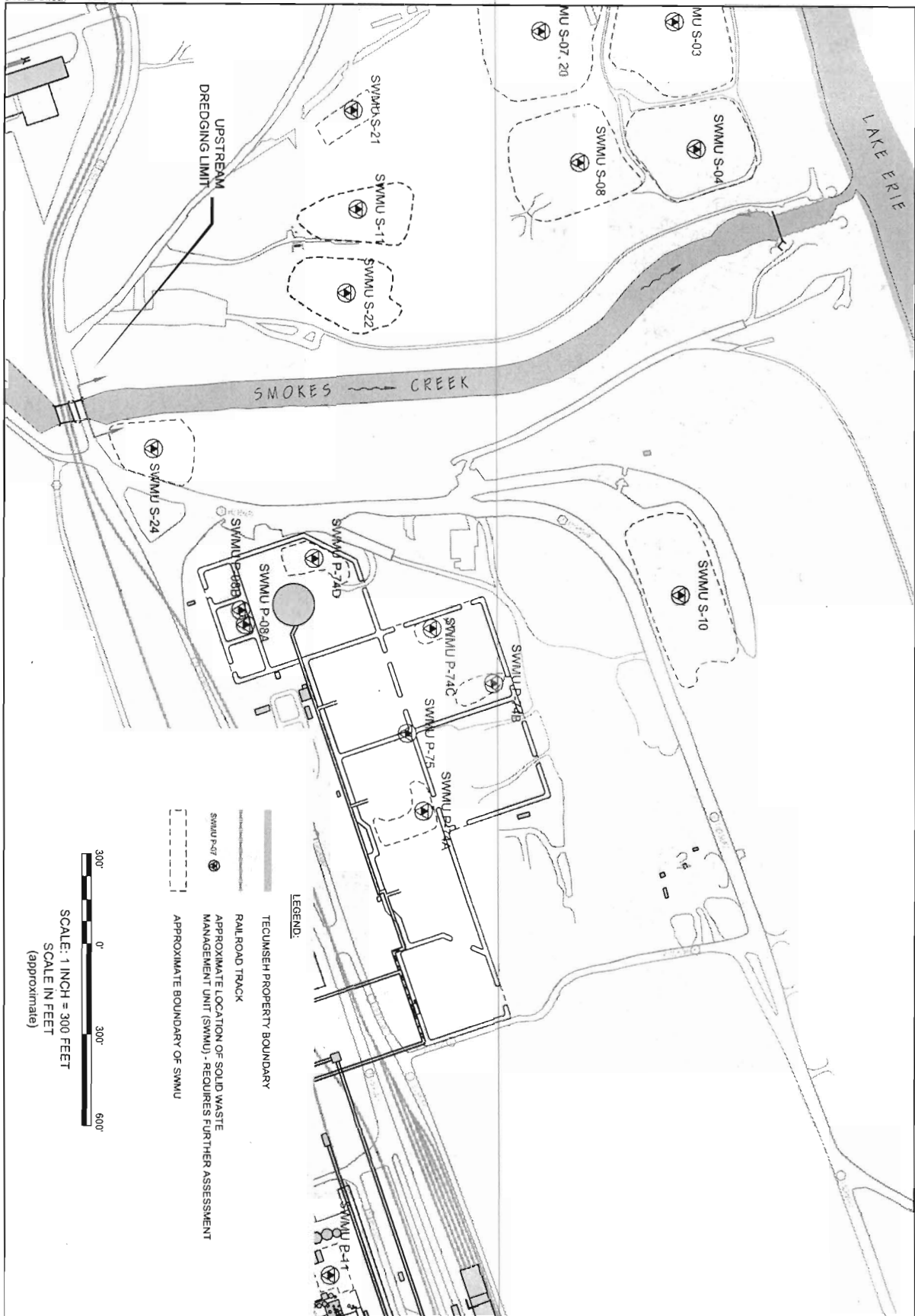


FIGURE 4

SMOKES CREEK DREDGING LIMITS & ADJACENT SWMUs
INTERIM CORRECTIVE MEASURE WORK PLAN

TECUMSEH LACKAWANNA SITE
LACKAWANNA, NEW YORK

PREPARED FOR
TECUMSEH REDEVELOPMENT, INC.



726 EXCHANGE STREET
SUITE 624
BUFFALO, NEW YORK 14210
(716) 856-0636

JOB NO.: 0071-007-130

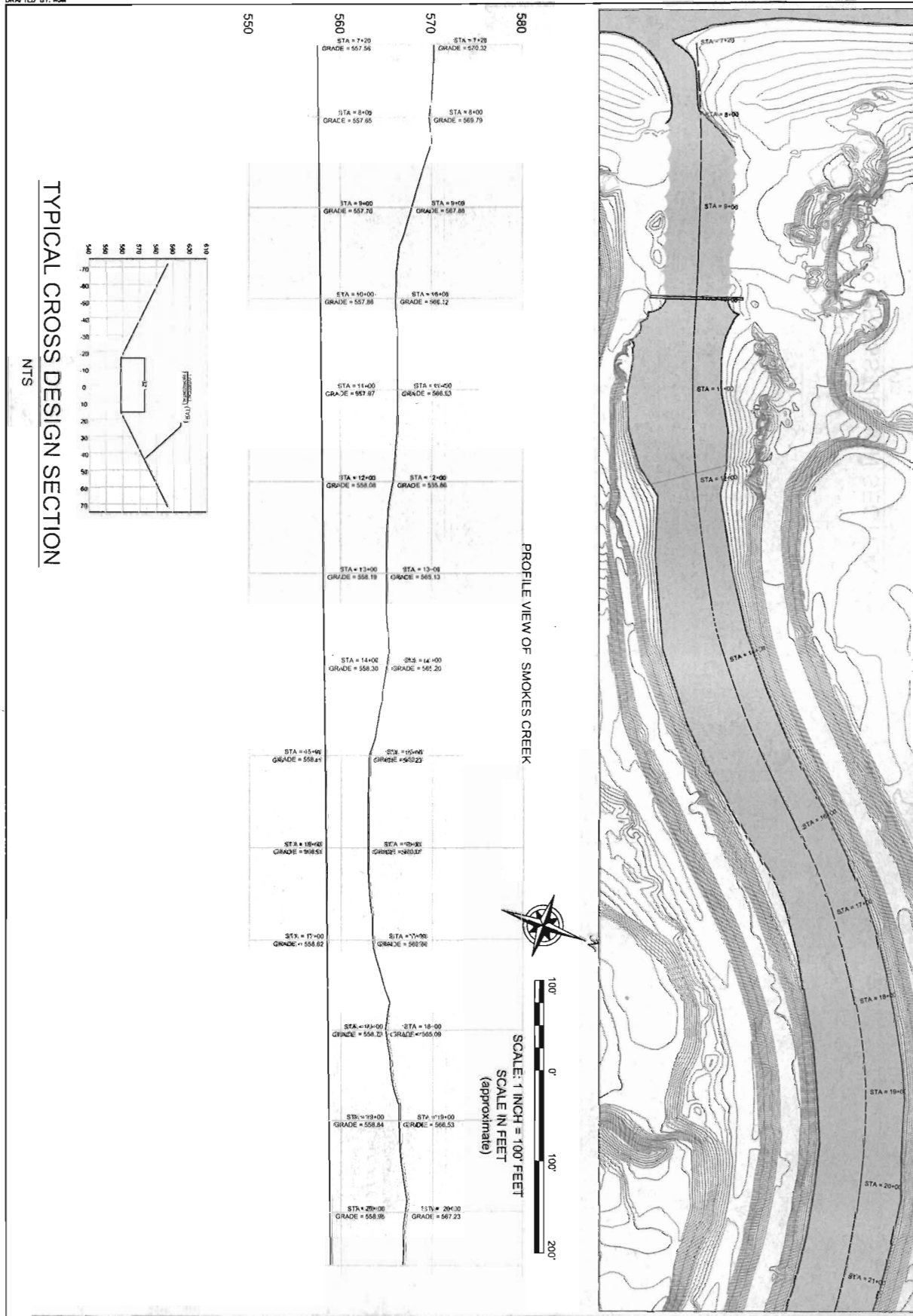


FIGURE 5

**PRELIMINARY DREDGING ALIGNMENT & PROFILE
(STA. 7 + 20 THROUGH 20 + 57.69)**
INTERIM CORRECTIVE MEASURE WORK PLAN

TECUMSEH LACKAWANNA SITE
LACKAWANNA, NEW YORK

PREPARED FOR
TECUMSEH REDEVELOPMENT, INC.



726 EXCHANGE STREET
SUITE 624
BUFFALO, NEW YORK 14210
(716) 866-0635

JOB NO.: 0071-007-130

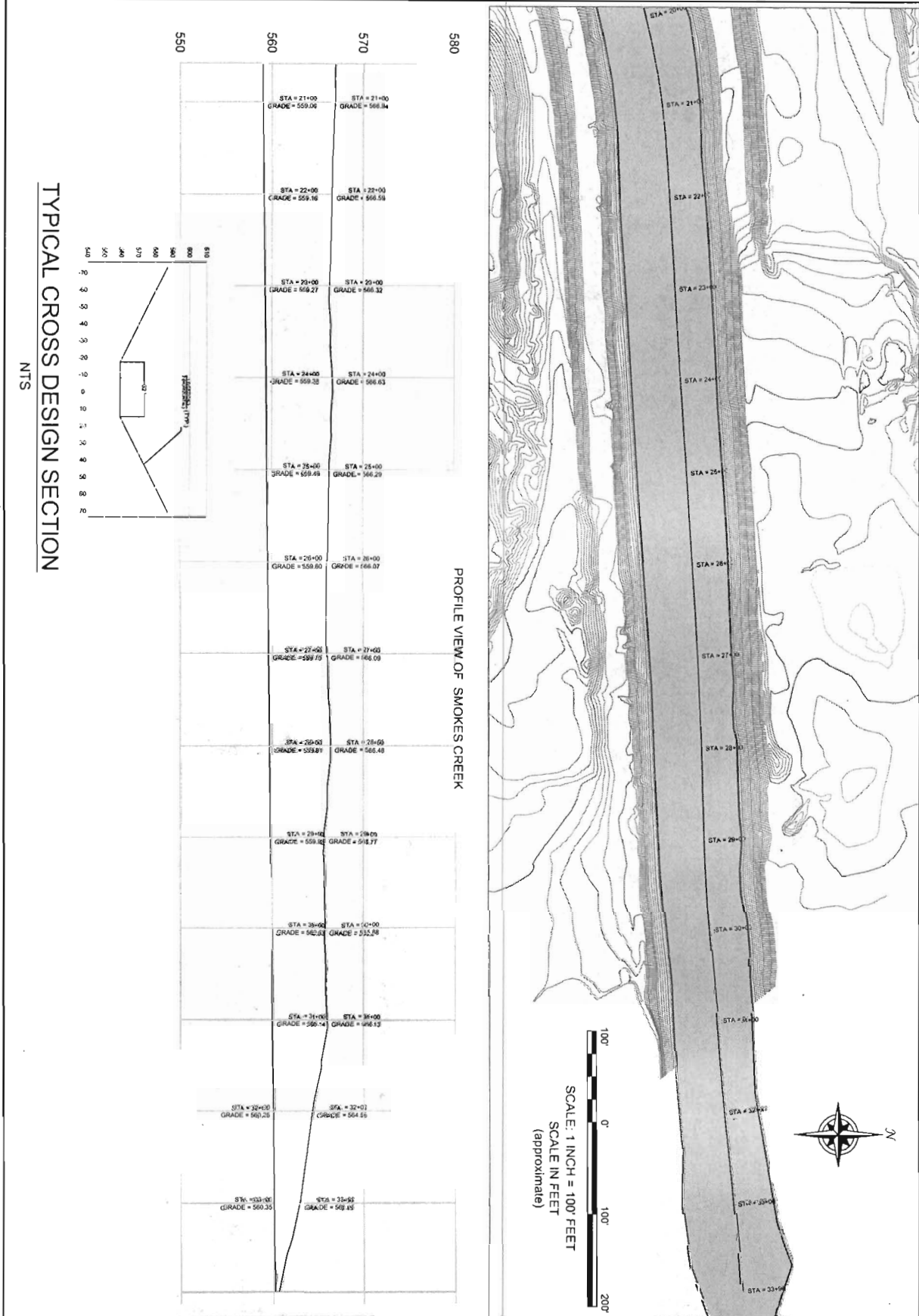


FIGURE 6

PRELIMINARY DREDGING ALIGNMENT & PROFILE
(STA. 20 + 57.69 THROUGH 33 + 95.67)

INTERIM CORRECTIVE MEASURE WORK PLAN

TECUMSEH LACKAWANNA SITE
LACKAWANNA, NEW YORK

PREPARED FOR
TECUMSEH REDEVELOPMENT, INC.



726 EXCHANGE STREET
SUITE 624
BUFFALO, NEW YORK 14210
(716) 866-0836

JOB NO.: 0071-007-130

DATE: NOVEMBER 2007
DRAFTED BY: BCI

F:\CD\Turnkey\Turnkey\ArcelorMittal\Smokes Creek\CD\Draw & Note\PlanFigure 7, post-Dredge Smokes Creek Sediment Sampling, 10/23/2008 3:02:52 PM

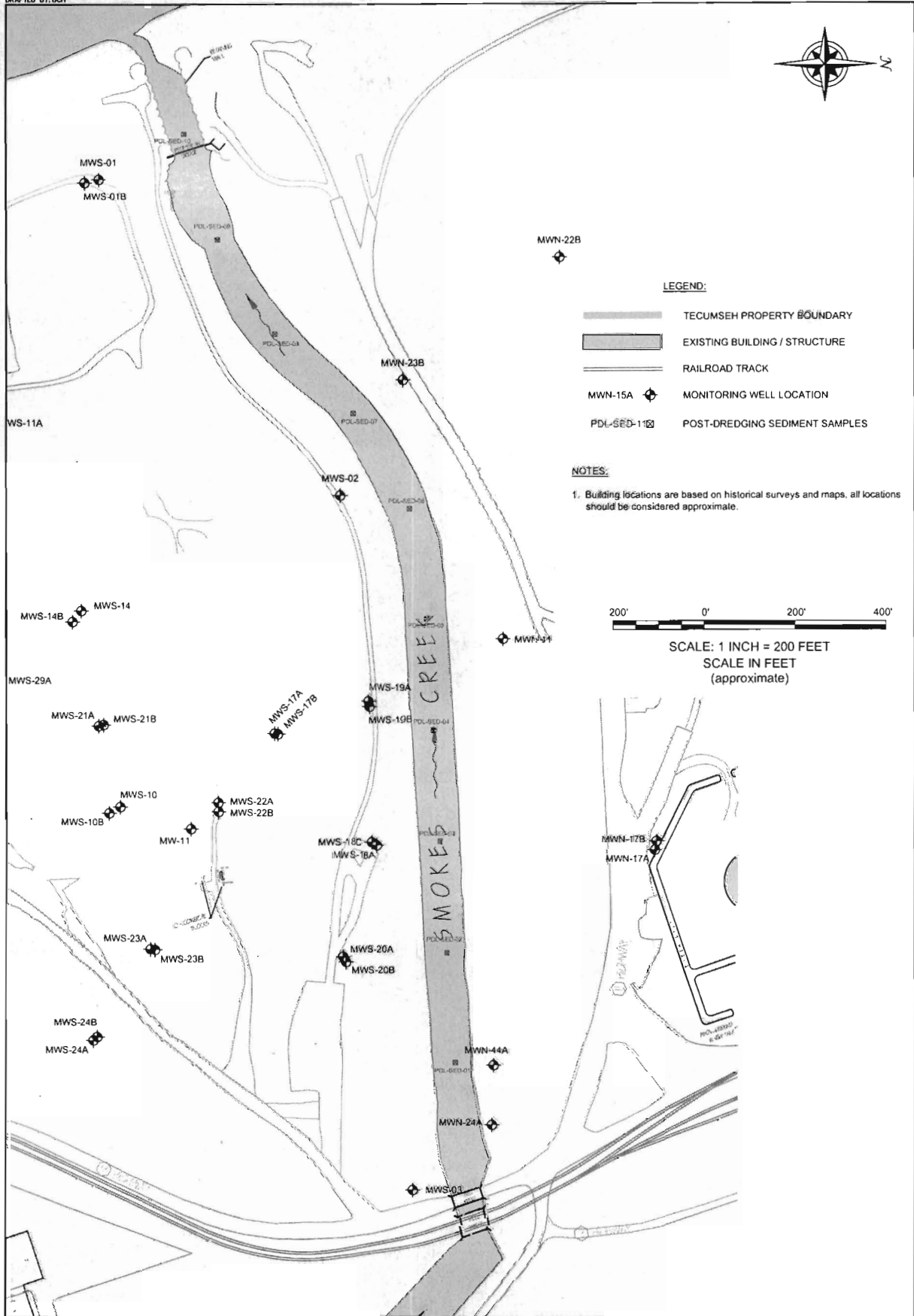


FIGURE 7

SMOKES CREEK (LOWER REACH) SITE PLAN
INTERIM CORRECTIVE MEASURES WORK PLAN
ARCELORMITTAL TECUMSEH REDEVELOPMENT LACKAWANNA SITE
LACKAWANNA, NEW YORK

PREPARED FOR
ARCELORMITTAL TECUMSEH REDEVELOPMENT, INC.



726 EXCHANGE STREET
SUITE 824
BUFFALO, NEW YORK 14210
(716) 856-0835

JOB NO.: 0071-007-130