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September 10, 2012

Via Email and Regular Mail

Mathew Hubicki, Project Manager
Remedial Bureau C, Brownfield Cleanup Program
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 11th Floor
Albany, New York 12233-7020

Re: **Brownfield Cleanup Program Application**
Former Miron Pre-Cast Site
1561 Ulster Avenue,
Town of Ulster, New York

Dear Mr. Hubicki:

This Firm represents the Brownfield Cleanup Program ("BCP") applicant, MHMG-KM Kingston, LLC (hereinafter, "Applicant") with respect to the Former Miron Pre-Cast Brownfield Site located at 1561 Ulster Avenue, Ulster, New York (the "Site").[1] The Applicant submitted its revised BCP Application package to the New York Department of Environmental Conservation ("NYSDEC") on July 23, 2012. In response to recent discussions with you and George Heitzman, the Applicant has requested that I submit, on its behalf, the attached Supplement to the Brownfield Cleanup Program Application prepared by its consultant C.T. Male Associates (hereinafter the "Application Supplement"). I also attach a September 7, 2012 letter which I received from Jeff Kane, Director of Development for the Applicant (the "Kane Letter").[2]

In submitting this Application Supplement and the Kane Letter, we seek to underscore that this Site is eligible for entry into the BCP. As succinctly stated by the New York Court of Appeals in The Matter of Lighthouse Pointe v. Department of Environmental Conservation, 14 N.Y.3d 161 (2010), "real property qualifies as a 'brownfield site' for purposes of acceptance into the BCP so long as the presence or potential presence of a contaminant within its boundaries makes redevelopment or reuse more complex, involved or difficult in some way." The Site plainly meets the Court of Appeals' description of an eligible brownfield site.

[1] As counsel to the Applicant on this project, we request that you please amend the BCP Application to reflect the change in attorney name.

[2] Please note that the Applicant is the single purpose development entity of Kirchhoff Properties, LLC, created for the purchase and development of the Former Miron Pre-Cast BCP Site.

Recall that the Site *has had a long history of heavy industrial use:* it was used as both a concrete pre-cast manufacturing facility and asphalt batch plant, beginning in the 1950s and 1960s and continuing for several decades. Portions of the Site were also used for gasoline storage and vehicle repair, as well as for storage of trucks. As the BCP Application and this Application Supplement reveal, such long term heavy industrial uses at the Site created numerous areas of known environmental contamination and other wide-spread nuisance conditions at the Site (i.e., the presence of tentatively identified compounds at elevated levels throughout the Site, stained subsurface soils exhibiting strong petroleum odors, as well as sheens on groundwater in test pit excavations). Indeed, of equal concern is the high probability of discovering presently unknown environmental impacts in areas of the Site which have not yet been investigated (e.g., underlying the building slabs and spoils/debris piles).

Moreover, the recent discovery of the environmental conditions described in the BCP Application and this Application Supplement already have and will continue to complicate the Applicant's efforts to redevelop the Site. As more fully explained in the Kane Letter, the newly discovered on-site contamination will substantially increase the Applicant's development costs. The Applicant has estimated that the cost to address presently known environmental conditions will be in excess of $460,000. Remedial costs associated with the likely discovery of additional contamination will significantly increase this value.

Of greater concern to the Applicant is the impact these newly discovered conditions will have on its ability to obtain financing for its development project. As stated in the attached letter, the Applicant's lender has expressed concerns regarding the increased risks associated with the known and unknown contamination at the Site. As a result, the lender will only finance the development under loan conditions which substantially increase the Applicant's financing costs.

Finally, as noted in the Kane Letter, the recent discovery of the environmental impacts at the Site a) has already resulted in a five month delay in commencement of the development project, b) will create increased construction costs as project start is pushed back, c) has generated tenant unease over additional delays and over the potential cancellation of the development project, d) has created lender and tenant unease regarding locating on contaminated property, and e) will cause difficulty in attracting additional tenants to the site due to the on-site contamination.

As the above makes clear, the contamination already uncovered and that anticipated to be discovered in the future has made the Applicant's redevelopment of the Site "more complex, involved and difficult" in numerous ways. In closing, we trust that the information previously provided and transmitted to you today establishes that the Former Miron Pre-Cast Site should be granted entry into the BCP.

Please contact me if you have any questions regarding the attached or wish to further discuss this issues raised in this letter.

Very truly yours,

Gary S. Bowitch

Encls.

cc:

MHMG-KM Kingston, LLC
Mike Ryan, NYSDEC (via email and regular mail)
George Heitzman, NYSDEC (via email and regular mail)
James McIver, C.T. Male Associates, PC

KANE LETTER

KIRCHHOFF COMPANIES

September 7, 2012

Gary S. Bowitch, Esq.
Bowitch & Coffey, LLC
17 Elk Street
Albany, NY 12207

re: Former Miron Precast Site
Town of Ulster, New York

Dear Mr. Bowitch:

I provide the following background to help you understand the impact that site contamination has had on the proposed redevelopment of the above-referenced site.

- Kirchhoff Properties, LLC, through our single-purpose entity, MHMG-KM Kingston, LLC (referred to collectively herein as KP), put the former Miron Precast site under a purchase contract on August 11, 2011.
- In October, 2011, KP began a geotechnical test-pitting program on the site to get a better handle on the subsurface conditions. As shown in the photos submitted separately, this effort quickly revealed the presence of stained soils, solid waste, an oil sheen on the groundwater, and strong petroleum odors. *This gave great pause to our development team.*
- In response, KP began to research the financial impacts the newly discovered on-site contamination would have on the site development process. We have reached the following conclusions:
    - The presence of the contaminated soils uncovered during the test-pitting program will result in substantially increased development costs.
    - Contaminated soils will need to be removed from the site at a cost of $50 per ton, estimated at a total of up to $300,000.
    - Removal of these soils will require the purchase of additional fill materials (for a site which is already a fill site), estimated at a cost of $40 per CY, for an additional $160,000.
    - Remediation of the anticipated discovery of additional contamination at the site (expected to be uncovered upon removal of building slabs and debris piles) will likely add significantly to the development costs.
- KP discussed the findings with our longtime lending partner, M&T Bank, to discuss the impact of our findings on the lending process.

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- M&T Bank expressed concern about the presence of the contamination, and the potential of additional contamination in areas of the site which have yet to be evaluated (e.g., under building slabs and debris piles).
- M&T's position is that due to the increased risks associated with both the known and unknown contamination, the finance deal will therefore ultimately require one or more of the following to cover lender risk:
  - Increased owner equity contributions
  - Additional contingency requirements
  - Loan rate increase of 50 to 75 basis points

It is clear that the presence of the contamination will have a direct, negative impact on our ability to obtain financing under acceptable conditions.

Moreover, it is clear that the presence of the contamination has negatively impacted the project timeline. KP obtained Site Plan Approval for the Medical Office Building development project more than 5 months ago. Nonetheless, we have not yet broken ground, pending our investigation into the impact the presence of contamination will have on the cost of financing. That has put the project further at risk due to:

- Escalation of construction costs due to project delay (estimated by our Construction Manager, Kirchhoff Consigli Construction Management, at ¼% to ½% monthly, or 3% to 6% annually).
- Tenant unease at the delay, and the potential that the development project could be cancelled. This has led to tenant renegotiation conversations.
- Tenant and lender unease with the locating at property with on-site contamination.
- Delay in landing additional tenants for the site due to the on-site contamination issues.

In short, the additional on-site contamination found at the former Miron Precast Site has had definitive financial impacts and added immeasurably to the complexity of putting leasing and financing deals together on the site.

Please contact me should you have any questions or comments regarding this information.

Sincerely,

Jeff Kane

cc: Joseph T. Kirchhoff
Kyle Kirchhoff

SUPPLEMENT TO
BCP APPLICATION

September 2012

Supplement to the Brownfield Cleanup Program Application
Former Miron Pre-Cast Site
1561 Ulster Avenue
Town of Ulster
Ulster County, New York

Prepared for:

CHIEF, SITE CONTROL SECTION
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION
625 Broadway
Albany, New York 12233

Prepared by:

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C.T. Male Project No: 12.2160

FORMER MIRON PRE-CAST SITE
SUPPLEMENT TO THE BROWNFIELD CLEANUP PROGRAM APPLICATION

TABLE OF CONTENTS

1.0 INTRODUCTION

MHMG - KM KINGSTON LLC, (hereinafter, "the Applicant"), the future owner of the Former Miron Pre-Cast Site ("Site") has submitted a Brownfield Cleanup Program Application to the New York State Department of Environmental Conservation's ("NYSDEC"). This document serves to supplement the original Application for the purpose of further demonstrating that the Site meets the regulatory criteria for eligibility into the Brownfield Cleanup Program, including those specified in 6 NYCRR Part 375-3.3 (a)(1)(i) and (ii). The Site description, project description, adjacent land use and description/discussion of the local and regional geology and hydrogeology are covered in some detail in the BCP Application and Remedial Investigation ("RI") report previously provided to the NYSDEC; so are not discussed in this submission. This document provides a brief history of the heavy industrial uses at the Site, and, further, describes how the recent investigations of the Site have found environmental impacts which will complicate the redevelopment of the Site.

2.0 SITE HISTORY

As explained more fully in the BCP Application, the Site was used as a concrete pre-cast manufacturing facility and asphalt batch plant, beginning in the 1950s and 1960s. Portions of the Site had been used for storage of trucks and there was a gas station/service station formerly located on the northern edge of the Site.

The Site has been abandoned for more than a decade and has experienced several arson fires and significant vandalism to the existing structures. In addition, the site was poorly maintained by the operator while in service and there is a significant amount of debris surrounding the former operational areas. There have been releases of petroleum and other potentially hazardous materials in the processing areas of the former plant. There are several abandoned structures that were formerly part of the pre-cast construction and asphalt batch operations. These structures include the pad from a former automotive garage, an office building, the pre-cast building, the asphalt batch plant and storage bins. The Site also contains numerous stockpiled and scattered concrete structures such as catch basins, dry wells and septic tanks from past operations.

The Applicant engaged in appropriate due diligence before moving forward with its plan to purchase the property. A Phase I Environmental Site Assessment (ESA) of the property was performed by the Applicant ("Phase I Environmental Site Assessment of the Former Miron Pre-Cast Facility, Town of Ulster, Ulster County New York"), prepared by PVE Sheffler, dated October 21, 2011. The 2011 PVE Sheffler Phase I ESA is included in Exhibit 2 of the RI Report, which is contained within the BCP Application as Attachment B, Environmental Reports. Limited subsurface testing was included at that time. The Phase I ESA identified a release of petroleum products that affected soil and groundwater in the southeastern portion of the site where a petroleum tanks was formerly located. Details of that spill were contained in a report entitled "Spill Investigation, Miron Pre-Cast Property, 1561 Ulster Avenue, Town of Ulster, Ulster County", prepared by The Chazen Companies, dated December 23, 2009 (2009 Chazen Spill Investigation), which is included in Exhibit 3 of the RI Report. At the Applicant's request, the Applicant's consultant generated a report entitled "Remediation Work Plan of the Pre-Cast Building, Former Miron Site, 1561 Ulster Avenue, Kingston, New York", prepared by PVE Sheffler, dated December 21, 2011 ("2011 PVE Remediation Work Plan"). This work plan can be found in Exhibit 3 of the RI Report.

The 2011 PVE Remediation Work Plan was submitted to the NYSDEC on or about December 21, 2011 by PVE Sheffler, consultant for the Applicant, for review and approval. However, based on the Applicant's agreement with the current owner of the Site, the owner had the option to implement the spill remediation plan at its own expense rather than give a purchase price credit for the value of the cleanup to the Applicant. The current owner, Neighbor Realty II LLC, retained The Chazen Companies to implement the 2011 PVE Sheffler Remediation Work Plan. The current owner has been engaged in the ongoing cleanup of the previously identified spill and recently obtained closure of Spill No. 03-12832 from the NYSDEC.

As part of the Applicant's efforts to codify its costs associated with the redevelopment of this Site, it undertook a significant geotechnical effort to define the nature of the soils in the proposed construction areas. This assessment was done to evaluate potential construction issues (e.g., buried concrete, unsuitable soils, etc.). However, during this geotechnical investigative effort, the Applicant encountered several areas of the site where there was obvious soil and groundwater contamination at levels that warranted concern. Although no chemical analysis was performed during the Applicant's

geotechnical assessment, the Applicant's construction manager noted petroleum odors and sheens in several test pit locations. The Applicant prepared a photographic summary depicting subsurface contamination and spoils/debris areas encountered during its geotechnical assessment. The Applicant's photographic summary is attached hereto as Attachment A and includes photographs depicting sheen on water, oil stained soil, oil filled drums, drum carcasses, etc. Further, recent groundwater sampling results obtained as part of the Applicant's RI indicate that groundwater is still contaminated at levels exceeding the applicable groundwater standards.

Without question, the Site's past heavy industrial uses (for both concrete and asphalt batch plants) as well as its historical use for automotive repair and gasoline storage has left the Site in a severely blighted condition with, among other things, soils exhibiting "nuisance" factors as identified in the NYSDEC's document CP-51, Soil Cleanup Guidance. These existing environmental and nuisance conditions represent a significant impediment to construction activities and will, therefore, complicate redevelopment of the Site.

3.0 ISSUE OF CONCERN

During the course of the RI conducted for this property, there were several instances where obvious contamination was observed yet the laboratory results did not confirm these contaminated conditions. In some instances, the soils were noticeably stained and/or sheen was observed on groundwater. Physical observations suggested that the samples were substantially contaminated, yet the lab results were relatively "clean". Given that the laboratory results didn't correspond to expectations based on field observations, the samples were re-analyze for tentatively identified compounds (TICs).

TICs were identified in virtually every sample tested. The TICs were primarily identified as substituted hydrocarbons consistent with weathered gasoline, diesel or fuel oil products (e.g., substituted benzene, substituted naphthalene, etc.). The lab findings were consistent with the physical evidence observed at the Site. Petroleum odors were observed at those locations where staining was noted and TICs were identified in higher concentrations where the highest photo-ionization detector (PID) readings were observed.

4.0 NUISANCE VALUES AND AREAS OF CONCERN

It is noteworthy that there was a corresponding relationship between elevated PID readings, TICs and the SCGs that were exceeded. Although there is no regulatory standard applicable to TICs, the presence of TICs at elevated levels at the Site, is indicative of numerous historic releases of petroleum and/or other hazardous materials at the Site.

Also of concern are the areas of the Site that were not assessed due to the presence of substantial debris piles or dilapidated buildings where entry was not possible. For example, there were floor slabs with evidence of floor drains that could not be evaluated due to safety concerns. Some of these inaccessible areas where data gaps are present are immediately adjacent to areas of the Site where potential source regions were identified. Thus, even though no sampling data was obtained in these areas, the historic, heavy industrial use of the Site, and physical conditions (e.g., groundwater flow direction, building conditions) strongly suggest that environmental impacts will be observed in these areas once construction and related excavation activity begins.

Areas where data gaps exist and where the Site is impacted by petroleum products that either exceed SCGs or are present at nuisance levels are depicted in Figure 7, Areas of Concern (AOCs). A brief description of each of the AOCs follows:

AOC-1: This region surrounds the former gas station/service station located on the northern edge of the site. Slightly elevated PID readings above background levels were encountered in this region, but the issue of concern is the potential presence of floor drains on the remnant slab. No data were collected beneath the slab and based on the age of operation, chlorinated solvents and other petroleum-based degreasing agents may have been used at this facility. This region is identified as an AOC despite the lack of data in this region because the past operations indicate that this area is likely to contain environmental impacts that will have to be addressed before any redevelopment can take place in this area of the Site. Detailed characterization of the soils in AOC-1 would occur during remediation of the Site.

AOC-2: This AOC is situated surrounding the former scale house area. There was a dry well identified in this region and, even though the initial lab data were

non-detect, VOC TICs were identified upon reanalysis. PID readings obtained from soils taken from the saturated zone exhibited slighted elevated PID readings when compared to background. No data could be collected from beneath the footprint of the building. This AOC is identified because the evidence of TICs in groundwater adjacent to the drywell make it likely that it will contain environmental impacts that will have to be addressed before any redevelopment can take place in this area of the Site.

AOC-3: This AOC encompasses a large area surrounding the former concrete forms processing area and the ramp adjacent to the asphalt batch plant. The processing plant is not accessible due to the deteriorated condition of the building. It is likely, given the past industrial operations here, that there are floor drains in this building. For example, former operating processes included spraying the forms with petroleum products to prevent the concrete from sticking to the wooden forms. Petroleum impacted soil and groundwater were observed adjacent to this building to the south and west. These impacts are likely the result of the historic heavy industrial operations that occurred in this building.

There is a substantial volume of concrete block and other debris stored in the storage bays adjacent to the asphalt batch plant. Drum carcasses, paint cans and other containers were observed inside of these storage bays. Drums containing what appear to be waste oil were identified on at least one area of the site. Other liquid filled containers were identified in this area. A monitoring well located within this AOC indicated the presence of TICs in groundwater.

AOC-4: AOC-4 encompasses the region surrounding the loading area for the asphalt batch plant. Visibly stained, odorous soils were encountered in several test pits installed in this region. Soils encountered in this region during construction activity are likely to require management as a petroleum-contaminated soil. They would certainly be odorous and could not be disposed without proper care. The soils in the area should be considered to be impacted at "Nuisance" levels, such that they cannot be managed as "clean" but will need to be mitigated or otherwise specially managed.

AOC-5: Samples obtained from test pits and wells installed in AOC-5 exceeded the applicable SCGs. A portion of this area includes the tank that was closed as part of the DEC's Spill No. 03-12832. Wells installed as part of that spill closure activity were sampled as part of the RI conducted in support of the BCP Application. One of the wells, MW-A, exceeded a number of standards for gasoline-range petroleum-based compounds, as well as Aldrin, a commonly used pesticide. The two other wells installed as part of this closure activity were impacted with TICs at substantially elevated levels. Test pits installed in this region exhibited evidence of staining and odor. PID readings were elevated in the test pits and soil borings installed in this area and were typically an order of magnitude over background levels. Indeed, there may be two separate source areas in this AOC.

In addition, the impacted groundwater is likely to be migrating off-site based on groundwater flow which is expected to be westward.

AOC-6 (not shown on Figure 7): It is clear from the overall conditions at the Site, that the former operator of the Site was remiss when it came to Site maintenance. There are drums, paint cans and other environmental sensitive items in the spoil piles that dot the Site. There are concerns that the spoil piles could contain wastes that require special handling. Past maintenance practices were evidently lacking, so there are concerns that unknown materials may be located elsewhere on the Site and could be encountered during Site remediation. Much of the Site was inaccessible during the previous investigations, resulting in data gaps which raise substantial concerns regarding unknown but suspected areas of contamination based on the known historic industrial practices at this Site.

5.0 SUMMARY

Soil and groundwater are impacted at levels that exceed the SCGs in several areas of the Site and impacted groundwater may be migrating off-site. There is also substantial subjective evidence of nuisance impacts observed in many areas of the Site. Large portions of the Site that cannot be presently evaluated until the buildings are demolished, spoil piles are removed and the subsurface made accessible, are likely to be contaminated due to the known historic industrial practices at this Site. Moreover, the presence of TICs in saturated soils and in groundwater indicate that the environmental impacts are potentially widespread in the southern half of the Site. Prior to any construction activity at the Site, these conditions will have to be addressed (i.e., remediated), clearly complicating the redevelopment of the Site.

ATTACHMENT A

APPLICANT GENERATED PHOTOGRAPHIC SUMMARY

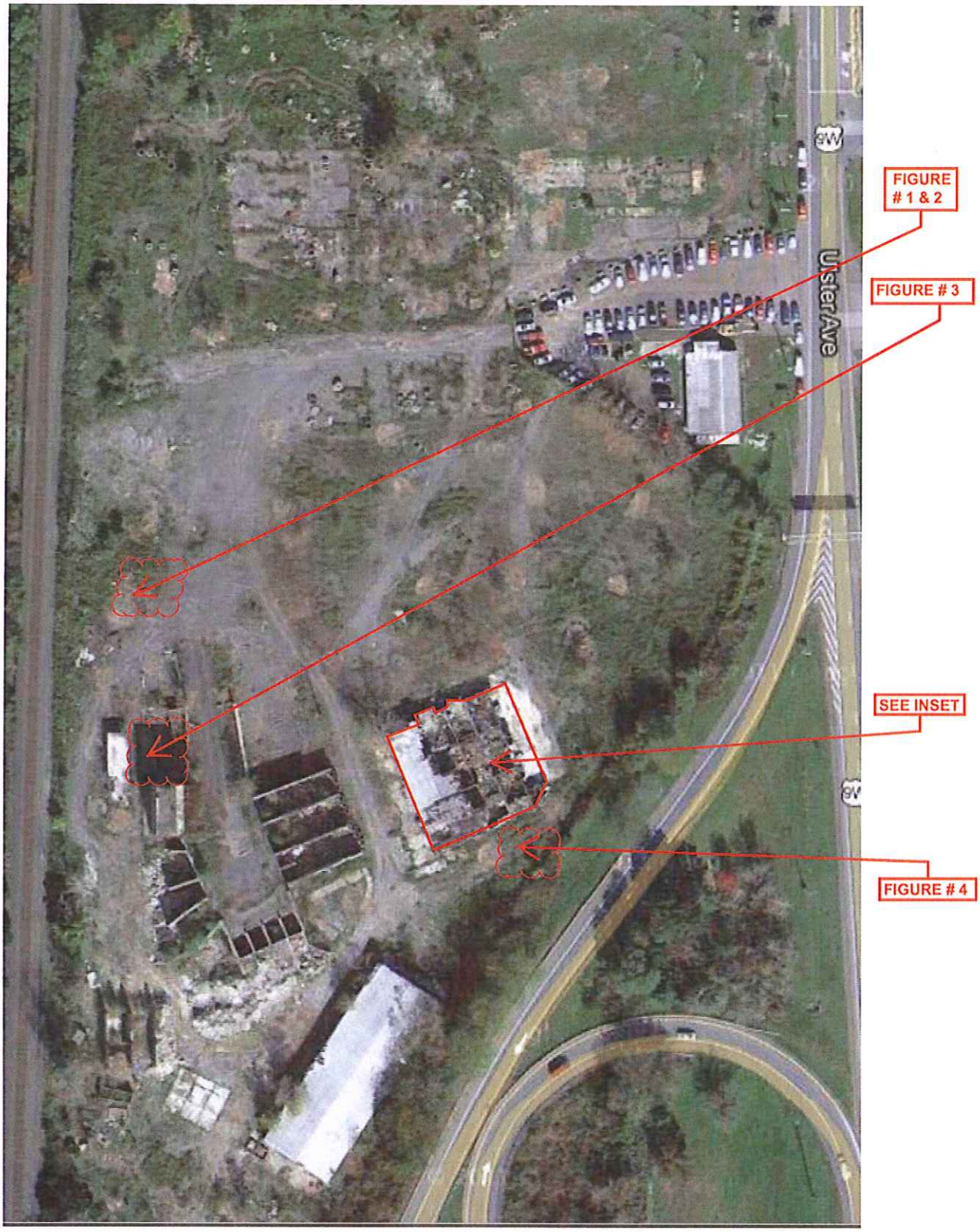


FIGURE # 1 & 2
FIGURE # 3
SEE INSET
FIGURE # 4
Ulster Ave

FIGURE # 1 - Stained, odor-producing soils

FIGURE # 2 - Stained, odor-producing soils excavated during exploratory geotechnical digging.

FIGURE # 3 - Stained, odor-producing layer of soil uncovered during geotechnical excavation.


INSET
FIGURE # RM.1
FIGURE # RM.2
FIGURE # RM.3
FIGURE # RM.4
FIGURE # RM.5 & 6

FIGURE # RM.1

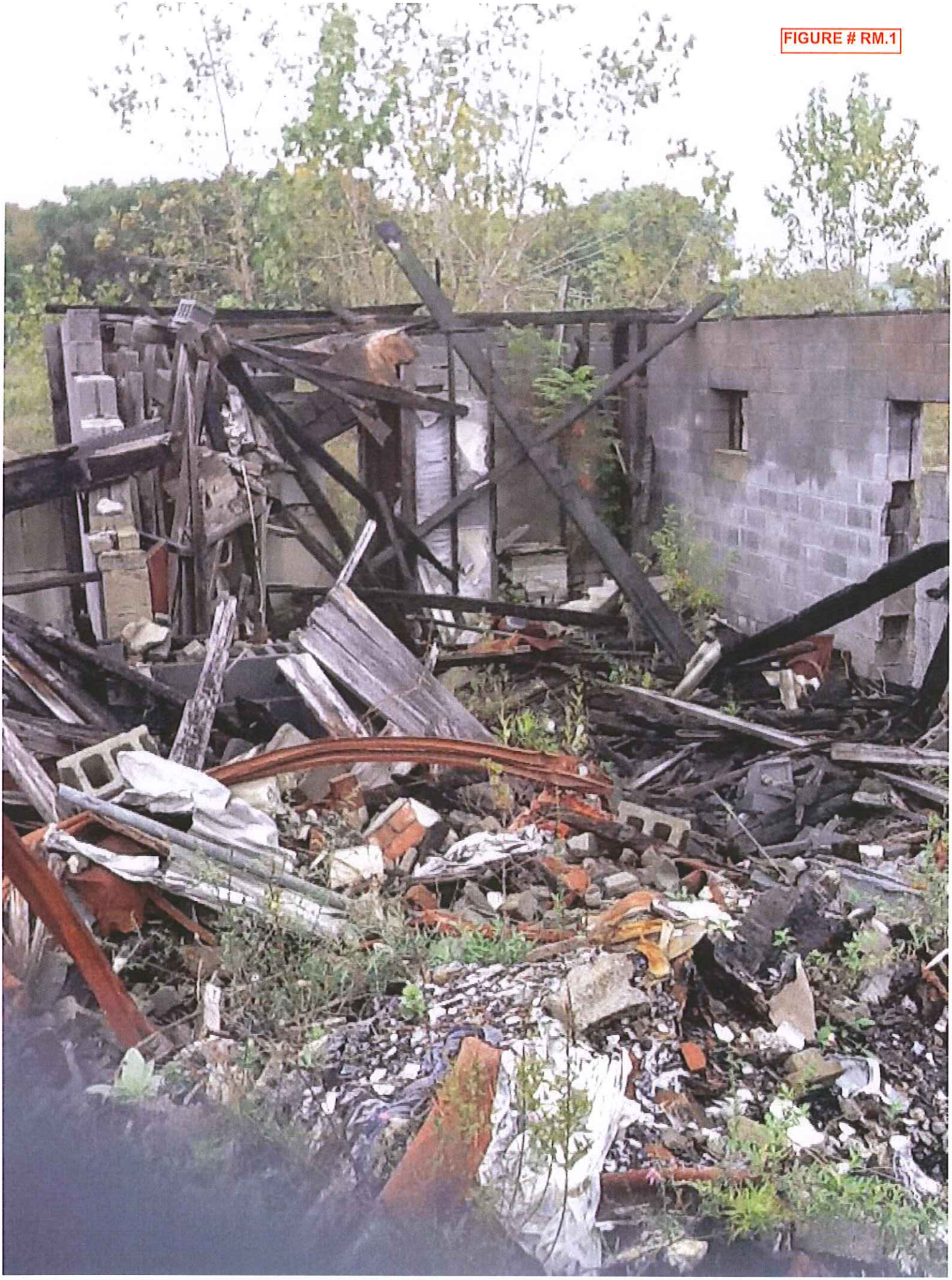


FIGURE # RM.2


FIGURE # RM.3


FIGURE # RM.4

FIGURE # RM.5

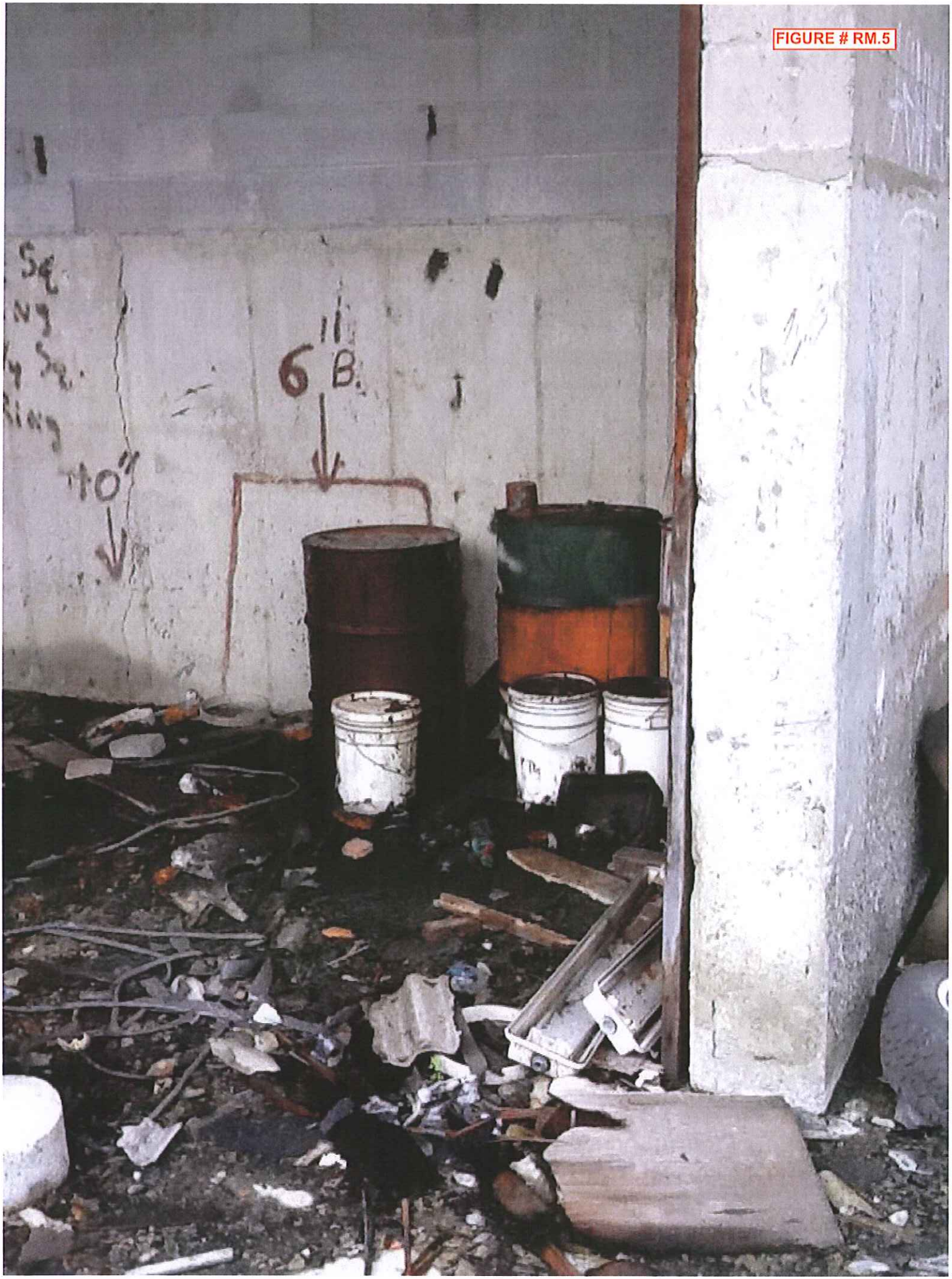
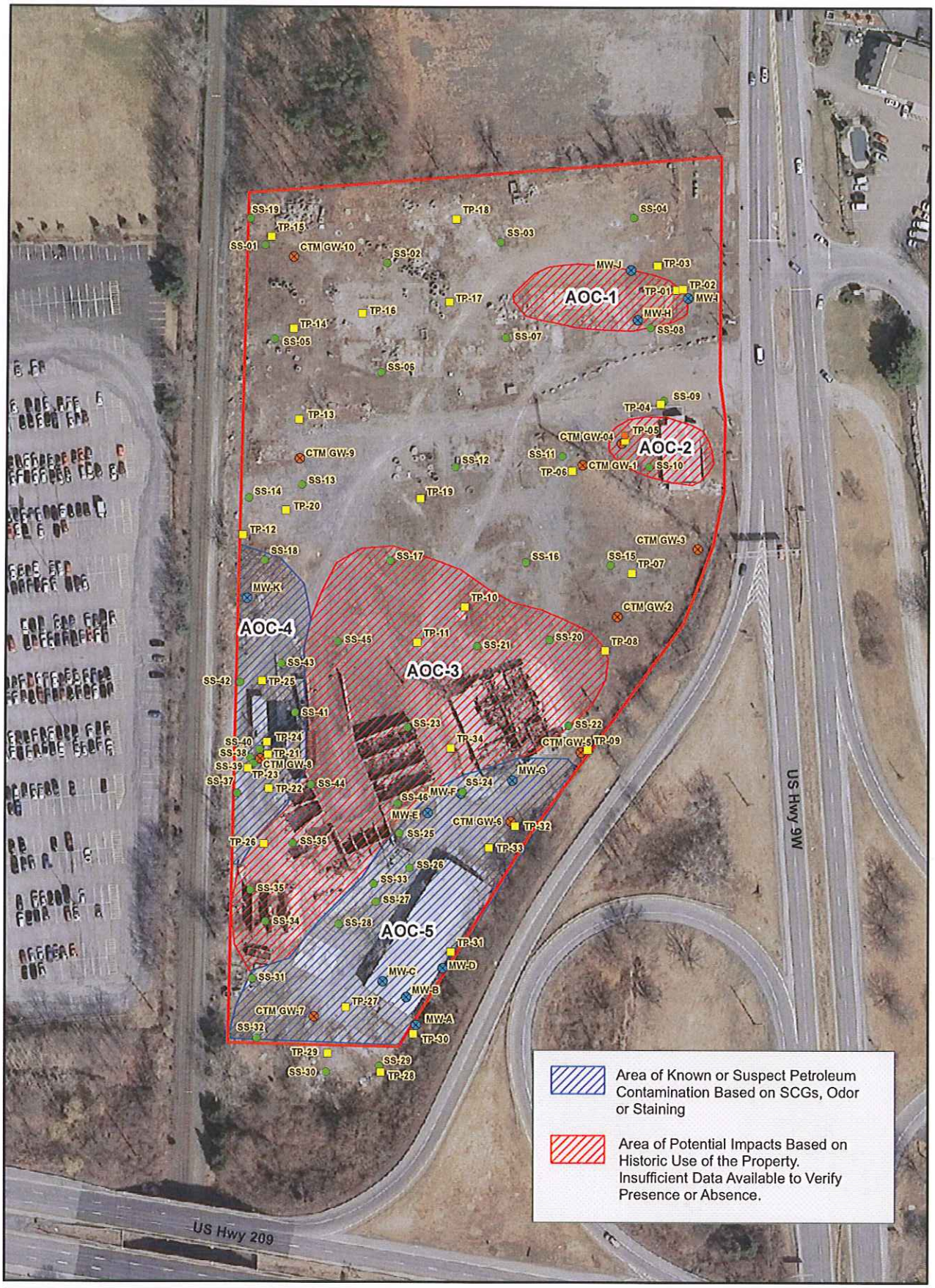



FIGURE # RM.6

FIGURE 7



N
W E
S

0 50 100 Feet

1 inch = 100 feet

Legend

- Existing Monitoring Well
- Monitoring Well Installed April 2012
- Surface Soil Samples
- Test Pits
- Drywell
- Approximate Site Boundary

Map Notes: 1. Orthoimagery flown spring 2009, 1-foot resolution, natural color.
2. The locations and features depicted on this map are approximate and do not represent a field survey.

Project Number: 12.2160
Data Source: NYSGIS Clearinghouse
Projection: NY State Plane East, NAD 83 (ft.)
Date: September 4, 2012
File: Fig7_AreasConcern.mxd
GIS: CH

Figure 7 – Areas of Concern

Town of Ulster — **Ulster County, New York**

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