

FORMER BUFFALO TERMINAL  
ERIE COUNTY  
BUFFALO, NEW YORK

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# SITE MANAGEMENT PLAN FOR OPERABLE UNIT 1

NYSDEC Site Number: C915201

**Prepared for:**

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**Revisions to Final Approved Site Management Plan:**

Revision No.	Date Submitted	Summary of Revision	NYSDEC Approval Date


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DECEMBER 2017

## CERTIFICATION STATEMENT

I, Michael J. Benoit, certify that I am currently a New York State-registered professional engineer as in defined in 6 NYCRR Part 375 and that this Site Management Plan was prepared in accordance with all applicable statutes and regulations and in substantial conformance with the DER *Technical Guidance for Site Investigation and Remediation* (DER-10).



  
Michael J. Benoit

December 21, 2017  
Date

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## **List of Acronyms**

Arcadis	Arcadis of New York, Inc.
BCA	Brownfield Cleanup Agreement
BCP	Brownfield Cleanup Program
bls	below land surface
CFR	Code of Federal Regulations
DER	Division of Environmental Remediation
ECL	Environmental Conservation Law
ExxonMobil	ExxonMobil Oil Corporation
IC	institutional control
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYCRR	New York Codes, Rules and Regulations
OU-1	Operable Unit 1
PRR	Periodic Review Report
Roux	Roux Associates, Inc.
SCO	Soil Cleanup Objective
SMP	Site Management Plan

## EXECUTIVE SUMMARY

The following provides a brief summary of the institutional controls implemented for the Site, as well as the inspections and reporting activities required by this Site Management Plan:

Site Identification:                      Site No. C915201  
Operable Unit 1 of the Former Buffalo Terminal  
522 Elk Street and 542 Elk Street  
Buffalo, New York

Institutional Controls:	1. The Site properties may be used for commercial or industrial enterprises allowable under current zoning.
	2. The use of groundwater underlying the Site properties is prohibited without necessary water quality treatment as determined by the New York State Department of Health or the Erie County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the New York State Department of Environmental Conservation.
	3. Data and information pertinent to site management must be reported at the frequency and in a manner as defined in this Site Management Plan.
	4. All future activities that will disturb remaining contaminated material must be conducted in accordance with this Site Management Plan.
	5. Access to the Site properties must be provided to agents, employees, or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by the Environmental Easement.
	6. Vegetable gardens and farming on the Site are prohibited.
Inspections:	Frequency:
Site-Wide Inspections	Annually and within 5 days of an emergency event with the potential to affect remaining contamination

Site Identification:                      Site No. C915201  
Operable Unit 1 of the Former Buffalo Terminal  
522 Elk Street and 542 Elk Street  
Buffalo, New York

Reporting:	Frequency:
Inspections	Annually
Certification/PRR	Every 5 years
Final Construction report	Upon completion of soil management/excavation activities

Further descriptions of the above requirements are provided in detail in the subsequent sections of this Site Management Plan.

## **1.0 INTRODUCTION**

### **1.1 General**

This Site Management Plan (SMP) is a required element of the remedial program for Operable Unit 1 (OU-1) of the former Buffalo Terminal located in the City of Buffalo, Erie County, New York (hereinafter referred to as the “Site”). The Site is currently in the New York State Brownfield Cleanup Program (BCP; identified as Site No. C915201), which is administered by the New York State Department of Environmental Conservation (NYSDEC).

ExxonMobil Oil Corporation (ExxonMobil) entered into a Brownfield Cleanup Agreement (BCA; Index No. B9-0706-05-10), effective April 3, 2006, with the NYSDEC to remediate the Site and other portions of the former Buffalo Terminal, which (at that time) were collectively identified as BCP Site No. C915201. Effective September 12, 2017, the boundaries of BCP Site No. C915201, which formerly comprised five operable units, were redefined through a BCA amendment to include OU-1 only. The remedial programs for the remaining operable units of the former Buffalo Terminal are now addressed under four separate BCAs (corresponding to Operable Unit 2 East, Operable Unit 2 West, Operable Unit 3, and Operable Unit 4) and a Stipulation (Operable Unit 5). Figures 1 and 2 of this SMP show the location and operable unit boundaries, respectively, of the former Buffalo Terminal. The boundaries of the Site (OU-1) are shown on Figure 3 and are more fully described in the metes and bounds descriptions that are part of the Environmental Easement provided in Appendix A.

After completion of the remedial work, some contamination remains at the Site, which is hereafter referred to as “remaining contamination”. Institutional controls (ICs) have been incorporated into the Site remedy to control exposure to remaining contamination to ensure protection of public health and the environment. An Environmental Easement granted to the NYSDEC, and recorded with the Erie County Clerk, requires compliance with this SMP and all ICs placed on the Site.

This SMP was prepared to manage remaining contamination at the Site until the Environmental Easement is extinguished in accordance with Article 71, Title 36 of the

Environmental Conservation Law (ECL). This SMP has been approved by the NYSDEC, and compliance with this plan is required by the grantor of the Environmental Easement and the grantor's successors and assigns. This SMP may only be revised with the approval of the NYSDEC.

It is important to note that:

- This SMP details the Site-specific implementation procedures that are required by the Environmental Easement. Failure to properly implement the SMP is a violation of the Environmental Easement, which is grounds for revocation of the Certificate of Completion.
- Failure to comply with this SMP is also a violation of ECL, Title 6, Part 375 of the New York Codes, Rules, and Regulations (6 NYCRR Part 375), and the BCA, and thereby subject to applicable penalties.

All reports associated with the Site can be viewed by contacting the NYSDEC or its successor agency managing environmental issues in New York State. A list of contacts for persons involved with the Site is provided in Appendix B of this SMP.

This SMP was prepared by Arcadis of New York, Inc. (Arcadis), on behalf of ExxonMobil, in accordance with the requirements of the NYSDEC's *Technical Guidance for Site Investigation and Remediation* (DER-10; NYSDEC 2010), and the guidelines provided by NYSDEC. This SMP addresses the means for implementing the ICs that are required by the Environmental Easement for the Site.

## **1.2 Revisions**

Revisions to this SMP will be proposed in writing to the NYSDEC's project manager. Revisions will be necessary upon, but not limited to, a post-remedial removal of contaminated soil, or other significant change to the Site conditions. In accordance with the Environmental Easement for the Site, the NYSDEC will provide a notice of any approved changes to the SMP, and append these notices to the SMP that is retained in its files.

## **1.3 Notifications**

Notifications will be submitted by the property owner to the NYSDEC project manager, as needed, in accordance with DER-10 for the following reasons:

- Written 60-day advance notice of any proposed changes in Site use that are required under the terms of the BCA, 6 NYCRR Part 375, or ECL.
- Seven-day advance notice of any field activity associated with the remedial program.
- Written 15-day advance notice of any proposed ground-intrusive activity pursuant to the Excavation Work Plan, which is provided in Appendix C of this SMP.

Any change in the ownership of the Site or the responsibility for implementing this SMP will include the following notifications:

- At least 60 days prior to the change, the NYSDEC project manager will be notified in writing of the proposed change. This will include a certification that the prospective purchaser has been provided with a copy of the BCA, and all approved work plans and reports, including this SMP.
- Within 15 days after the transfer of all or part of the Site, the new owner's name, contact representative, and contact information will be confirmed in writing to the NYSDEC project manager.

Contact information for the NYSDEC project manager and other Site-related contacts is provided in Appendix B. The list of Site-related contacts will be updated as necessary to provide accurate contact information.

## **2.0 SUMMARY OF PREVIOUS REMEDIAL INVESTIGATIONS AND REMEDIAL ACTIONS**

### **2.1 Site Location and Description**

The Site is generally located on the north side of Elk Street at the intersection of Elk Street and Winona Street in the City of Buffalo, Erie County, New York (Figure 1). The Site comprises approximately 1.76 acres and two properties, which are identified as Block 1, Lot 10.1 (522 Elk Street; commonly referred to as “Parcel No. 4”) and Block 1, Lot 27.1 (542 Elk Street; commonly referred to as “Parcel No. 5”) on Section 123.09 of the City of Buffalo Tax Map (Figure 3). Parcel No. 4 is generally bounded by a privately-owned property (tax parcel 123.09-1-2.1) to the north and west, Elk Street to the south, and Winona Street to the east. Parcel No. 5 is generally bounded by privately-owned properties to the north, Elk Street to the south, Bradford Street to the east, and Winona Street to the west. The boundaries of the OU-1 properties are more fully described in Schedules A and B of the Environmental Easement (Appendix A). As of the issuance date of this SMP, both properties are currently vacant and owned by ExxonMobil.

### **2.2 Physical Setting**

#### 2.2.1 Land Use

The Site is zoned M1 (light industrial district) and is currently vacant. The area immediately surrounding the Site includes a mix of commercial and industrial properties, including (to the south of the Site) the active petroleum distribution terminal currently owned and operated by Buckeye Terminals, LLC.

#### 2.2.2 Geology

The former Buffalo Terminal is located within the Erie-Ontario Lowland physiographic region of the Interior Plains Division. In general, the region is underlain by Silurian and Devonian age interbedded shales, siltstones, sandstones, limestones, and dolomites, dipping approximately 0.50 degrees to the south.

According to data from the well and soil boring logs from previous investigations, three unconsolidated deposits exist at the Site. The first is a fill layer that consists of black

cinders, silt, gravel, sand, slag, brick, coal, and wood. The second unit consists of alluvial deposits of silts, silts and clays, sands, and sands and gravel. The third unit is a gray to brown glacio-lacustrine clay. Based upon the boring log for ESL-8/ESL-W1, which was drilled to a depth of 16 feet below land surface (bls), the fill layer was approximately 2 feet thick and was underlain by a layer of silt and clay from 2 to 4 feet bls and clay from 4 to 16 feet bls. Based upon the boring logs for ESL-13 through ESL-26, which were drilled to depths of up to 4 feet bls, fill thickness ranged from 1 foot to 4 feet. Fill was underlain by silts, sands, and gravel intermixed with clay.

The monitoring wells and soil borings installed in August 2006 to depths up to 13 feet bls indicate that topsoil/fill ranged in thickness from 0.5 foot to 2 feet and is underlain by a gray to brown silty clay (MW-OU1-1, MW-OU1-2, and SB-OU1-1 through SB-OU1-3) ranging in thickness from zero to 10.5 feet or gray to brown clay (MW-OU1-3) approximately 3.5 feet thick. At MW-OU1-3, the gray to brown clay was underlain by 5.5 feet of silty clay and finally by 1.5 feet of gravel and sand from 9 to 10.5 feet bls. Bedrock may have been encountered at 10.5 feet bls at MW-OU1-3, where refusal occurred and dark limestone with white crystals was present in the drill cuttings.

### 2.2.3 Hydrogeology

The water table was encountered at approximately five feet bls at temporary well ESL-8/ESL-W1 during its installation. No additional water level measurements were recorded at this well. This temporary well was abandoned by removing the screen and casing, and grouting the hole following the completion of the site facility investigation (Remedial Engineering, PC and Roux Associates, Inc. [Roux] 2007a).

The water table was encountered at approximately five feet bls at MW-OU1-1, at between 7.5 and nine feet bls at MW-OU1-2, and between 7 and 8 feet bls at MW-OU1-3. The water table elevations on OU-1 range from 577 to 579 feet above mean sea level and suggest a hydraulic gradient toward the east. However, based upon the direct observation of the lithology and the limited yield of the wells on OU-1, it is clear that the clay layer beneath OU-1 is not a significant water bearing formation. MW-OU1-1 produced only 5 gallons of water before it was bailed dry and MW-OU1-2 and MW-OU1-3 each produced only 1 gallon before they were bailed dry. Recharge in all of these wells was extremely



slow, with MW-OU1-2 and MW-OU1-3 requiring sampling over three work days to accumulate sufficient water to collect the necessary groundwater sample volume. Attempting to draw meaningful conclusions regarding flow direction beneath OU-1 based on the available water level data from these wells would be questionable.

As described in prior reports, groundwater flow beneath the Site is generally expected to be south toward the Buffalo River. The water table elevations measured in three wells located on the south side of Elk Street (B-1MW, MW-34 and MW-35) range from 584 to 585 feet above mean sea level. Due to the differences in construction of the temporary wells on the Site, which were screened entirely within the clay unit, compared to the overburden wells south of Elk Street, a direct comparison of water level elevations is not appropriate.

### **2.3 Investigation and Remedial History**

Prior to 1976, the Site was occupied by residential structures. The Site properties (Parcel Nos. 4 and 5) were purchased by ExxonMobil following a March 12, 1976 release of heavy-end cracking stock from former Tank No. 60 (located south of Elk Street on the former terminal property). The cracking stock spilled onto Elk Street and Parcel Nos. 4 and 5. ExxonMobil cleaned up the cracking stock by vacuuming off excess product and then mixing the remaining material with sand, excavating the material, and disposing of it off-Site. ExxonMobil subsequently demolished the residential structures present on the Site and the properties have since remained vacant.

Several environmental investigations were conducted by ExxonMobil and its consultants to characterize existing (pre-remediation) conditions at the Site. The results of those investigations, which were the basis for the remedy selected by NYSDEC and implemented by ExxonMobil at the Site, were presented in the following documents:

- *Environmental Site Assessment, Parcels North of Elk Street* (Groundwater Technology, Inc. 1994);
- *Site Facility Investigation Report* (Roux 1998);
- *Site Facility Investigation Completion Report* (Roux 1999);
- *Elk Street Properties Area Investigation Completion Report* (Roux 2002); and

- *Alternatives Analysis Report/Remedial Action Work Plan for Operable Unit 1* (AAR/RAWP; Remedial Engineering, PC and Roux 2007a).

The Site was remediated between May 7 and July 20, 2007 and between May 17 and May 19, 2010 in accordance with the AAR/RAWP, *Response to NYSDEC Comment Letter Dated February 15, 2007* (Remedial Engineering, PC and Roux 2007b), and *Response to NYSDEC Letter Entitled “OU-1 Construction Certification Report”* (Remedial Engineering, PC and Roux 2010). The primary objective of the remediation was to implement Remedial Alternative 2, as described in the AAR/RAWP, which would achieve a Track 2 Commercial Use scenario for the Site (Remedial Engineering, PC and Roux 2007b). The remediation activities were performed on behalf of ExxonMobil by Clean Harbors, Inc. and generally included the following:

- Excavation of approximately 3,859 in-situ cubic yards (cy) of impacted soil (approximately 379 cy from Parcel No. 4 and approximately 3,480 cy from Parcel No. 5) down to the native silty clay material<sup>1</sup> (generally, to depths ranging from approximately one to three feet below grade);
- Off-Site disposal of approximately 5,788 tons of impacted soil at a permitted solid waste landfill in accordance with applicable laws and regulations;
- Backfilling excavations with imported common fill material and approximately six inches of imported topsoil meeting the lower of the restricted use soil cleanup objectives (SCOs) for protection of human health (commercial) or protection of groundwater, as set forth in Table 375-6.8(b) of 6 NYCRR Part 375; and
- Restoration of the Site and other areas disturbed during the remediation activities.

The remedial excavation limits are shown on Figure 4 of this SMP. Figure 5 depicts post-remediation Site conditions as of the date of this SMP. Additional information regarding the remediation activities conducted at the Site is provided in the *Final Engineering Report for Operable Unit 1* (Remedial Engineering, PC and Roux 2017).

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<sup>1</sup> One excavation area on Parcel No. 4 was only advanced to one foot below grade based on confirmation sampling results, which met the applicable SCOs for commercial use (Remedial Engineering, PC and Roux 2017).

## **2.4 Remedial Action Objectives**

The remedial goal for the Site was to meet the 6 NYCRR Part 375 commercial criteria at any depth above the clay. The NYSDEC-selected remedy for the Site (a Track 2 cleanup) was fully protective of public health and the environment, taking into account the current, intended, and potential future land use. The remedy that was implemented to achieve the 6 NYCRR Part 375 commercial criteria for protection of human health was an upgrade to the current zoning of the property, which is M1 (light industrial district) and the light industrial zoning proposed at that time in the *Elk Street Corridor Redevelopment Plan* (Wendel Duchscherer et al. 2008).

Based upon the identification of the contaminants and impacted media, as described in previous investigation reports and summarized in Section 3.0 of the AAR/RAWP, identification of the applicable Standards, Criteria, and Guidance, taking into consideration current and potential future land use and identification of the actual or potential public health and/or environmental exposures, the only appropriate remedial action objective identified for the remedial action was to prevent ingestion/direct contact with impacted soil.

## **2.5 Remaining Contamination**

### **2.5.1 Soil**

As described in the AAR/RAWP, soil at the Site was impacted by the historic release of product (heavy-end cracking stock) from former Tank No. 60 in 1976 and background influences (i.e., residential uses, previous property owner usage, regional industrial influences, nearby highways, and urban fill). The primary constituents of concern at the Site are semi-volatile organic compounds and metals – specifically, arsenic, cadmium, and lead. The Site remediation activities summarized in Section 2.3 of this SMP resulted in the removal of existing soils located above the native silty clay material that exceeded the SCOs for commercial use. Excavations were backfilled with imported common fill material and approximately six inches of imported topsoil meeting the lower of the restricted use SCOs for protection of human health (commercial) or protection of groundwater, as set forth in Table 375-6.8(b) of 6 NYCRR Part 375. The

remediation activities achieved a Track 2 cleanup; however, soils at the Site properties still exceed the unrestricted SCOs.

#### 2.5.2 Groundwater

Groundwater at the Site has not been impacted by the historic release from former Tank No. 60 or background influences (Remedial Engineering, PC and Roux 2007a). Therefore, groundwater did not require remediation and was not addressed in the AAR/RAWP.

### **3.0 INSTITUTIONAL CONTROL PLAN**

#### **3.1 General**

Since remaining contamination exists at the Site, ICs are required to protect human health and the environment. This IC Plan describes the procedures for the implementation and management of all ICs at the Site. The IC Plan is one component of the SMP and is subject to revision by the NYSDEC.

This plan provides:

- A description of all ICs on the Site;
- The basic implementation and intended role of each IC;
- A description of the key components of the ICs set forth in the Environmental Easement;
- A description of the controls to be evaluated during each required inspection and periodic review;
- A description of plans and procedures to be followed for implementation of ICs, such as the implementation of the Excavation Work Plan (provided in Appendix C of this SMP) for the proper handling of remaining contamination that may be disturbed during maintenance or redevelopment work on the Site; and
- Any other provisions necessary to identify or establish methods for implementing the ICs required by the Site remedy, as determined by the NYSDEC.

#### **3.2 Institutional Controls**

A series of ICs is required by the AAR/RAWP to: (1) prevent future exposure to remaining contamination; and (2) limit the use and development of the Site to commercial or industrial enterprises allowable under current zoning. Adherence to these ICs on the Site is required by the Environmental Easement and will be implemented under this SMP. ICs identified in the Environmental Easement may not be discontinued without an amendment to or extinguishment of that Environmental Easement. The IC boundaries are shown on Figure 3. These ICs are:

- The Site properties may be used for commercial or industrial enterprises allowable under current zoning;

- The use of groundwater underlying the Site properties is prohibited without necessary water quality treatment as determined by the New York State Department of Health (NYSDOH) or the Erie County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from NYSDEC;
- Data and information pertinent to Site management must be reported at the frequency and in a manner as defined in this SMP;
- All future activities that will disturb remaining contaminated material must be conducted in accordance with this SMP;
- Access to the Site properties must be provided to agents, employees, or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by the Environmental Easements; and
- Vegetable gardens and farming on the Site properties are prohibited.

### **3.3 Site-Wide Inspections**

Site-wide inspections will be performed by at a minimum of once per year. Modification to the frequency or duration of the inspections will require approval from the NYSDEC. Site-wide inspections will also be performed after all severe weather conditions that may affect the remaining contamination at the Site. A comprehensive Site-wide inspection will be conducted and documented according to the SMP schedule, regardless of the frequency of the Periodic Review Report (PRR).

During an inspection, an inspection form will be completed as provided in Appendix D of this SMP. The inspections will determine and document the following:

- Compliance with all ICs, including Site usage;
- General Site conditions at the time of the inspection;
- The Site management activities being conducted including, where appropriate, confirmation sampling and a health and safety inspection;
- If these controls continue to be protective of human health and the environment;
- Compliance with requirements of this SMP and the Environmental Easements; and
- As appropriate, completeness of Site records.

Reporting requirements are outlined in Section 4.0 of this SMP.

Inspections will also be performed in the event of an emergency. An inspection of the Site will be conducted within 5 days after the event to verify the effectiveness of the

ICs implemented at the Site by a qualified environmental professional, as determined by the NYSDEC. Written confirmation must be provided to the NYSDEC project manager within 7 days after the event that includes a summary of actions taken, or to be taken, and the potential impact to the environment and the public.

## **4.0. REPORTING REQUIREMENTS**

### **4.1 Site Management Reports**

All Site management inspection events will be recorded on the Site-wide inspection form provided in Appendix D of this SMP, which is subject to NYSDEC revision.

All applicable inspection forms and other records, including media sampling data generated for the Site during the reporting period will be submitted in electronic format to the NYSDEC on an annual basis and summarized in the subsequent PRR.

Each inspection report will include, at a minimum, the following:

- Date of event or reporting period;
- Name, company, and position of person(s) conducting monitoring/inspection activities;
- Description of the activities performed;
- Where appropriate, color photographs or sketches showing the approximate location of any problems or incidents noted (included either on the checklist/form or on an attached sheet);
- Any observations, conclusions, or recommendations; and
- A determination as to whether contaminant conditions have changed since the last reporting event.

Non-routine event reporting forms will include, at a minimum:

- Date of event;
- Name, company, and position of person(s) conducting non-routine maintenance/repair activities;
- Description of non-routine activities performed; and
- Where appropriate, color photographs or sketches showing the approximate location of any problems or incidents (included either on the form or on an attached sheet).

### **4.2 Periodic Review Report**

The PRR will consist only of the certification as described in Section 4.3 of this SMP except in the event where there have been changes to the Site or data gathered during the certifying period. Given such an event, the submittal of a comprehensive PRR will be necessary, as specified below.



A PRR will be submitted to NYSDEC beginning sixteen (16) months after the Certificate of Completion is issued. This initial certifying period commences upon issuance of the Certificate of Completion. After submittal of the initial PRR, subsequent PRRs shall be submitted to NYSDEC every five years or at another frequency as may be subsequently required by NYSDEC. In the event that the Site is subdivided into separate parcels with different ownership, a single PRR will be prepared that addresses the Site properties described in the Environmental Easement (Appendix A). The report will be prepared in accordance with DER-10 and submitted within 30 days of the end of each certification period. Media sampling results will also be incorporated into the PRR. Each PRR will include:

- Identification, assessment and certification of all ICs required by the remedy for the Site;
- Results of the required annual Site inspections and severe condition inspections, if applicable;
- All applicable Site management forms and other records generated for the Site during the reporting period in the NYSDEC-approved electronic format, if not previously submitted;
- A summary of any data and/or information generated during the reporting period, with comments and conclusions, if any;
- A Site evaluation, which includes the following:
  - The compliance of the remedy with the requirements of the AAR/RAWP;
  - Any new conclusions or observations regarding Site contamination based on inspections or data generated;
  - Recommendations regarding any necessary changes to the remedy; and
  - The overall performance and effectiveness of the remedy.

#### **4.3 Certification of Institutional Controls**

Following the last inspection of the reporting period, a qualified environmental professional will prepare, and include in the PRR, the following certification as per the requirements of NYSDEC's DER-10:

*“For each institutional control identified for the site, I certify that all of the following statements are true:*

- *The institutional control employed at this site is unchanged from the date the control was put in place, or last approved by the Department;*
- *Nothing has occurred that would impair the ability of the control to protect the public health and environment;*
- *Nothing has occurred that would constitute a violation or failure to comply with any site management plan for this control;*
- *Access to the site will continue to be provided to the Department to evaluate the remedy, including access to evaluate the continued maintenance of this control;*
- *If a financial assurance mechanism is required under the oversight document for the site, the mechanism remains valid and sufficient for the intended purpose under the document;*
- *Use of the site is compliant with the environmental easement; and*
- *The information presented in this report is accurate and complete.*

*I certify that all information and statements in this certification form are true. I understand that a false statement made herein is punishable as a Class “A” misdemeanor, pursuant to Section 210.45 of the Penal Law. I, [name], of [business address], am certifying as [Site Owner or Site Owner’s Designated Site Representative], and I have been authorized and designated by all site owners to sign this certification for the site.”*

For BCP projects, every five years the following certification will be added to the certification statement:

- *The assumptions made in the qualitative exposure assessment remain valid.*

The signed certification will be included in the PRR, if such report is required for the period. Otherwise, the Certification will be submitted as a stand-alone document.

The PRR/Certification will be submitted, in electronic format, to the NYSDEC Central Office, the NYSDEC Regional Office in which the Site is located, and the NYSDOH Bureau of Environmental Exposure Investigation. The PRR/Certification may need to be submitted in hard-copy format, as requested by the NYSDEC project manager.

#### **4.4 Corrective Measures Work Plan**

If any component of the remedy is found to have failed, or if the periodic certification cannot be provided due to the failure of an institutional control, a Corrective Measures Work Plan will be submitted to the NYSDEC for approval. This plan will

explain the failure and provide the details and schedule for performing work necessary to correct the failure. Unless an emergency condition exists, no work will be performed pursuant to the Corrective Measures Work Plan until it has been approved by the NYSDEC. Upon completion of the Corrective Measure, a signed certification form must be submitted to the NYSDEC.

## 5.0 REFERENCES

Groundwater Technology, Inc. 1994. *Environmental Site Assessment, Parcels North of Elk Street*. Mobil Buffalo Terminal, Buffalo, New York. Prepared for Mobil Oil Corporation. February 1.

NYSDEC. 2010. *DER-10, Technical Guidance for Site Investigation and Remediation*. Division of Environmental Remediation. May.

Remedial Engineering, PC and Roux. 2007a. *Alternatives Analysis Report/Remedial Action Work Plan for Operable Unit 1*. Former Buffalo Terminal, Buffalo, New York. Prepared for ExxonMobil. January 8.

Remedial Engineering, PC and Roux. 2007b. *Response to NYSDEC Comment Letter Dated February 15, 2007*. Former Buffalo Terminal, Buffalo, New York. Prepared for ExxonMobil. March 13.

Remedial Engineering, PC and Roux. 2010. *Response to NYSDEC Letter Entitled "OU-1 Construction Certification Report"*. Former Buffalo Terminal, Buffalo, New York. Prepared for ExxonMobil. January 8.

Remedial Engineering, PC and Roux. 2017. *Final Engineering Report for Operable Unit 1*. Former Buffalo Terminal, Buffalo, New York. Prepared for ExxonMobil. December 22.

Roux. 1998. *Site Facility Investigation Report*. Mobil Buffalo Terminal, Buffalo, New York. Prepared for Mobil Oil Corporation. November 25.

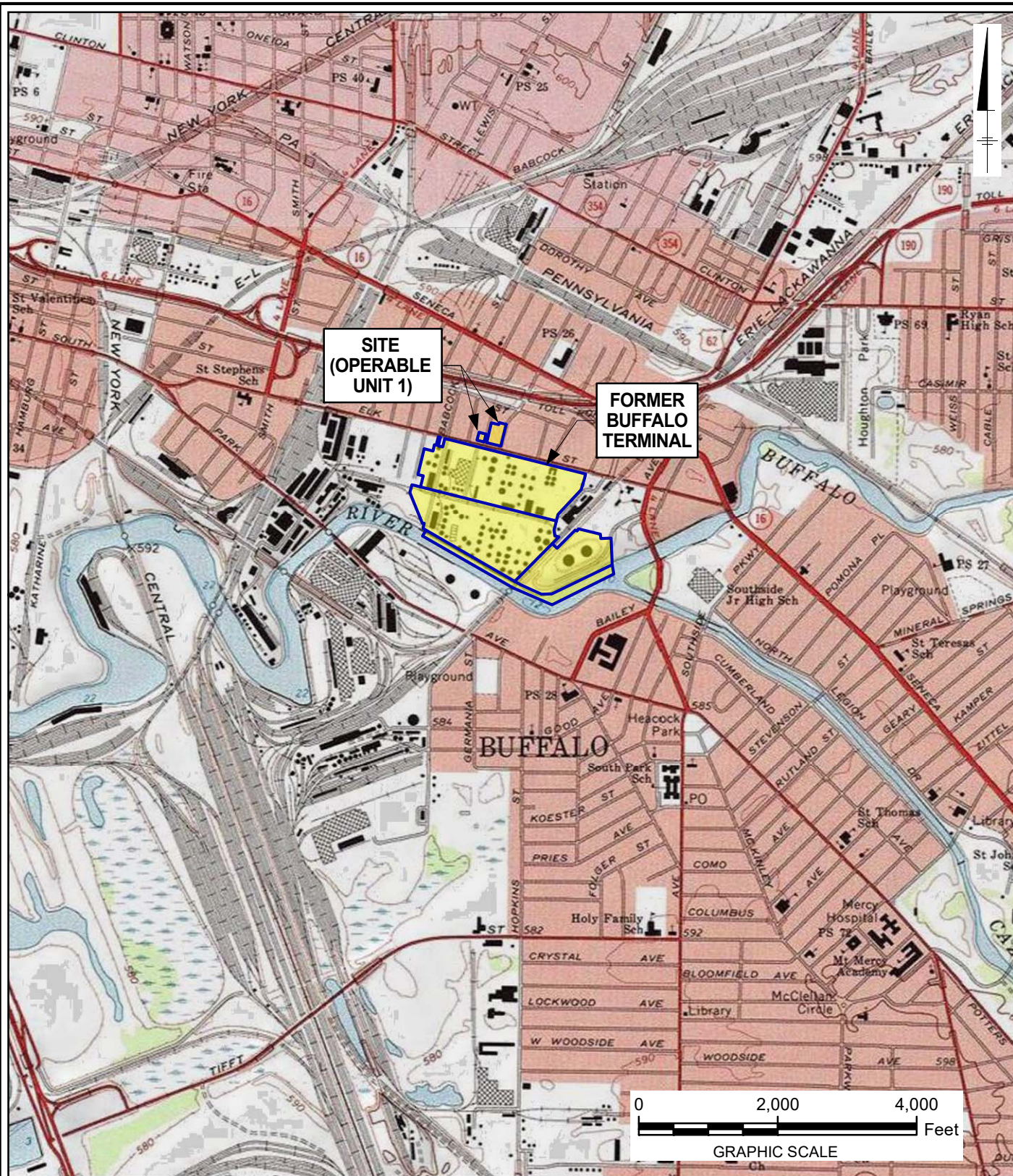
Roux. 1999. *Site Facility Investigation Completion Report*. Mobil Buffalo Terminal, Buffalo, New York. Prepared for Mobil Oil Corporation. December 14.

Roux. 2002. *Elk Street Properties Area Investigation Completion Report*. Buffalo Terminal, Buffalo, New York. Prepared for ExxonMobil. March 22.

Wendel Duchscherer, Malcolm Pirnie, and Militello Realty. 2008. *Elk Street Corridor Redevelopment Plan*. Prepared for the Buffalo Urban Development Corporation. October.

# FIGURES





EXXONMOBIL ENVIRONMENTAL SERVICES COMPANY  
FORMER BUFFALO TERMINAL  
CITY OF BUFFALO, ERIE COUNTY, NEW YORK  
**SITE MANAGEMENT PLAN FOR OPERABLE UNIT 1**

## SITE LOCATION MAP

### NOTES:

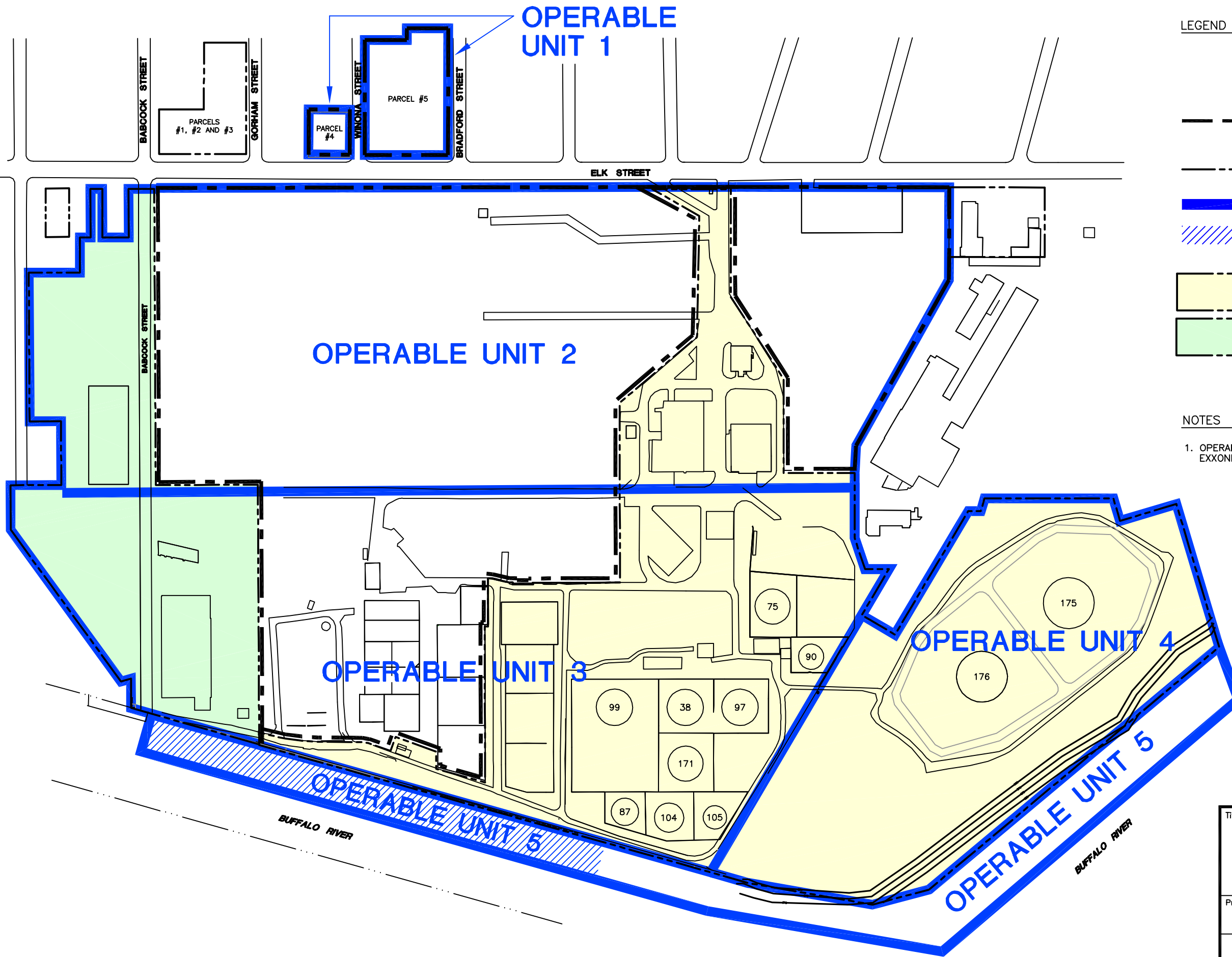
1. USGS QUADRANGLE MAP OBTAINED THROUGH ARCGIS ONLINE.











FIGURE  
**1**



V:\CAD\PROJECTS\0172\0052\463\0172.0052\463.09.DWG

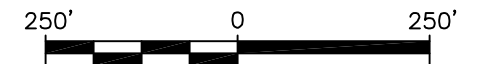



#### LEGEND

-  EXISTING TANK
-  EXISTING STRUCTURE
-  PROPERTY CURRENTLY OWNED BY EXXONMOBIL (BASED ON DENLUCK-O'NEILL ENGINEERING AND SURVEYING, DEC. 15, 1988; AND NUSSBAUMER & CLARKE, INC. FEBRUARY 6, 1995)
-  LIMITS OF PROPERTY FORMERLY OWNED BY EXXONMOBIL OIL CORPORATION
-  OPERABLE UNIT BOUNDARY
-  AREA WHERE EXXONMOBIL HAS PARTICIPATED IN DREDGING OPERATIONS TO MAINTAIN BARGE ACCESS TO THE SITE
-  PROPERTY OWNED AND OPERATED BY BUCKEYE TERMINALS, LLC AS OF MAY 4, 2005
-  PROPERTY OWNED AND OPERATED BY ONE BABCOCK STREET, INC. SINCE 1995

#### NOTES

1. OPERABLE UNIT 5 IS NOT PART OF THE CURRENT OR FORMER EXXONMOBIL PROPERTY.




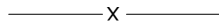
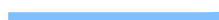

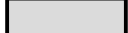
Title: <b>DEFINITION OF OPERABLE UNITS FOR THE FORMER BUFFALO TERMINAL</b>			
FORMER EXXONMOBIL BUFFALO TERMINAL, BUFFALO, NEW YORK			
Prepared For: EXXONMOBIL OIL CORPORATION			
 ROUX ASSOCIATES, INC. <i>Environmental Consulting and Management</i>	Compiled by: N.C.	Date: 19JUN15	FIGURE  <b>2</b>
	Prepared by: J.A.D.	Scale: AS SHOWN	
	Project Mgr: W.K.	Project: 0172.0052Y018	
	File: 0172.0052Y463.09.DWG		

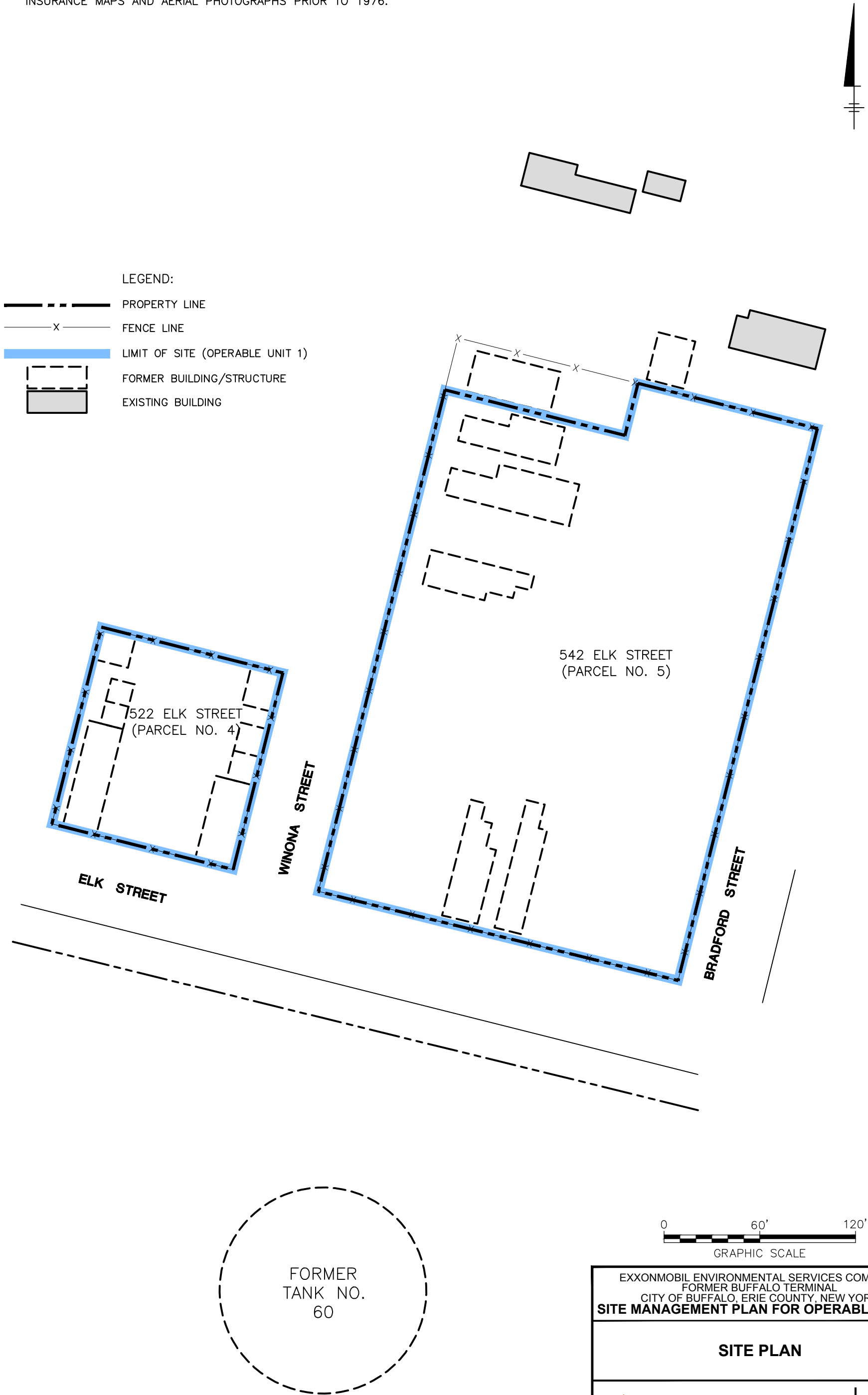
XREFS: IMAGES:  
85953X01  
85953XBP

NOTE:

1. LOCATION OF FORMER BUILDINGS ARE BASED ON SANBORN FIRE INSURANCE MAPS AND AERIAL PHOTOGRAPHS PRIOR TO 1976.

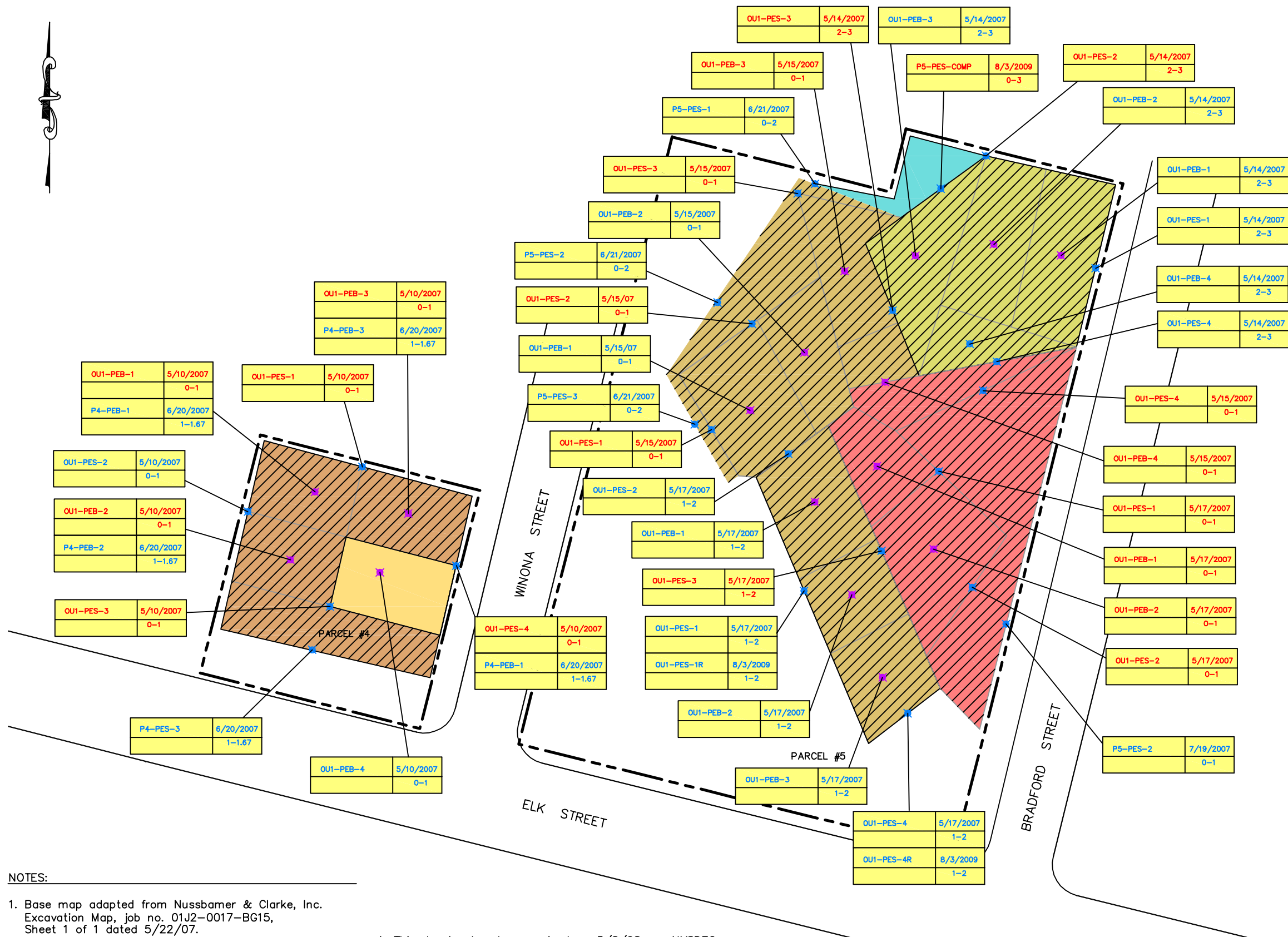
LEGEND:

	PROPERTY LINE
	FENCE LINE
	LIMIT OF SITE (OPERABLE UNIT 1)
	FORMER BUILDING/STRUCTURE
	EXISTING BUILDING





0172Y 0052Y 424 0172.0052Y424.01.DWG



**LEGEND**

--- PROPERTY LINE  
--- DENOTES GRID LINES FOR SOIL SAMPLING  
\* DENOTES LOCATION OF COMPOSITE SIDEWALL SAMPLES  
\* DENOTES LOCATION OF COMPOSITE BOTTOM SAMPLES

SOIL EXCAVATED TO 1 FOOT BELOW GRADE  
SOIL EXCAVATED TO 1.67 FEET BELOW GRADE TO NATIVE SILTY CLAY  
SOIL EXCAVATED TO 2 FEET BELOW GRADE TO NATIVE SILTY CLAY  
SOIL EXCAVATED TO 3 FEET BELOW GRADE TO NATIVE SILTY CLAY  
SOIL EXCAVATED TO APPROX. 2-3 FEET BELOW GRADE TO NATIVE SILTY CLAY  
SOIL EXCAVATED TO 3 FEET BELOW GRADE TO NATIVE CLAY IN MAY 2010

SAMPLE DESIGNATION  
P5-PES-2 7/19/2007 0-1  
— SAMPLE DATE  
— DEPTH INTERVAL WHERE SAMPLE WAS TAKEN (FEET)

SAMPLES THAT HAD ONE OR MORE COMPOUNDS THAT EXCEEDED THE RESTRICTED COMMERCIAL CRITERIA ARE SHOWN IN RED TEXT

- NOTES:**
1. Base map adapted from Nussbamer & Clarke, Inc. Excavation Map, job no. 01J2-0017-BG15, Sheet 1 of 1 dated 5/22/07.
  2. Initial phase of excavation and backfill was begun on May 8, 2007 and was completed on June 18, 2007.
  3. NYSDEC approved discontinuation of bottom sampling on June 21, 2007. Visual observation of native clay layer was used to determine the final depth of excavation after this date.

4. This drawing has been revised on 5/8/08 per NYSDEC comment letter dated 4/3/08. Soil sample OU1-PEB-4 (5/14/07; 2-3') has been added and color shading of the midwest subarea of parcel #5 has been revised.
5. This drawing was revised to include the second phase of excavation and disposal in the northern portion of Parcel #5 on May 18 and 19, 2010.

50' 0 50'

Title:

**REVISED EXCAVATION MAP**

FORMER BUFFALO TERMINAL, BUFFALO, NEW YORK

Prepared For:

EXXONMOBIL OIL CORPORATION

**ROUX**  
ROUX ASSOCIATES, INC.  
Environmental Consulting and Management

Compiled by: N.C.	Date: 17MAR11	FIGURE <b>4</b>
Prepared by: B.H.C.	Scale: AS SHOWN	
Project Mgr: N.C.	Project: 0172.0052Y014	
File: 0172.0052Y424.01.DWG		



CITY: SYRACUSE, NY DIV: GROUP: IMPV DB: K DAVIS LD: K DAVIS PIC: (Opt) PM: M BENIOT TM: A GEORGE L YR: ON="OFF="REF"  
C:\Users\kdavis\OneDrive - ARCADIS\BIM 360 Docs\EXXONMOBIL\Buffalo Terminal\OU-11800859531702001 - DWG\85953p01.dwg LAYOUT: 5 SAVED: 12/21/2017 5:14 PM ACADVER: 20.1S (LMS TECH) PAGES: 5 PLOT: 12/21/2017 5:15 PM BY: DAVIS, KATHI

XPFS:  
85953XBL ELK.jpg  
85953ELK



LEGEND:

- LIMIT OF SITE (OPERABLE UNIT 1)
- PROPERTY LINE
- RIGHT OF WAY
- EDGE OF PAVEMENT
- OVERHEAD WIRES
- CHAIN-LINK FENCE
- SANITARY MANHOLE
- GAS MARKER
- WATER VALVE
- FIRE HYDRANT
- UTILITY POLE
- CATCH BASIN
- AREA WITH SURFACE SOILS MEETING COMMERCIAL USE SCOs PURSUANT TO TRACK 2 COMMERCIAL USE REMEDIATION

NOTES:

1. BASE MAP ADAPTED FROM SURVEY MAPS OF LANDS LOCATED AT 522 ELK STREET AND 542 ELK STREET, CITY OF BUFFALO, ERIE COUNTY, NEW YORK, PREPARED BY CLEAR CREEK LAND SURVEYING, LLC, DATED MAY 25, 2017.
2. IMAGERY OBTAINED FROM GOOGLE EARTH PRO, DATED OCTOBER 14, 2016.
3. HORIZONTAL REFERENCE DATUM IS THE NORTH AMERICAN DATUM OF 1983, NEW YORK STATE PLANE WEST ZONE.
4. VERTICAL REFERENCE DATUM IS THE NORTH AMERICAN VERTICAL DATUM OF 1988.



EXXONMOBIL ENVIRONMENTAL SERVICES COMPANY  
FORMER BUFFALO TERMINAL  
CITY OF BUFFALO, ERIE COUNTY, NEW YORK  
**SITE MANAGEMENT PLAN FOR OPERABLE UNIT 1**

**POST-REMEDIATION SITE CONDITIONS**





# APPENDICES

## **APPENDIX A. ENVIRONMENTAL EASEMENT**

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:

Party 1:  
EXXONMOBIL OIL CORPORATION

Party 2:  
NEW YORK STATE DEPT OF  
ENVIRONMENTAL CONSERVATION

**Book Type: D Book: 11322 Page: 2277**

Page Count: 12

Doc Type: EASEMENT/RTWY

Rec Date: 11/30/2017

Rec Time: 02:35:12 PM

Control #: 2017242141

UserID: ERECORD

Trans #: 17209651

Document Sequence Number

TT2017009522

**Recording Fees:**

RECORDING	\$80.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
TP584	\$10.00
MARKOFF FEE	\$7.00

**Consideration Amount: 0.00**

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

---

**Total: \$117.00**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED  
BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW  
YORK. DO NOT DETACH. THIS IS NOT A BILL.

Christopher L. Jacobs  
County Clerk

**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36  
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

**THIS INDENTURE** made this 9<sup>th</sup> day of November, 2017, between Owner, ExxonMobil Oil Corporation, having an office at 22777 Springwoods Village Parkway, Spring, Texas 77389, County of Harris, State of Texas (the "Grantor"), and The People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS**, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located at the address of 542 Elk Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 123.09 Block 1 Lot 27.1, being the same as that property conveyed to Grantor by the following deeds:

- 1) Deed dated April 19, 1957 and recorded in the Erie County Clerk's Office in Liber and Page 6179/148.
- 2) Deed dated May 8, 1963 and recorded in the Erie County Clerk's Office in Liber and Page 6883/206.
- 3) Deed dated June 18, 1963 and recorded in the Erie County Clerk's Office in Liber and Page 6901/367.
- 4) Deed dated October 25, 1963 and recorded in the Erie County Clerk's Office in Liber and Page 6944/55.

- 5) Deed dated October 25, 1963 and recorded in the Erie County Clerk's Office in Liber and Page 6944/117.
- 6) Deed dated June 14, 1972 and recorded in the Erie County Clerk's Office in Liber and Page 7925/481.
- 7) Deed dated July 1, 1974 and recorded in the Erie County Clerk's Office in Liber and Page 8182/245.
- 8) Deed dated February 19, 1975 and recorded in the Erie County Clerk's Office in Liber and Page 8256/37.
- 9) Deed dated July 13, 1976 and recorded in the Erie County Clerk's Office in Liber and Page 8412/297.
- 10) Deed dated July 14, 1976 and recorded in the Erie County Clerk's Office in Liber and Page 8413/537.
- 11) Deed dated August 3, 1976 and recorded in the Erie County Clerk's Office in Liber and Page 8419/191.
- 12) Deed dated May 17, 1977 and recorded in the Erie County Clerk's Office in Liber and Page 8509/515.

**WHEREAS**, the property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.480 +/- acres, and is hereinafter more fully described in the Land Title Survey dated May 25, 2017 prepared by William J. Tucker II, L.L.S. of Clear Creek Land Surveying, LLC, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**WHEREAS**, Grantor, is the owner of real property located at the address of 522 Elk Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section 123.09 Block 1 Lot 10.1, being the same as that property conveyed to Grantor by the following deeds:

- 1) Deed dated July 23, 1976 and recorded in the Erie County Clerk's Office in Liber and Page 8414/397.
- 2) Deed dated September 22, 1976 and recorded in the Erie County Clerk's Office in Liber and Page 8436/201.

**WHEREAS**, the property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.280 +/- acres, and is hereinafter more fully described in the Land Title Survey dated May 25, 2017 prepared by William J. Tucker II, L.L.S. of Clear Creek Land Surveying, LLC, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule B; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: B9-0706-05-10 as amended September 12, 2017, Grantor conveys to Grantee a permanent Environmental Easement

pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Erie County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;



(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:  
(i) are in-place;  
(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a

defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:      Site Number: C915201  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

With a copy to:      Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed

by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

**Remainder of Page Intentionally Left Blank**

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

ExxonMobil Oil Corporation:

By: Robert W. Jackmore

Print Name: Robert W. Jackmore

Title: Agent and Attorney in Fact Date: 10/26/2017

**Grantor's Acknowledgment**

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF ERIE     )

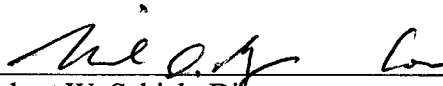
On the 26<sup>th</sup> day of October, in the year 20 17, before me, the undersigned, personally appeared Robert Jackmore personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Colette Ann Gorcica  
Notary Public - State of New York

COLETTE ANN GORCICA  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01GO6032325  
Qualified in Erie County  
My Commission Expires October 25, 2021

**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:

  
Robert W. Schick, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF ALBANY     )

On the 9<sup>th</sup> day of November, in the year 2017, before me, the undersigned, personally appeared Robert W. Schick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public - State of New York

**David J. Chiusano**  
Notary Public, State of New York  
No. 01CH5032146  
Qualified in Schenectady County  
Commission Expires August 22, 2018

**SCHEDULE "A" PROPERTY DESCRIPTION**

**ENVIRONMENTAL EASEMENT DESCRIPTION FOR 542 ELK STREET**

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE CITY OF BUFFALO, COUNTY OF ERIE AND STATE OF NEW YORK, BEING PART OF LOT NO. 75 TOWNSHIP 10 RANGE 8 OF THE BUFFALO CREEK RESERVATION, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHERLY LINE OF ELK STREET AND THE EASTERLY LINE OF WINONA STREET;

THENCE, NORTHERLY ON THE EASTERLY LINE OF WINONA STREET NORTH 13°56'42" EAST, A DISTANCE OF 295.00 FEET TO A POINT;

THENCE, PARALLEL TO THE NORTHERLY LINE OF ELK STREET SOUTH 76°03'18" EAST, A DISTANCE OF 104.00 FEET TO A POINT;

THENCE, NORTHERLY PARALLEL TO THE EASTERLY LINE OF WINONA STREET NORTH 13°56'42" EAST, A DISTANCE OF 30.00 FEET TO A POINT;

THENCE, EASTERLY ALONG A LINE PARALLEL TO THE NORTH LINE OF ELK STREET SOUTH 76°03'18" EAST, A DISTANCE OF 104.00 FEET TO A POINT ON THE WEST LINE OF BRADFORD STREET;

THENCE, SOUTHERLY ON THE WESTERLY LINE OF BRADFORD STREET SOUTH 13°56'42" WEST, A DISTANCE OF 325.00 FEET TO THE POINT OF INTERSECTION OF THE WEST LINE OF BRADFORD STREET WITH THE NORTH LINE OF ELK STREET;

THENCE, WESTERLY ALONG THE NORTHERLY LINE OF ELK STREET NORTH 76°03'18" WEST, A DISTANCE OF 208.00 FEET TO A POINT, THE POINT-OF-BEGINNING.

BEING 1.480 ACRES MORE OR LESS.

**SCHEDULE "B" PROPERTY DESCRIPTION**

**ENVIRONMENTAL EASEMENT DESCRIPTION FOR 522 ELK STREET**

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE CITY OF BUFFALO, COUNTY OF ERIE AND STATE OF NEW YORK, BEING PART OF LOTS NO. 75 AND 76 TOWNSHIP 10 RANGE 8 OF THE BUFFALO CREEK RESERVATION, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHERLY LINE OF ELK STREET AND THE WESTERLY LINE OF WINONA STREET;

THENCE, ALONG THE NORTHERLY LINE OF ELK STREET NORTH 76°03'18" WEST, A DISTANCE OF 106.00 FEET TO A POINT;

THENCE, PARALLEL TO THE WESTERLY LINE OF WINONA STREET NORTH 13°56'42" EAST, A DISTANCE OF 115.00 FEET TO A POINT;

THENCE, PARALLEL TO THE NORTHERLY LINE OF ELK STREET SOUTH 76°03'18" EAST, A DISTANCE OF 106.00 FEET TO A POINT;

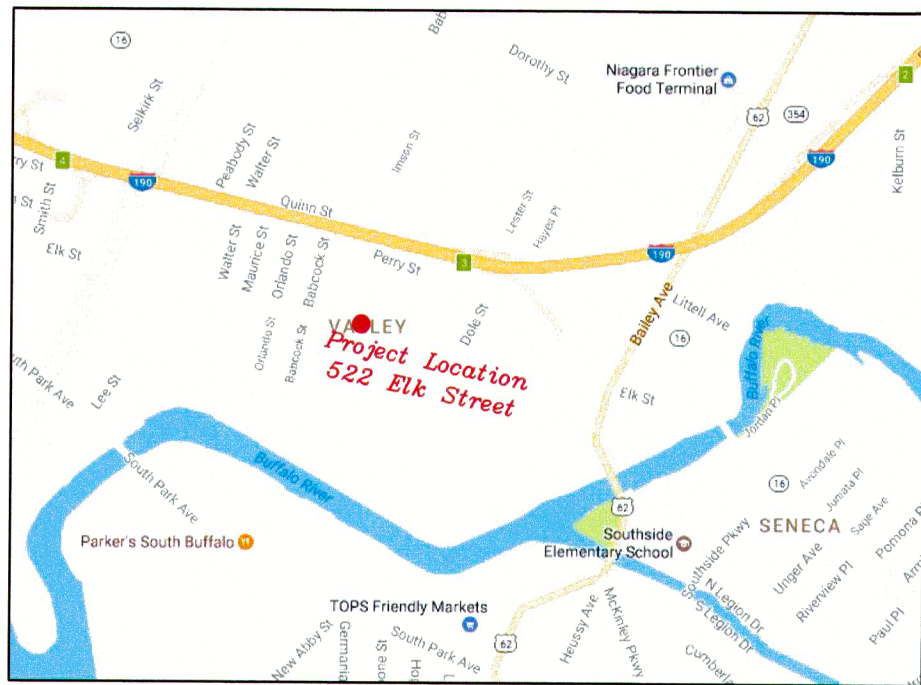
THENCE, SOUTHERLY ALONG THE WESTERLY LINE OF WINONA STREET SOUTH 13°56'42" WEST, A DISTANCE OF 115.00 FEET TO A POINT, THE POINT-OF-BEGINNING.

BEING 0.280 ACRES MORE OR LESS

Return To: First American Title NCS  
1790 Hughes Landing, Ste. 110  
The Woodlands, TX 77380  
Attn: Sharon Mork  
NCS No. 852540 T

**RECORDED AT THE REQUEST OF  
FIRST AMERICAN TITLE INS. CO.  
AS A COURTESY WITH NO LIABILITY**





LOCATION MAP  
Not to Scale

#### RECORD LEGAL DESCRIPTION FOR 522 ELK STREET

Parcel IV (For information Only: Section 123.9 Block 1 Lot 10.1):

##### Westerly Part of Premises:

ALL THAT TRACT OR PARCEL OF LAND, situate, lying and being in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 75 Township 10, Range 8 of the Buffalo Creek Reservation, described as follows:

BEGINNING on the Northerly line of Elk Street at the distance of 402 feet East from Babcock Street, or 51.5 feet Westerly from Winona Street and being 25.5 feet front and rear by 115 feet in depth.

Also:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 76 Township 10, Range 8 of the Buffalo Creek Reservation, described as follows:

BEGINNING on the North side of Elk Street 106 feet West of the intersection of the West side of Winona Street with the North line of Elk Street; Running THENCE, at right angles Northerly and parallel with Winona Street 115 feet; THENCE, Easterly and parallel with Elk Street 29 feet; THENCE, Southerly and parallel with Winona Street 115 feet to the North line of Elk Street; THENCE, Westerly along said North line of Elk Street 29 feet to the Place of Beginning.

##### Easterly Part of Premises:

ALL THAT TRACT OR PARCEL OF LAND, situate, lying and being in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 75 Township 10, Range 8 of the Buffalo Creek Reservation, bounded and described as follows:

BEGINNING at a point in the Northerly line of Elk Street, at the distance of 427.5 feet Easterly of the intersection of the Northerly line of Elk Street with the Easterly line of Babcock Street; Running THENCE Northerly parallel with Babcock Street 115 feet; THENCE, Easterly parallel with Elk Street 25.5 feet; THENCE, Southerly parallel with Babcock Street 115 feet to the said line of Elk Street; THENCE, Westerly along said line of Elk Street 25.5 feet to the Place of Beginning, be the same more or less.

Also:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. 75 Township 10, Range 7 & 8 of the Buffalo Creek Reservation, bounded and described as follows:

BEGINNING at a point in the Northerly line of Elk Street at a distance of 453 feet Easterly of the point of intersection of the said Northerly line of Elk Street with the Easterly line of Babcock Street; Running THENCE, Easterly along said line of Elk Street 26 feet; THENCE, Northerly parallel with Babcock Street 115 feet; THENCE, Westerly parallel with Elk Street 26 feet; THENCE, Southerly parallel with Babcock Street 115 feet to the Place of Beginning, being the same more or less.

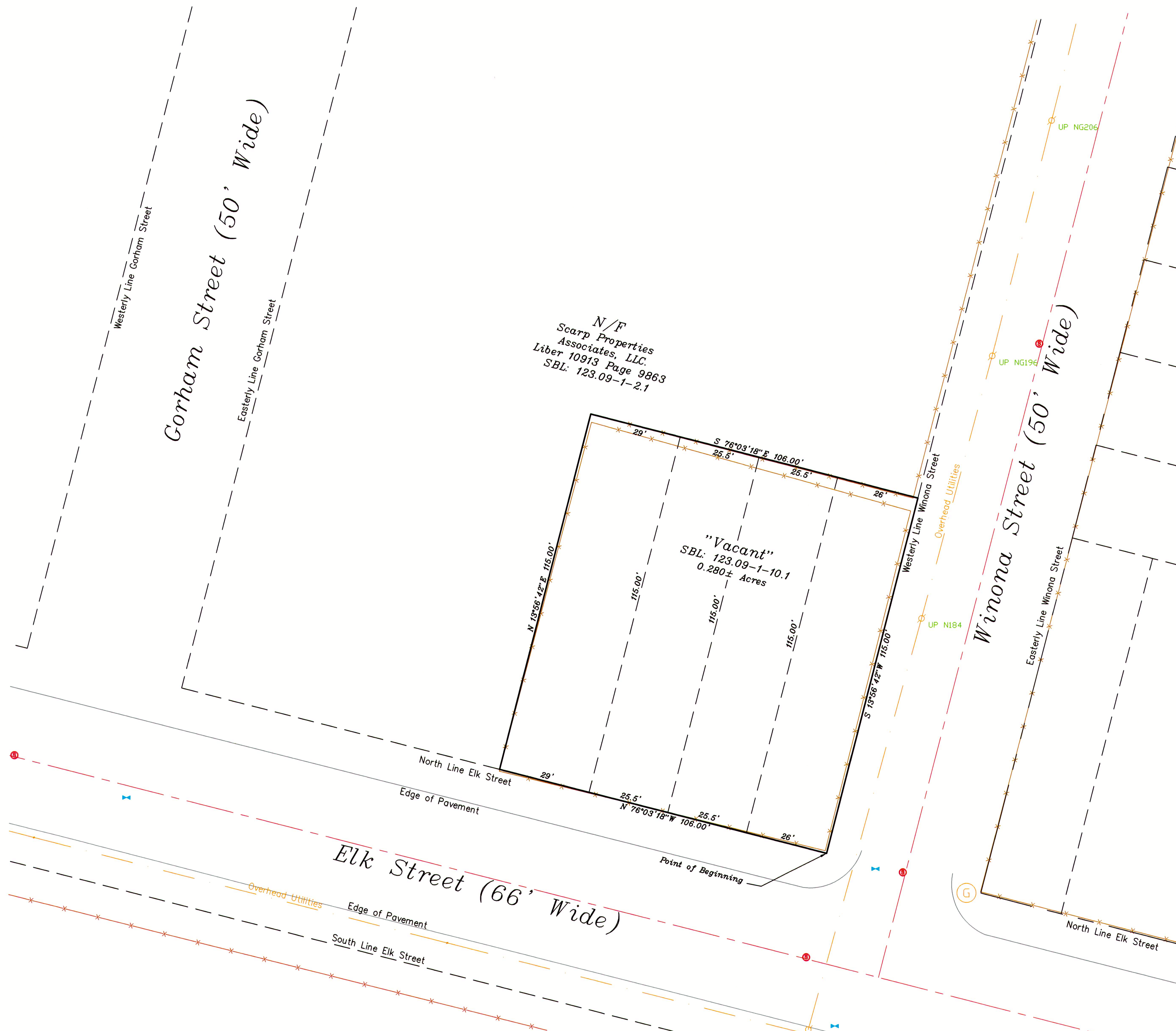
#### ENVIRONMENTAL EASEMENT DESCRIPTION FOR 522 ELK STREET BASED ON RECORD LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lots No. 75 and 76 Township 10, Range 8 of the Buffalo Creek Reservation, described as follows:

BEGINNING on the Northerly line of Elk Street and the Westerly line of Winona Street; THENCE, along the Northerly line of Elk Street North 76°03'18" West, a distance of 106.00 feet to a point; THENCE, parallel to the Westerly line of Winona Street North 13°56'42" East, a distance of 115.00 feet to a point; THENCE, parallel to the Northerly line of Elk Street South 76°03'18" East, a distance of 106.00 feet to a point; THENCE, Southerly along the Westerly line of Winona Street South 13°56'42" West, a distance of 115.00 feet to a point, the Point-of-Beginning.

Being 0.280 Acres more or Less.

"This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the New York Environmental Conservation Law. The engineering and institutional controls for this Easement are set forth in the Site Management Plan (SMP). A copy of the SMP must be obtained by any party with an interest in the property. The SMP can be obtained from NYS Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233 or at "derweb@dec.ny.gov."



#### General Notes

##### Legend:

- - Existing Iron
- - Set Iron
- D - Deed
- M - Measured
- Utility Pole
- Chainlink Fence
- Water Valve
- Fire Hydrant
- Gas Marker
- Sanitary Manhole
- Catch Basin
- Round Catch Basin
- Valve
- Monitoring Well

##### Notes:

This survey was prepared for an Environmental Easement.

This map of survey dated May 25, 2017 was prepared from an instrument survey, with field work completed on May 23, 2017.

This survey was prepared for the parties and purpose indicated herein. Any extension of the use beyond the purpose agreed to, exceeds the scope of the engagement.

It is a violation of New York State Education Law for any person, unless acting under the direction of a licensed surveyor, to alter an item in any way.

Only copies of this survey marked with an original signature and an original embossed or ink seal are the product of the land surveyor.

This plan NOT valid with an Affidavit of No Change.

This survey was prepared without the benefit of an up to date abstract of title and is subject to any state of facts revealed by an examination of such.

Distance shown are measured, unless otherwise indicated.

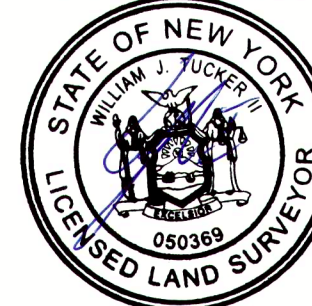
Horizontal location referenced to New York State Plane Coordinate System: New York West NAD83(2011)

Elevations are referenced to NAVD88 by GPS Observation.

Symbols are graphical representations and not to scale.

Only visible utility services and/or encumbrances were located and shown.

Survey by William J. Tucker, II PLS #50369  
Clear Creek Land Surveying, L.L.C.  
7449 Mill St. Canadea, NY 14717  
Phone 716-592-5800 Fax 716-592-5566



Project  
**BUFFALO TERMINAL OU-1**

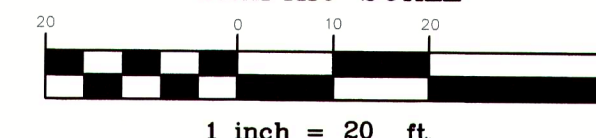
Date  
**MAY 25, 2017**

Scale  
**1"=20'**

Firm Name and Address  
**Clear Creek Land  
Surveying, LLC  
7449 Mill St.  
Canadea, NY 14717  
ph. 716-592-5800  
fax 716-592-5566**

Project Name and Address  
**Lands Surveyed:  
522 Elk St  
Part of Lots 75 & 76 Township  
10, Range 8 of the Buffalo  
Creek Reservation  
City of Buffalo  
Erie County  
State of New York**

#### GRAPHIC SCALE









## **APPENDIX B. LIST OF SITE CONTACTS**

**Appendix B**  
**List of Site Contacts**  
**Site Management Plan for Operable Unit 1**

**ExxonMobil Environmental Services Company**  
**Former Buffalo Terminal**  
**City of Buffalo, Erie County, New York**

Organization	Primary Point-of-Contact	Contact Information
<b>Site Owner</b>		
ExxonMobil	Ms. Elizabeth Zinkevycz	647 Route 1, Suite 14, PMB 253 York, Maine 03909 Telephone: (207) 363-8345 E-mail: elizabeth.e.zinkevycz@exxonmobil.com
<b>Remedial Party</b>		
ExxonMobil	Ms. Elizabeth Zinkevycz	647 Route 1, Suite 14, PMB 253 York, Maine 03909 Telephone: (207) 363-8345 E-mail: elizabeth.e.zinkevycz@exxonmobil.com
<b>Qualified Environmental Professional</b>		
Arcadis of New York, Inc.	Mr. Michael Benoit, PE	One Lincoln Center 110 West Fayette Street, Suite 300 Syracuse, New York 13202 Telephone: (315) 671-9298 E-mail: michael.benoit@arcadis.com
<b>NYSDEC</b>		
NYSDEC DER Project Manager	Closed Sites Manager	270 Michigan Avenue Buffalo, New York 14203-2999 Telephone: (716) 851-7220
NYSDEC Region 9 Hazardous Waste Engineer	Current Regional Hazardous Waste Engineer	270 Michigan Avenue Buffalo, New York 14203-2999 Telephone: (716) 851-7220
NYSDEC Site Control	Site Control Section Chief	625 Broadway, 11th Floor Albany, New York 12233-7014 Telephone: (518) 402-9595

## **APPENDIX C. EXCAVATION WORK PLAN**

## EXCAVATION WORK PLAN

### C-1 NOTIFICATION

At least 15 days prior to the start of any activity that is anticipated to encounter remaining contamination, the Site owner or their representative will notify the NYSDEC. Table C-1 includes contact information for such notifications. The information on this table will be updated as necessary to provide accurate contact information. A full listing of Site-related contact information is provided in Appendix B of the SMP.

**Table C-1: Notifications\***

<b>Organization</b>	<b>Primary Point-of-Contact</b>	<b>Contact Information</b>
NYSDEC DER Project Manager	Closed Sites Manager	Telephone: (716) 851-7220
NYSDEC Region 9 Hazardous Waste Engineer	Current Regional Hazardous Waste Engineer	Telephone: (716) 851-7220
NYSDEC Site Control	Site Control Section Chief	Telephone: (518) 402-9595
NYSDOH Bureau of Environmental Exposure Investigation	Bureau Chief	Telephone: (518) 402-7860

\* Note: Notifications are subject to change and will be updated as necessary.

This notification will include:

- A detailed description of the work to be performed, including the location and areal extent of excavation, plans/drawings for Site re-grading, intrusive elements or utilities to be installed below grade, and estimated volumes of contaminated soil to be excavated;
- A summary of environmental conditions anticipated to be encountered in the work areas, including the nature and concentration levels of Site-related contaminants of concern, potential presence of grossly contaminated media (if any), and plans for any pre-construction sampling;
- A schedule for the work, detailing the start and completion of all intrusive work;
- A summary of the applicable components of this EWP;
- A statement that the work will be performed in compliance with this EWP and Title 26, Section 1910.120 of the Code of Federal Regulations (29 CFR 1910.120);

- Copies of the contractor's task-specific Health and Safety Plan and Community Air Monitoring Plan in electronic format;
- Identification of disposal facilities for potential waste streams; and
- Identification of sources of any anticipated backfill, along with all required chemical testing results.

## **C-2 SOIL SCREENING METHODS**

Visual, olfactory, and instrument-based (i.e., photoionization detector) soil screening will be performed by a qualified environmental professional during all excavations into known or potentially contaminated material (remaining contamination). Soil screening will be performed when invasive work is done and will include all excavation and other ground-intrusive work performed during development, such as excavations for foundations and utility work, after issuance of the Certificate of Completion.

Excavated soils will be segregated based on previous environmental data and screening results into material that requires off-Site disposal and material that requires testing to determine if the material can be reused on-Site as fill. Further discussion of off-Site disposal of materials and on-Site reuse is provided in Sections C-6 and C-7, respectively, of this EWP.

## **C-3 SOIL STAGING METHODS**

Soil stockpiles will be continuously encircled with a berm and/or silt fence. Hay bales will be used as needed near catch basins, surface waters, and other discharge points.

Stockpiles will be kept covered at all times with appropriately anchored tarps. Stockpiles will be routinely inspected and damaged tarp covers will be promptly replaced.

Stockpiles will be inspected at a minimum once each week and after every storm event. Results of inspections will be recorded in a logbook and maintained at the Site and available for inspection by the NYSDEC.

## **C-4 MATERIALS EXCAVATION AND LOAD-OUT**

A qualified environmental professional or person under their supervision will oversee all invasive work and the excavation and load-out of all excavated material.

The owner of the property and its contractors are solely responsible for safe execution of all invasive and other work performed under this EWP.

The presence of utilities and easements on the Site will be investigated by the qualified environmental professional. It will be determined whether a risk or impediment to the planned work under this EWP is posed by utilities or easements on the Site.

Loaded vehicles leaving the Site will be appropriately lined, tarped, securely covered, manifested, and placarded in accordance with applicable federal, state, and local laws and regulations.

A truck wash will be operated on-Site, as appropriate. The qualified environmental professional will be responsible for ensuring that all outbound trucks are washed (as necessary and appropriate) at the truck wash before leaving the Site. Truck wash waters will be collected and disposed of off-Site in an appropriate manner.

Locations where vehicles enter or exit the Site will be inspected daily for evidence of off-Site soil tracking. The qualified environmental professional will be responsible for ensuring that all egress points for truck and equipment transport from the Site are clean of dirt and other materials derived from the Site during intrusive excavation activities. Cleaning of the adjacent streets will be performed as needed to maintain a clean condition with respect to Site-derived materials.

## **C-5 MATERIALS TRANSPORT OFF-SITE**

All transport of materials will be performed by licensed haulers in accordance with appropriate federal, state, and local regulations, including 6 NYCRR Part 364. Haulers will be appropriately licensed and trucks properly placarded.

Material transported by trucks exiting the Site will be secured with tight-fitting covers. Loose-fitting canvas-type truck covers will be prohibited. If loads contain wet material capable of producing free liquid, truck liners will be used.

Truck transport routes (primary and secondary) are shown on Figure C-1.

All trucks loaded with Site materials will exit the vicinity of the Site using only the approved truck routes. These are the most appropriate routes and take into account: (a) limiting transport through residential areas and past sensitive sites; (b) use of city mapped truck routes; (c) prohibiting off-Site queuing of trucks entering the facility; (d) limiting



total distance to major highways; (e) promoting safety in access to highways; and (f) overall safety in transport.

Trucks will be prohibited from stopping and idling in the neighborhood outside the project Site.

Egress points for truck and equipment transport from the Site will be kept clean of dirt and other materials during Site remediation and development.

Queuing of trucks will be performed on-Site in order to minimize off-Site disturbance. Off-Site queuing will be prohibited.

## **C-6 MATERIALS DISPOSAL OFF-SITE**

All material excavated and removed from the Site will be treated as contaminated and regulated material and, unless determined to be suitable for reuse on-Site, will be transported and disposed in accordance with all applicable federal, state, and local laws and regulations, including 6 NYCRR Part 360. If disposal of material from the Site is proposed for unregulated off-Site disposal (i.e., clean soil removed for development purposes), a formal request with an associated plan will be made in writing to the NYSDEC. Unregulated off-Site management of materials from the Site will not occur without formal NYSDEC approval.

Off-Site disposal locations for excavated soils will be identified in the pre-excavation notification. This will include estimated quantities and, if appropriate, a breakdown by class of disposal facility (e.g., hazardous waste disposal facility, solid waste landfill, petroleum treatment facility, C/D recycling facility, etc.). Actual disposal quantities and associated documentation will be reported to the NYSDEC in the PRR (described in Section 4.2 of the SMP). This documentation will include: waste profiles, test results, facility acceptance letters, manifests, bills of lading, and facility receipts.

Non-hazardous historic fill and contaminated soils taken off-Site will be handled, at a minimum, as municipal solid waste in accordance with 6 NYCRR Part 360-1.2. Material that does not meet Unrestricted SCOs is prohibited from being taken to a New York State recycling facility (6 NYCRR Part 360-16 Registration Facility).

## **C-7 MATERIALS REUSE ON-SITE**

Material excavated from the Site will be considered “potentially reusable” if such material is free of separate-phase product. Potentially-reusable material will be placed on polyethylene sheeting in stockpiles not exceeding 500 cubic yards. Stockpiles will be covered with polyethylene sheeting whenever material is not being actively placed into or removed from the stockpile, during overnight/weekend hours, during periods of precipitation, or whenever dust action levels are exceeded.

Each stockpile of potentially-reusable material will be sampled and tested to evaluate its suitability for reuse as fill at the Site. One composite sample will be collected for each 500-cubic yard stockpile or fraction thereof. Each composite sample will comprise between three and five grab samples collected from spatially distributed locations within the stockpile. The composite sample will be formed by placing equal portions of soil from each grab sample into a pre-cleaned, stainless steel bowl or dedicated container. The grab samples will be thoroughly homogenized using a stainless steel scoop or trowel before being transferred into the sample containers provided by the laboratory. The filled sample containers will be labeled and transported to the laboratory using a chain-of-custody form.

Each composite sample will be analyzed for semi-volatile organic compounds and arsenic, cadmium, and lead<sup>1</sup> in accordance with the most-recent versions of United States Environmental Protection Agency SW-846 Methods 8270 and 6010, respectively, as referenced in NYSDEC’s Analytical Services Protocol. In order to be reused as fill material at the Site, potentially-reusable material must: 1) be free of separate-phase product; and 2) meet the lower of the restricted SCOs for protection of public health (commercial use) or protection of groundwater, as set forth in Table 375-6.8(b) of 6 NYCRR Part 375. If determined to be suitable for reuse, potentially-reusable material may be used as fill material at the Site without restriction. Potentially-reusable material that does not meet the reuse criteria described above will be removed from the Site and disposed of in accordance with Section 7 of this EWP.

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<sup>1</sup> Collectively, semi-volatile organic compounds and arsenic, cadmium, and lead represent the Site-related constituents of concern.

Organic matter (e.g., wood, roots, stumps, etc.) or other solid waste derived from clearing and grubbing of the Site will not be reused as backfill or landscaping material at the Site.

The qualified environmental professional will ensure that the procedures for material reuse described in this section of the EWP are followed, and that unacceptable material does not remain at the Site.

## **C-8 FLUIDS MANAGEMENT**

All liquids to be removed from the Site, including but not limited to, excavation dewatering, decontamination waters and groundwater monitoring well purge and development waters, will be handled, transported, and disposed in accordance with applicable federal, state, and local laws and regulations. Dewatering, purge, and development fluids will not be recharged back to the land surface or subsurface of the Site, and will be managed off-Site, unless prior approval is obtained from NYSDEC.

Discharge of water generated during large-scale construction activities to surface waters (i.e. a local pond, stream, or river), if feasible, will be performed under a State Pollutant Discharge Elimination System permit issued by NYSDEC.

## **C-9 BACKFILL FROM OFF-SITE SOURCES**

All materials proposed for import onto the Site will: 1) be approved by the qualified environmental professional; 2) comply with 6 NYCRR 375-6.7(d); and 3) meet the lower of the restricted SCOs for protection of public health (commercial use) or protection of groundwater, as set forth in Table 375-6.8(b) of 6 NYCRR Part 375. To determine their suitability for use at the Site, off-Site fill materials will be sampled and tested in accordance with Table 5.4(e)10 of DER-10. A *Request to Import/Reuse Fill or Soil* form (<http://www.dec.ny.gov/regulations/67386.html>) will be prepared and submitted to the NYSDEC project manager, allowing a minimum of five business days for review.

Material from industrial sites, spill sites, or other environmental remediation sites or potentially contaminated sites will not be imported to the Site. Soils that meet “exempt” fill requirements under 6 NYCRR Part 360, but do not meet backfill requirements for the

Site, will not be used as fill material at the Site without prior approval by NYSDEC. Solid waste will not be used as fill material at the Site.

Trucks entering the Site with imported soils will be securely covered with tight fitting covers. Imported soils will be stockpiled separately from excavated materials and covered to prevent dust releases.

## **C-10 STORMWATER POLLUTION PREVENTION**

General storm water pollution prevention activities to be conducted in support of Site excavation activities include the following:

- Silt fencing or hay bale dikes will be installed around the entire perimeter of the construction area;
- Accumulated sediments will be removed as required to keep the silt fencing and hay bale dikes functional;
- All undercutting or erosion of the silt fence toe anchor will be repaired immediately with appropriate backfill materials;
- Manufacturer's recommendations will be followed for replacing silt fencing damaged due to weathering;
- Erosion and sediment control measures identified in the SMP must be inspected to ensure that they are operating correctly; and
- Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters.

Temporary erosion and sediment controls will be inspected not less than once per week and after each storm event. Inspection results will be recorded in a logbook, which will be maintained at the Site and made available for inspection by NYSDEC.

## **C-11 EXCAVATION CONTINGENCY PLAN**

If underground tanks or other previously unidentified contaminant sources are found during post-remedial subsurface excavations or development-related construction, excavation activities will be suspended until sufficient equipment is mobilized to address the condition.

Sampling will be performed on product, sediment, and surrounding soils as necessary to determine the nature of the material and proper disposal method. Chemical

testing will be performed for a full list of analytes (target analyte list metals, target compound list volatile organic compounds, target compound list semi-volatile organic compounds, target compound list pesticides, and polychlorinated biphenyls), unless the Site history and previous sampling results provide a sufficient justification to limit the list of analytes. In this case, a reduced list of analytes will be proposed to the NYSDEC for approval prior to sampling.

Identification of unknown or unexpected contaminated media identified by screening during invasive Site work will be promptly communicated by phone to the NYSDEC project manager. Reportable quantities of petroleum product will also be reported to the NYSDEC spills hotline. These findings will be also included in the PRR.

## **C-12 COMMUNITY AIR MONITORING PLAN**

Community air monitoring for total volatile organic compounds and respirable dust (particulate matter less than 10 micrometers in diameter) will be performed in accordance with the NYSDOH *Generic Community Air Monitoring Plan* (GCAMP; Appendix 1A of DER-10) for soil disturbance activities conducted at the Site. The quantity and locations of community air monitoring stations will be determined in conjunction with NYSDOH, based on the size and location of the proposed excavation; however, at a minimum there will be one upwind and one downwind monitoring location. Community air monitoring results will be included in the final report for the excavation activity. Exceedances of the action levels identified in the GCAMP will be reported to the NYSDEC and NYSDOH project managers.

## **C-13 ODOR CONTROL PLAN**

This odor control plan is capable of controlling emissions of nuisance odors off-Site. Specific odor control methods to be used on a routine basis will include several best management practices, as described below. If nuisance odors are identified at the Site boundary, or if odor complaints are received, work will be halted and the source of odors will be identified and corrected. Work will not resume until all nuisance odors have been abated. The NYSDEC and NYSDOH project managers will be notified of all odor events

within one day of the odor event and notified of any other complaints about the project. Implementation of all odor controls, including the halt of work, is the responsibility of the Site owner's qualified environmental professional, and any measures that are implemented will be described in the Excavation Activities Report.

All necessary means will be employed to prevent on- and off-Site nuisances. At a minimum, these measures will include: (a) limiting the area of open excavations and size of soil stockpiles; (b) shrouding open excavations with tarps and other covers; and (c) using foams to cover exposed odorous soils. If odors develop and cannot be otherwise controlled, additional means to eliminate odor nuisances will include: (d) direct load-out of soils to trucks for off-Site disposal; (e) use of chemical odorants in spray or misting systems; and (f) use of staff to monitor odors in surrounding neighborhoods.

If nuisance odors develop during ground-intrusive work that cannot be corrected, or where the control of nuisance odors cannot otherwise be achieved due to on-Site conditions or close proximity to sensitive receptors, odor control will be achieved by sheltering the excavation and handling areas in a temporary containment structure equipped with appropriate air venting/filtering systems.

#### **C-14 DUST CONTROL PLAN**

A dust suppression plan that addresses dust management during invasive on-Site work will include, at a minimum, the following:

- Dust suppression will be achieved through the use of a dedicated on-Site water truck, which will be equipped with a water cannon capable of spraying water directly onto off-road areas including excavations and stockpiles;
- Clearing and grubbing of larger sites will be done in stages to limit the area of exposed, unvegetated soils vulnerable to dust production;
- Gravel will be used on roadways to provide a clean and dust-free road surface;
- On-Site roads will be limited in total area to minimize the area required for water truck sprinkling;
- Vehicle speeds on temporary access roads and active haul routes will be restricted;

- Excavated material and clean fill material will be hauled in properly covered vehicles;
- Shallow excavations and stockpiles of clean fill material will be covered with polyethylene liners (anchored appropriately to resist wind forces) before extended work breaks and at the end of each work day; and
- Paved surfaces over which construction vehicles travel will be cleaned on a periodic basis.

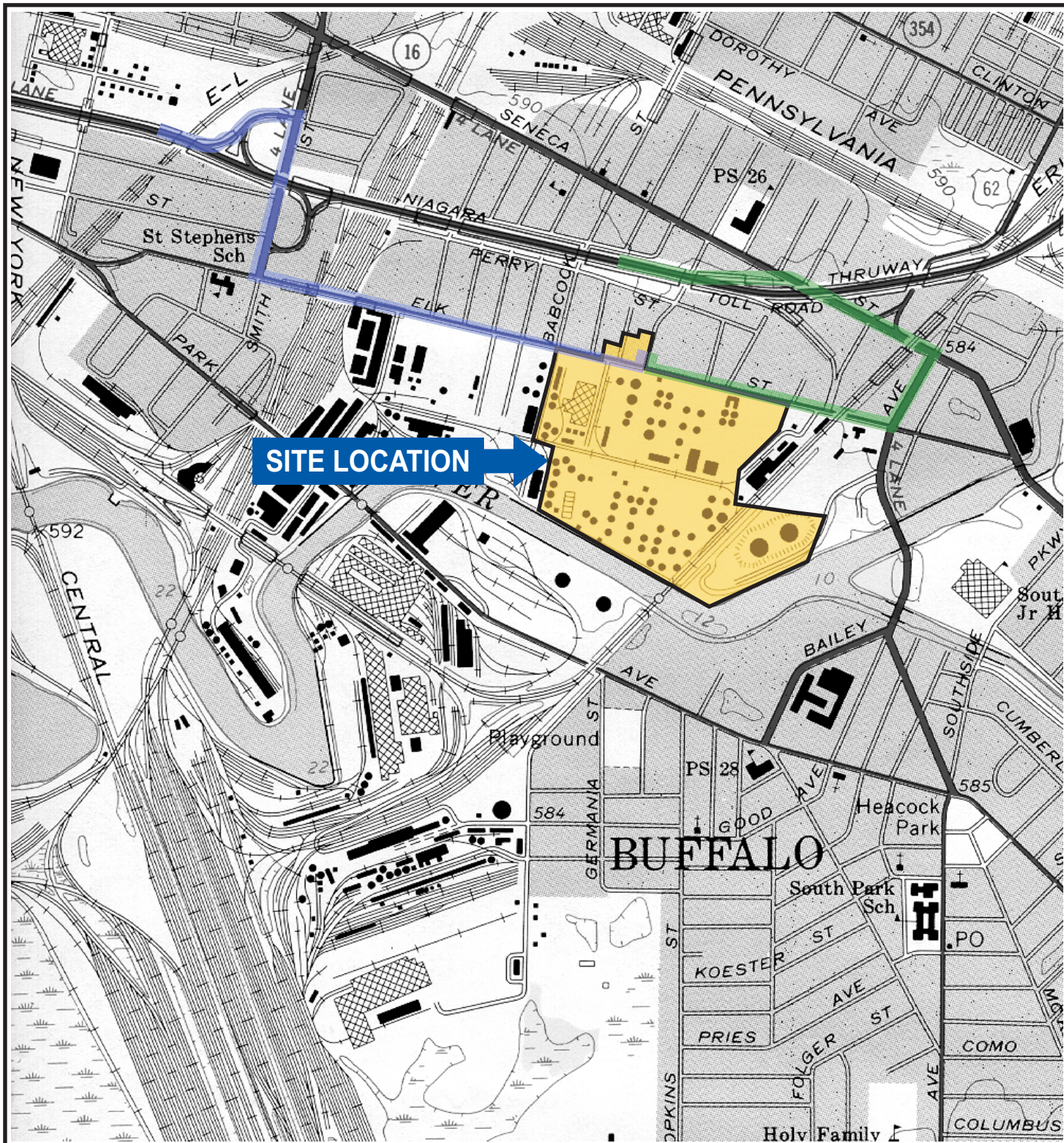
#### **C-15 OTHER NUISANCES**

A plan will be developed and utilized by the contractor for all remedial work to ensure compliance with local noise control ordinances.

#### **C-16 REPORTING**

A report will be submitted to the NYSDEC within 90 days of completion of the activities performed under this EWP. This report shall contain a summary of the activities performed; a summary of all data gathered and results; information about any media that was removed from the Site: volume, contamination levels, area from which removed; and any other information that may indicate a change to the “remaining contamination” that is at the Site. Such changes may require revision of the SMP.





# LEGEND

- Primary Route
- Secondary Route



0 2000'

Title:

## TRUCK ROUTE MAP

FORMER BUFFALO TERMINAL

Prepared for:

EXXONMOBIL OIL CORPORATION

**ROUX**  
ROUX ASSOCIATES, INC.  
Environmental Consulting  
& Management

Compiled by: N.C..	Date: 08JAN07	FIGURE  C-1
Prepared by: R.K.	Scale: AS SHOWN	
Project Mgr.: N.C.	Office: NY	
File No.: MC5233016.CDR	Project No.: 17252Y08	



## **APPENDIX D. SITE-WIDE INSPECTION FORM**

**SITE-WIDE INSPECTION FORM**

**FORMER BUFFALO TERMINAL  
OPERABLE UNIT 1  
CITY OF BUFFALO, ERIE COUNTY, NEW YORK  
SITE NO. C915201**

Site Property: \_\_\_\_\_

Date and Time of Inspection: \_\_\_\_\_

Inspector (Name, Title, and Affiliation): \_\_\_\_\_

Weather Conditions: \_\_\_\_\_

General Site Conditions: ☐ Acceptable ☐ Unacceptable; describe: \_\_\_\_\_

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Describe repairs, maintenance, or corrective actions implemented since previous inspection: \_\_\_\_\_

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**ATTACH PHOTOGRAPHS OF AREAS OR ITEMS INSTALLED, REPAIRED, OR REPLACED**

Any signs/evidence of use of the Site in a manner inconsistent with the Site Management Plan and environmental easement?

☐ No ☐ Yes; describe: \_\_\_\_\_

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**ATTACH PHOTOGRAPHS OF AREAS OF NON-COMPLIANCE**

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Describe any repairs, maintenance, or corrective actions required to correct observed deficiencies: \_\_\_\_\_

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ATTACH PHOTOGRAPHS OF DEFICIENT AREAS OR ITEMS OBSERVED DURING THE INSPECTION

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Inspector's Signature: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_