



Department of
Environmental
Conservation

BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

☐ Amendment to [check one or more boxes below]

- ☐ Add
- ☐ Substitute
- ☐ Remove
- ☐ Change in Name

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applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? ☐ Yes ☐ No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

☒ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

☒ Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

This amendment is to address corrections to the property acreage per the attached surveys (added 0.31 acres). This amendment also revises the property boundaries to exclude certain areas that are not feasible to be covered due to existing infrastructure, as further described in the attached letter dated August 23, 2019 (reduced 1.17 acres).

Please refer to the attached instructions for guidance on filling out this application

Section I. Existing Agreement Information

BCP SITE NAME: ExxonMobil Oil Former Buffalo Terminal BCP SITE NUMBER: C915201D

NAME OF CURRENT APPLICANT(S): Elk Street Commerce Park, LLC

INDEX NUMBER OF EXISTING AGREEMENT: C915201D-01 DATE OF EXISTING AGREEMENT: 10-2-17

Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)?

☐

Yes

☐

No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF NEW REQUESTOR'S REPRESENTATIVE

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached?

☐

Yes

☐

No

Describe Requestor's Relationship to Existing Applicant:

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Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? ☐ Yes ☐ No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? ☐ Yes ☐ No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? ☐ Yes ☐ No
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ☐ No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. ☐ Yes ☐ No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? ☐ Yes ☐ No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? ☐ Yes ☐ No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? ☐ Yes ☐ No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? ☐ Yes ☐ No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? ☐ Yes ☐ No
11. Are there any unregistered bulk storage tanks on-site which require registration? ☐ Yes ☐ No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

☐

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

Requestor's Relationship to Property (check one):

☐ Prior Owner ☐ Current Owner ☐ Potential /Future Purchaser ☐ Other _____

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? ☐ Yes ☐ No

Note: a purchase contract does not suffice as proof of access.

Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (TBL) (in existing agreement)

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
503 Elk Street	1	123.13	1	2.111	10.80
625 Elk Street		123.13	1	2.112	16.81
1 Babcock Street		122.12	1	20.1	6.37

previous BCA area sub-total: 33.98 ac

Check appropriate boxes below:

- ☒ Changes to metes and bounds description or TBL correction
☒ Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: 0.31

area derived by
subtraction of
17.44-6.44

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
per attached survey → 503 Elk Street	1	123.13	1	2.111	0.20
→ 625 Elk Street		123.13	1	2.112	0.04
1 Babcock Street		122.12	1	20.1	0.07

- ☒ Reduction of property

Approximate acreage removed: (1.17)

per previous
amendment surveys

updated previous BCA parcel
area total: $33.98 + 0.31 = 34.29$ ac

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
625 Elk Street		123.13	1	2.112	(1.17)

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

new revised BCA parcel area total:
 $34.29 - 1.17 = 33.12$ ac

Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From ECL 27-1405(31):</p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information
BCP SITE NAME: ExxonMobil Oil Former Buffalo Terminal OU3 BCP SITE NUMBER: C915201D
NAME OF CURRENT APPLICANT(S): Elk Street Commerce Park, LLC
INDEX NUMBER OF EXISTING AGREEMENT: C915201D-08-17
EFFECTIVE DATE OF EXISTING AGREEMENT: 10-2-17

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
(Individual)
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: _____ Signature: _____
Print Name: _____
(Entity)
I hereby affirm that I am (title _____) of (entity _____); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
_____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: _____ Signature: _____
Print Name: _____

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Co-Manager (title) of Elk Street Commerce Park, LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: September 3, 2019 Signature: 

Print Name: Paul R. Neureuter

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 10/2/17

Signature by the Department:

DATED: 11/18/19

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

SUBMITTAL INFORMATION:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE:_____ **LEAD OFFICE:**_____

PROJECT MANAGER:_____

**BROWNFIELD CLEANUP PROGRAM (BCP)
INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION**

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement and/or Application. **NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.**

SECTION II NEW REQUESTOR INFORMATION

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the [NYS Department of State's Corporation & Business Entity Database](#). A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

SECTION IV**NEW REQUESTOR ELIGIBILITY INFORMATION**

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

OU3 Description

ELK Street Commerce Park LLC

THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 196, 197, 198, 199 and 200, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows;

Commencing at a point in the south line of Elk Street at its intersection with the west line of former Babcock Street;

Thence S 14°04'02" W along the west line of former Babcock Street, to the north line of former Prenatt Street, a distance of 757.05 feet, being the point of BEGINNING;

THENCE S 75°58'26" E, along the north line of former Prenatt Street, a distance of 1254.01 feet;

THENCE S 13°52'57" W, a distance of 248.23 feet;

THENCE N 76°43'41" W, a distance of 75.91 feet;

THENCE N 75°46'54" W, a distance of 147.34 feet;

THENCE S 14°13'06" W, a distance of 4.51 feet;

THENCE N 75°52'22" W, a distance of 51.14 feet;

THENCE N 14°13'06" E, a distance of 4.59 feet;

THENCE N 75°46'54" W, a distance of 8.42 feet;

THENCE N 62°28'23" W, a distance of 45.18 feet;

THENCE N 70°59'33" W, a distance of 10.49 feet;

THENCE S 13°56'18" W, a distance of 123.33 feet;

THENCE N 76°03'42" W, a distance of 8.61 feet;

THENCE S 13°53'44" W, a distance of 398.93 feet;

THENCE N 60°26'26" W, a distance of 129.60 feet;

THENCE N 13°53'44" E, a distance of 44.10 feet;

THENCE N 56°16'16" W, a distance of 110.08 feet;

THENCE S 33°38'09" W, a distance of 38.12 feet;

THENCE N 56°30'40" W, a distance of 60.28 feet;

THENCE N 66°27'07" W, a distance of 17.01 feet;

THENCE N 75°32'46" W, a distance of 111.09 feet;

THENCE N 72°19'41" W, a distance of 46.30 feet;

THENCE N 68°43'57" W, a distance of 38.95 feet;

THENCE N 62°46'42" W, a distance of 73.96 feet;

THENCE S 14°01'34" W, a distance of 35.78 feet;

THENCE N 60°05'04" W, along a line being measured 4 feet perpendicular to the north line of the New Channel of the Buffalo River as adopted by Counsel Proceedings on October 17, 1917 P1958#54 a distance of 285.85 feet;

THENCE N 29°54'56" E, to the said north line of the New Channel of the Buffalo River, a distance of 4.00 feet;

THENCE N 60°04'54" W, along the said north line of the New Channel of the Buffalo River, to the east line of lands conveyed by deed recorded in the Erie County Clerk's Office in Liber 8145 of Deeds page 391, also being the west line of former Babcock Street, a distance of 55.70 feet;

THENCE N 14°04'02" E, along the east line of said lands of Liber 8145, page 391 and the west line of former Babcock Street, a distance of 73.60 feet;

THENCE S 81°30'54" W, a distance of 25.00 feet;

THENCE N 21°20'16" W, a distance of 479.80 feet;
THENCE N 13°42'27" E, to the south line of former Prenatt Street, a distance of 48.00 feet;
THENCE S 75°58'26" E, along the south line of former Prenatt Street, a distance of 301.36 feet;
THENCE N 14°04'02" E, a distance of 66.00 feet, to the point of BEGINNING, containing 17.44 acres,
more or less.

Legal Description

OU3 Buckeye Terminals, LLC.

THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 196, 197, 198, 199 and 200, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows;

Commencing at a point in the south line of Elk Street at its intersection with the west line of former Babcock Street;

THENCE S14°04'02" W, along the west line of former Babcock Street, to the north line of former Prenatt Street, a distance of 757.05 feet;

THENCE S75°58'26" E, along the north line of former Prenatt Street, a distance of 1847.78 feet to the point being the point of Beginning;

THENCE S 13°52'57" W, a distance of 248.23 feet;

THENCE N 76°43'41" W, a distance of 75.91 feet;

THENCE N 75°46'54" W, a distance of 147.34 feet;

THENCE S 14°13'06" W, a distance of 4.51 feet;

THENCE N 75°52'22" W, a distance of 51.14 feet;

THENCE N 14°13'06" E, a distance of 4.59 feet;

THENCE N 75°46'54" W, a distance of 8.42 feet;

THENCE N 62°28'23" W, a distance of 45.18 feet;

THENCE N 70°59'33" W, a distance of 10.49 feet;

THENCE S 13°56'18" W, a distance of 123.33 feet;

THENCE N 76°03'42" W, a distance of 8.61 feet;

THENCE S 13°53'44" W, a distance of 398.93 feet;

THENCE N 60°26'26" W, a distance of 129.60 feet;

THENCE N 13°53'44" E, a distance of 44.10 feet;

THENCE N 56°16'16" W, a distance of 110.08 feet;

THENCE S 33°38'09" W, a distance of 38.12 feet;

THENCE N 56°30'40" W, a distance of 60.28 feet;

THENCE N 66°27'07" W, a distance of 17.01 feet;

THENCE N 75°32'46" W, a distance of 111.09 feet;

THENCE N 72°19'41" W, a distance of 46.30 feet;

THENCE N 68°43'57" W, a distance of 38.95 feet;

THENCE N 62°46'42" W, a distance of 73.96 feet;

THENCE S 14°01'34" W, a distance of 35.78 feet;

THENCE S 60°05'04" E, along a line being measured 4 feet perpendicular to the north line of the New Channel of the Buffalo River as adopted by Counsel Proceedings on October 17, 1917 P1958#54, a distance of 1199.15 feet;

THENCE N 29°51'17" E, to the said north line of the New Channel of the Buffalo River, a distance of 4.00 feet;

THENCE N 60°05'04" W, along the said north line of the New Channel of the Buffalo River, a distance of 5.71 feet;

THENCE N 44°46'50" E, a distance of 902.41 feet;

THENCE N 75°58'26" W, a distance of 60.53 feet;

THENCE N 06°22'06" W, the west line of Lot 200, a distance of 84.81 feet;

THENCE N 14°13'54" E, along the west line of lot 200, to the north line of former Prenatt Street, a distance of 134.56 feet;

THENCE N 75°58'26" W, along the north line of said Prenatt Street, a distance of 593.77 feet to the point of beginning, containing 16.85 acres, more or less.

Excluding the following areas:

Exception Area 'A'

THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 198, and 199, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows;

Commencing at the point of beginning for the OU3 Buckeye Terminals, LLC. parcel;

THENCE S75°58'26" E, along the north line of former Prenatt Street, a distance of 180.26 feet;

THENCE S 14°01'34" W, a distance of 374.82 feet to the point of beginning;

THENCE S 13°17'19" W, a distance of 23.31 feet;
THENCE S 27°04'32" E, a distance of 13.69 feet;
THENCE S 14°15'03" W, a distance of 39.16 feet;
THENCE N 76°48'55" W, a distance of 44.23 feet;
THENCE N 13°35'48" E, a distance of 25.36 feet;
THENCE N 76°07'28" W, a distance of 80.13 feet;
THENCE S 14°14'35" W, a distance of 30.92 feet;
THENCE N 76°14'57" W, a distance of 94.37 feet;
THENCE N 10°31'36" E, a distance of 1.53 feet;
THENCE N 77°46'01" W, a distance of 8.34 feet;
THENCE S 69°32'12" W, a distance of 33.03 feet;
THENCE N 76°12'35" W, a distance of 74.89 feet;
THENCE S 14°20'39" W, a distance of 318.91 feet;
THENCE S 73°49'47" E, a distance of 9.04 feet;
THENCE S 12°33'22" W, a distance of 12.47 feet;
THENCE S 76°33'42" E, a distance of 15.63 feet;
THENCE N 58°29'44" E, a distance of 11.02 feet;
THENCE S 76°35'31" E, a distance of 58.42 feet;
THENCE S 13°53'00" W, a distance of 74.60 feet;
THENCE S 60°05'27" E, a distance of 181.11 feet;
THENCE S 78°19'01" E, a distance of 20.73 feet;
THENCE N 11°30'15" E, a distance of 10.75 feet;
THENCE N 78°25'51" W, a distance of 27.13 feet;
THENCE N 60°00'15" W, a distance of 164.28 feet;
THENCE N 13°59'31" E, a distance of 80.19 feet;
THENCE N 76°11'39" W, a distance of 84.73 feet;
THENCE N 13°45'35" E, a distance of 288.42 feet;
THENCE S 76°04'27" E, a distance of 503.65 feet;
THENCE S 78°07'11" E, a distance of 8.59 feet;
THENCE N 02°32'47" W, a distance of 19.45 feet;
THENCE N 75°54'43" W, a distance of 49.42 feet;
THENCE N 14°47'00" E, a distance of 24.63 feet;
THENCE S 76°06'56" E, a distance of 47.08 feet;
THENCE N 13°38'28" E, a distance of 30.60 feet;
THENCE N 76°10'05" W, a distance of 19.16 feet;

THENCE N 14°03'00" E, a distance of 4.98 feet;
THENCE N 76°02'09" W, a distance of 26.71 feet;
THENCE N 47°25'41" W, a distance of 11.26 feet;
THENCE N 76°00'01" W, a distance of 22.70 feet;
THENCE S 14°36'57" W, a distance of 37.64 feet;
THENCE N 74°08'00" W, a distance of 51.40 feet;
THENCE N 09°41'20" E, a distance of 2.55 feet;
THENCE N 74°50'25" W, a distance of 6.30 feet;
THENCE S 22°54'10" W, a distance of 3.46 feet;
THENCE N 73°16'26" W, a distance of 10.13 feet;
THENCE N 13°55'13" E, a distance of 48.56 feet;
THENCE S 78°07'08" E, a distance of 1.71 feet;
THENCE N 16°11'38" E, a distance of 7.40 feet;
THENCE S 77°02'44" E, a distance of 19.29 feet;
THENCE N 14°45'39" E, a distance of 11.66 feet;
THENCE N 74°05'23" W, a distance of 46.09 feet;
THENCE N 59°02'40" W, a distance of 7.56 feet;
THENCE N 76°52'49" W, a distance of 17.53 feet to the point of beginning containing 0.84 acres, more or less.

Exception Area 'B'

THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 199, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows;

Commencing at the point of beginning for the OU3 Buckeye Terminals, LLC. parcel;

THENCE S75°58'26" E, along the north line of former Prenatt Street, a distance of 285.55 feet;

THENCE S 14°01'34" W, a distance of 67.71 feet to the point of beginning;

THENCE S 13°29'41" W, a distance of 87.58 feet;
THENCE S 76°25'16" E, a distance of 15.66 feet;
THENCE S 14°18'59" W, a distance of 17.27 feet;
THENCE S 75°44'07" E, a distance of 18.80 feet;
THENCE S 14°05'51" W, a distance of 17.57 feet;
THENCE N 77°13'06" W, a distance of 17.52 feet;
THENCE S 13°42'04" W, a distance of 79.25 feet;
THENCE N 77°30'43" W, a distance of 2.90 feet;
THENCE S 13°47'42" W, a distance of 41.45 feet;
THENCE N 73°13'45" W, a distance of 2.05 feet;
THENCE S 13°50'53" W, a distance of 81.42 feet;
THENCE S 76°01'11" E, a distance of 23.73 feet;
THENCE N 61°32'45" E, a distance of 7.96 feet;
THENCE N 13°55'08" E, a distance of 168.09 feet;
THENCE N 18°10'44" E, a distance of 113.97 feet;
THENCE S 75°45'03" E, a distance of 53.44 feet;
THENCE N 13°16'10" E, a distance of 14.93 feet;
THENCE N 59°55'47" W, a distance of 26.17 feet;
THENCE N 76°00'22" W, a distance of 62.51 feet;

THENCE N 64°06'49" W, a distance of 10.63 feet;
THENCE N 10°42'37" E, a distance of 13.36 feet;
THENCE N 73°24'45" W, a distance of 5.52 feet to the point of beginning containing 0.25 acres,
more or less;

Exception Area 'C'

THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, Being part of Lots 199, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows;

Commencing at the point of beginning for the OU3 Buckeye Terminals, LLC. parcel;

THENCE S75°58'26" E, along the north line of former Prenatt Street, a distance of 433.68 feet;

THENCE S 14°01'34" W, a distance of 472.68 feet to the point of beginning;

THENCE N 76°35'43" W, a distance of 36.36 feet;

THENCE S 03°38'37" W, a distance of 11.42 feet;

THENCE on a curve to the left with an arc length of 34.32 feet and radius of 25.00 feet;

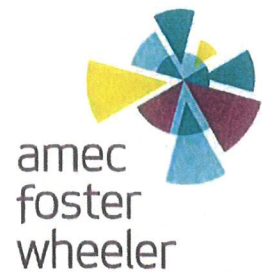
THENCE S 75°00'53" E, a distance of 85.96 feet;

THENCE N 44°46'50" E, a distance of 33.20 feet;

THENCE N 75°52'53" W, a distance of 92.81 feet;

THENCE N 14°07'56" E, a distance of 4.88 feet, to the point of beginning, containing 0.08 acres, more or less;

August 23, 2019



Mr. Chad Staniszewski
Mr. Eugene Melnyk
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203
Proposed BCA Amendment for OU3
NYSDEC Site No. C915201D

Dear Mr. Staniszewski & Mr. Melnyk:

On behalf of Elk Street Commerce Park, LLC (ESCP), Amec E&E PC (Amec) is requesting an amendment to the Brownfield Cleanup Agreement (BCA) for the Former ExxonMobil Buffalo Terminal Operable Unit 3 (OU3). The Decision Document (DD) for OU3 requires the installation of a low permeable cover system to reduce infiltration of stormwater and 12-inches of clean cover, or competent hardscape, to reduce human exposure to potentially impacted site soils. Amec is proposing to remove discreet areas from the BCA where the soil cover required for Track 4 remedy cannot currently be installed due to the presence of existing critical infrastructure. The areas are shown on the attached Figure 1 along with the accompanying photographs. Our supporting rationale for this request is summarized below.

Current operations at OU3 include a fueling station owned and operated by Buckeye Terminals, LLC (Buckeye). Existing infrastructure on the Buckeye property includes process piping, pumps and petroleum product storage tanks. Process piping that is part of the current site operations, in several locations is located on pipe racks that are critical to the operation of the facility. In many cases, the pipes are only 6 to 12-inches above the ground surface. The piping infrastructure poses significant constructability and safety concerns regarding the installation of a cover system or soil cover. As noted there is very little clearance below much of the piping. There is also insufficient space to safely excavate and backfill beneath the pipes and/or place additional clean cover between the bottom of the pipes and existing grade to achieve 12 inches of clean cover. A minimum of 6 inches of clearance also needs to be maintained between the pipes and the ground surface for monitoring and maintenance that further limits constructability.

There will be no increase in human exposure. The risk of human exposure to potentially impacted site soils in these areas is inherently minimal given the restricted/limited access to the site and the presence of the above-grade process piping and pipe racks, which limit direct access to the surface soils, as described above. Engineering controls for the site currently include perimeter security fencing, therefore only trained site workers have access to these areas. Exposure to potentially impacted site soils is further limited as much of the piping is located above ground and piping repairs or maintenance would not involve ground-invasive work or prolonged exposure to potentially impacted site soils. As noted, workers have to be trained to work in the restricted areas and are informed regarding the site hazards. Additional institutional

August 23, 2019
Mr. Chad Staniszewski
Continued...

controls in the form of signage and awareness in the existing training could be implemented to further protect site workers. These risk management measures have similar attributes (level of protection) to a soil cover in that they both adequately reduce human exposure to potentially impacted site soils.

There will be no increase in infiltration of stormwater. The remedy for OU3 includes the construction and operation of a groundwater extraction and treatment system which was supported by the development of a groundwater model long-term groundwater control. The model included contribution of limited infiltration from the previously lined tank farm areas as well as from the former rail road area on Operable Unit 4 (OU4). However, as part of ongoing work at the site, a new low permeable liner and stormwater drainage system were installed on the rail road area. The OU4 rail road area is much larger than the discrete areas proposed for removal from the BCA, therefore the long-term function of the groundwater extraction system is not impacted by the lack of impermeable cover in the selected areas shown on Figure 1.

In closing, to construct the cover system as described in the OU3 DD in the piping areas noted in Figure 1 would present safety and constructability challenges that would significantly outweigh the approach proposed above which would be to implement additional institutional controls within these restricted areas to further mitigate human exposure to potentially impacted site soils. With a low risk of human exposure to potentially impacted site soils and no increased impacts to the long-term groundwater remedy, we propose to remove these areas from the BCA.

If the proposed removal of areas from the BCA is acceptable to you, a metes and bounds survey can be completed to accurately delineate the areas. We are available to discuss this further at your earliest convenience.

Sincerely,
AMEC E&E, PC

Richard P. Egan, with permission for

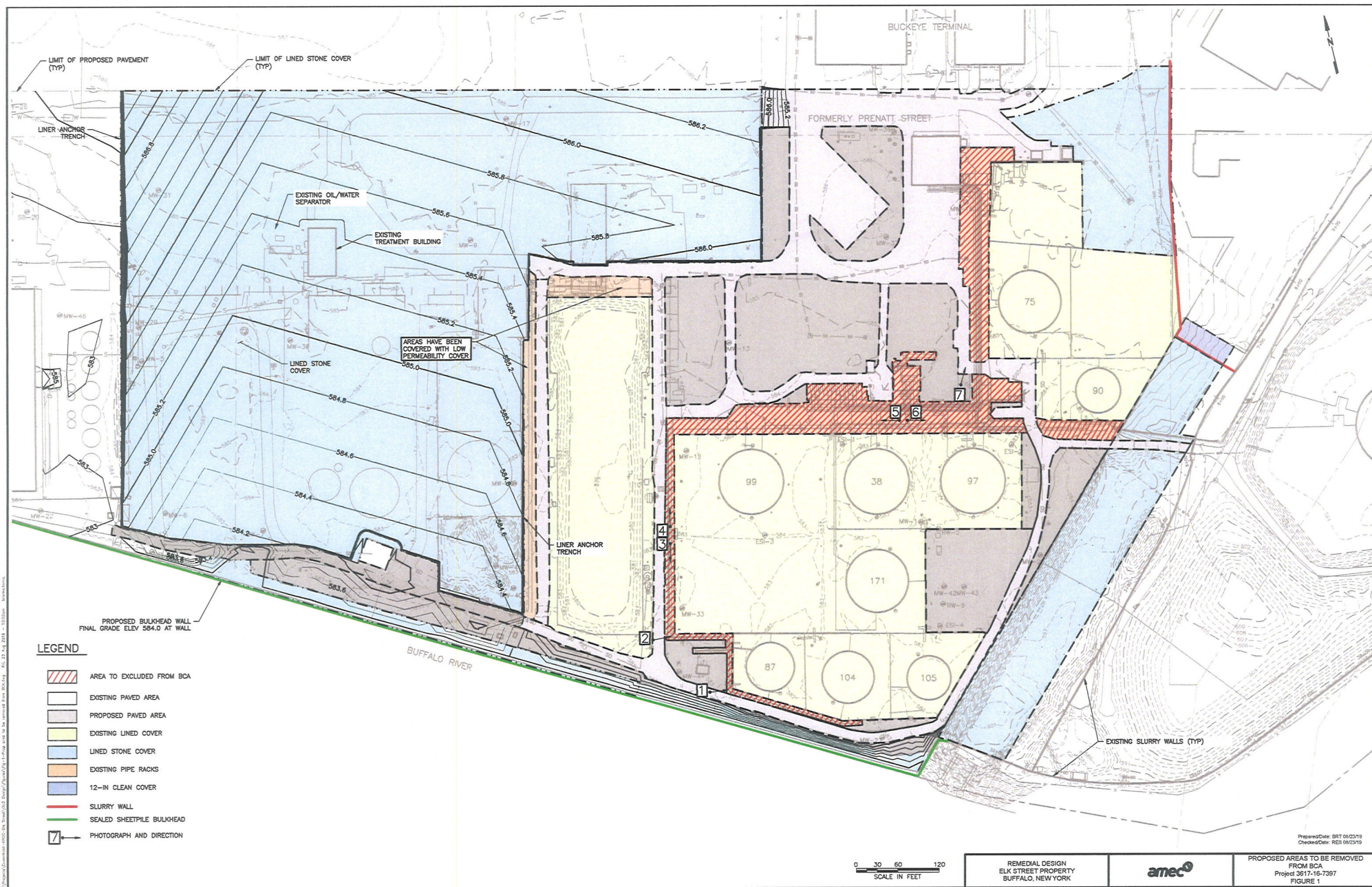
Richard Egan, P.E.
Associate Geotechnical Engineer

John W. Peterson

John Peterson
Associate Project Manager

Attachments

cc: Paul Neureuter ESCP
Arnie Cubins Krog
Ben Genes Krog
John Peterson Amec



PHOTOGRAPH No. 1

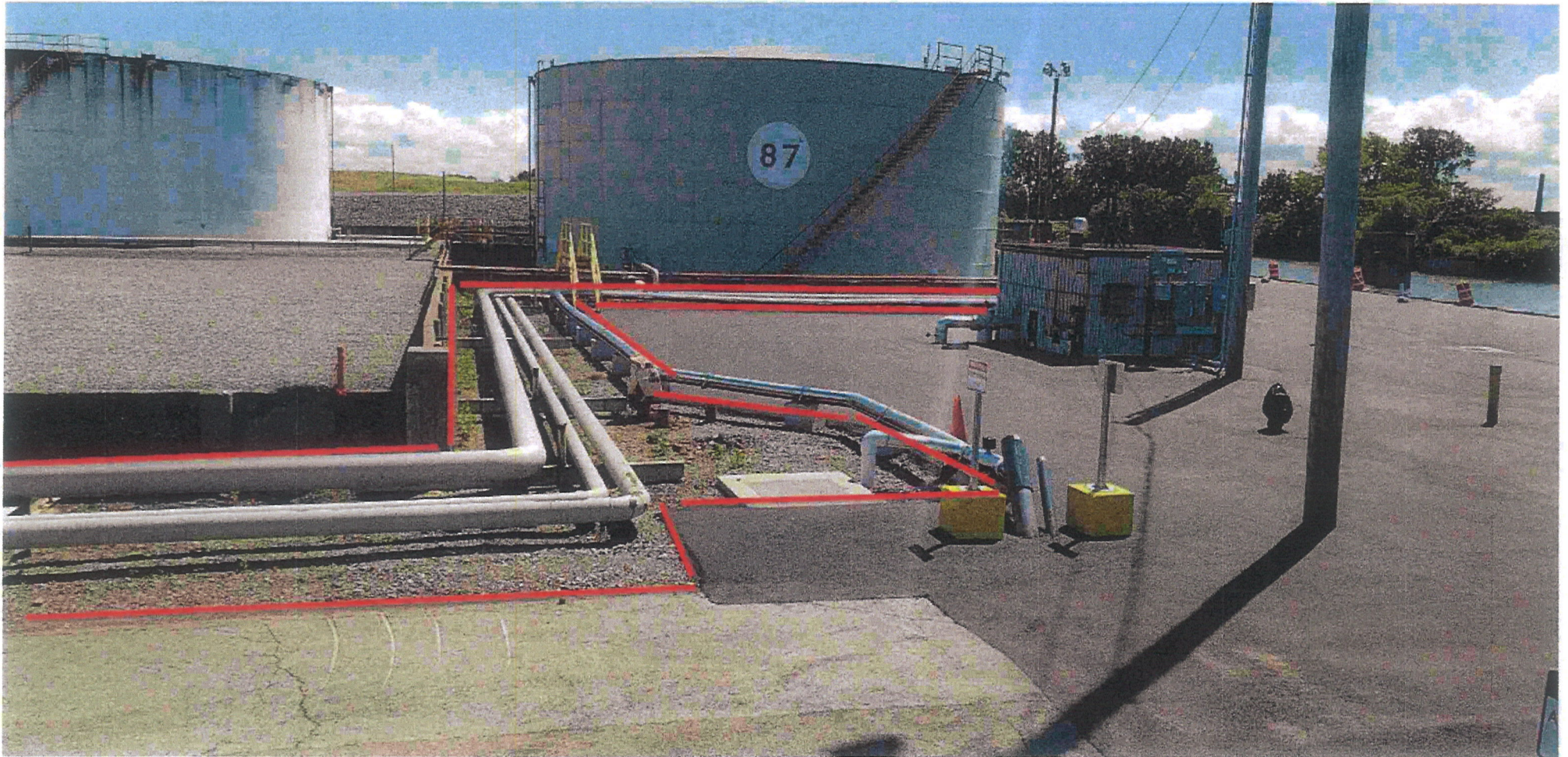
Photo showing area proposed to be removed from the BCA

Buckeye pipelines and infrastructure limit access



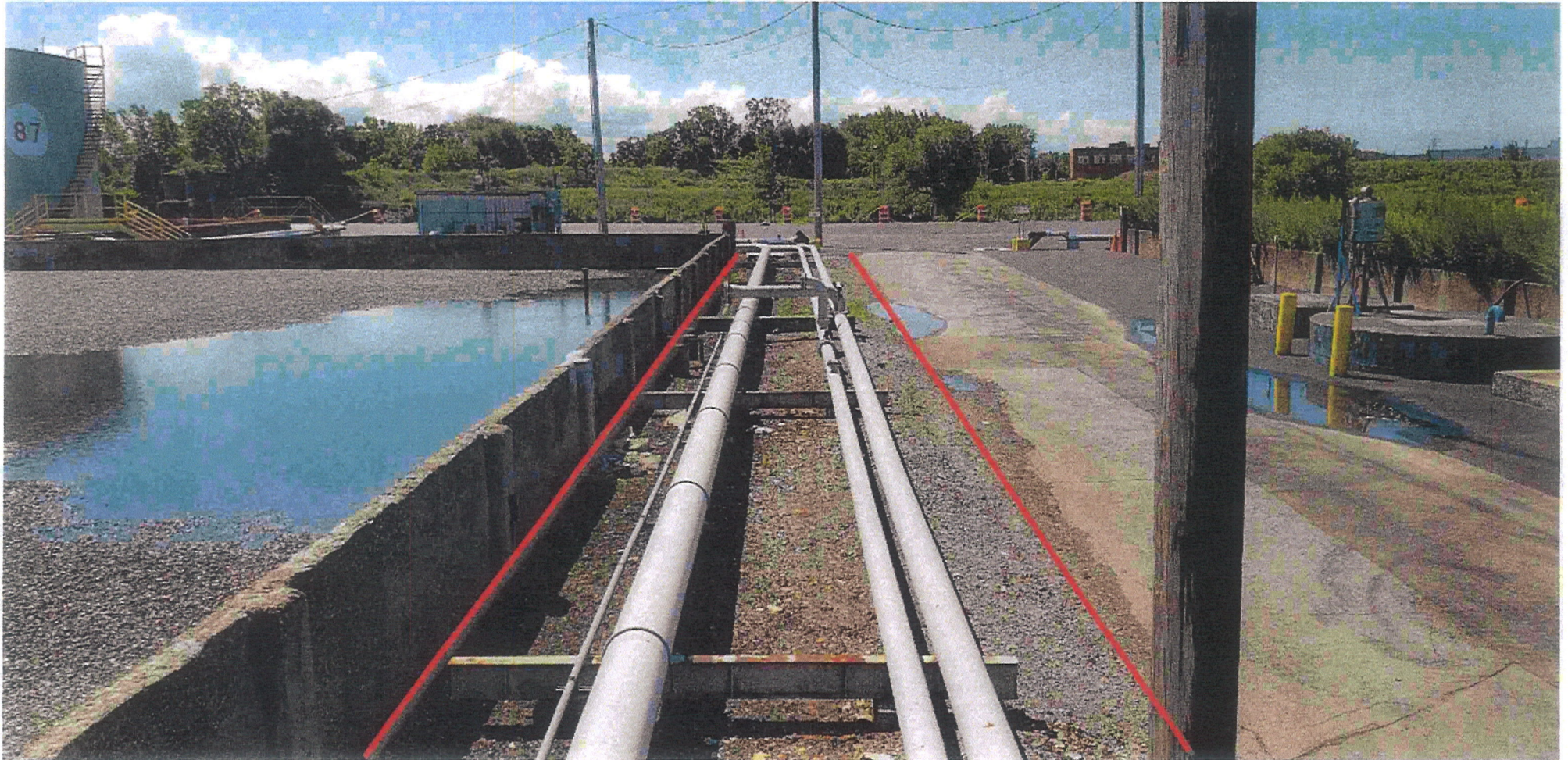
PHOTOGRAPH No. 2

Photo showing area proposed to be removed from the BCA
Buckeye pipelines and infrastructure limit access



PHOTOGRAPH No. 3

Photo showing area proposed to be removed from the BCA
Buckeye pipelines and infrastructure limit access



PHOTOGRAPH No. 4

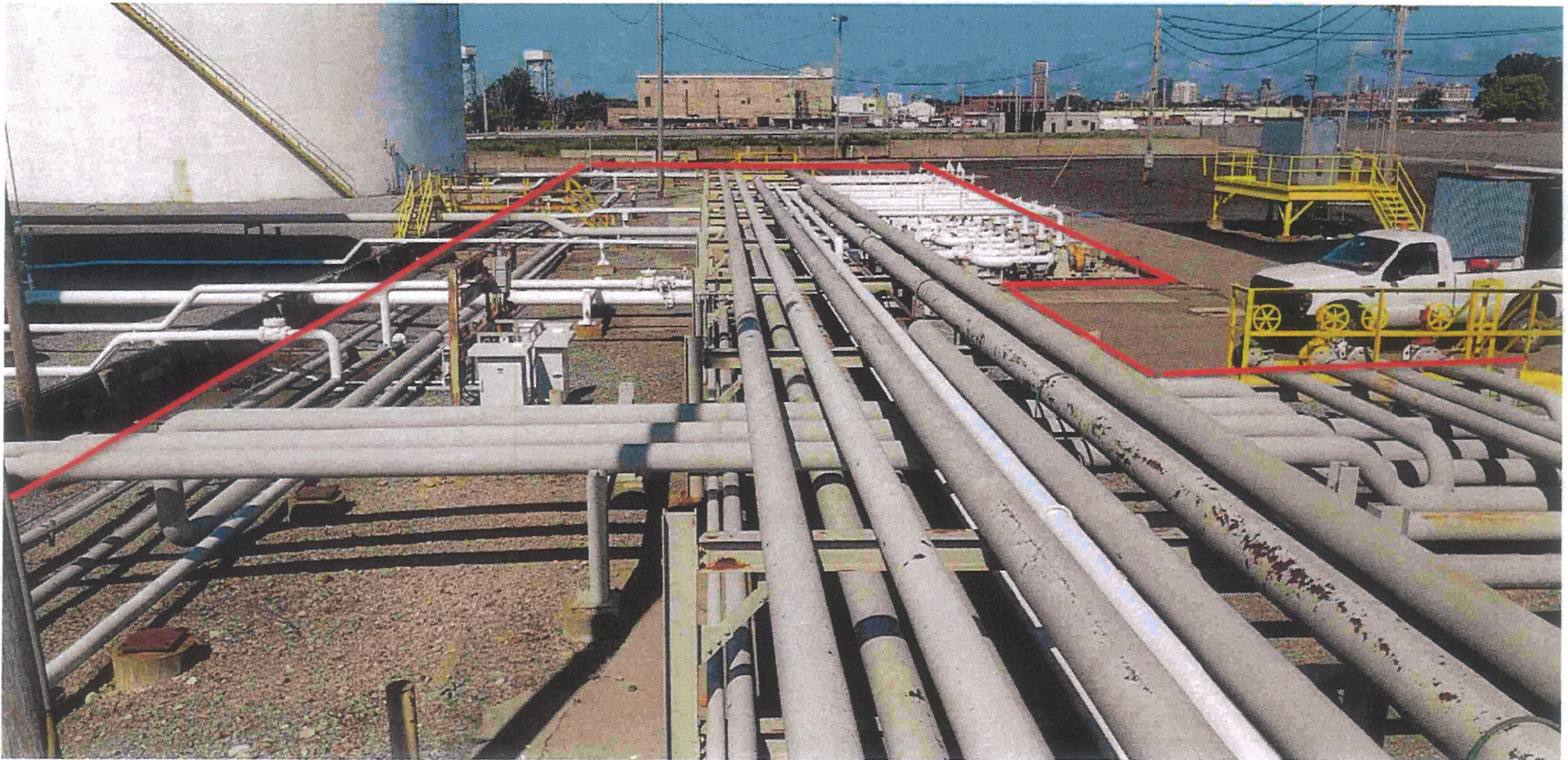
Photo showing area proposed to be removed from the BCA
Buckeye pipelines and infrastructure limit access



PHOTOGRAPH No. 5

Photo showing area proposed to be removed from the BCA

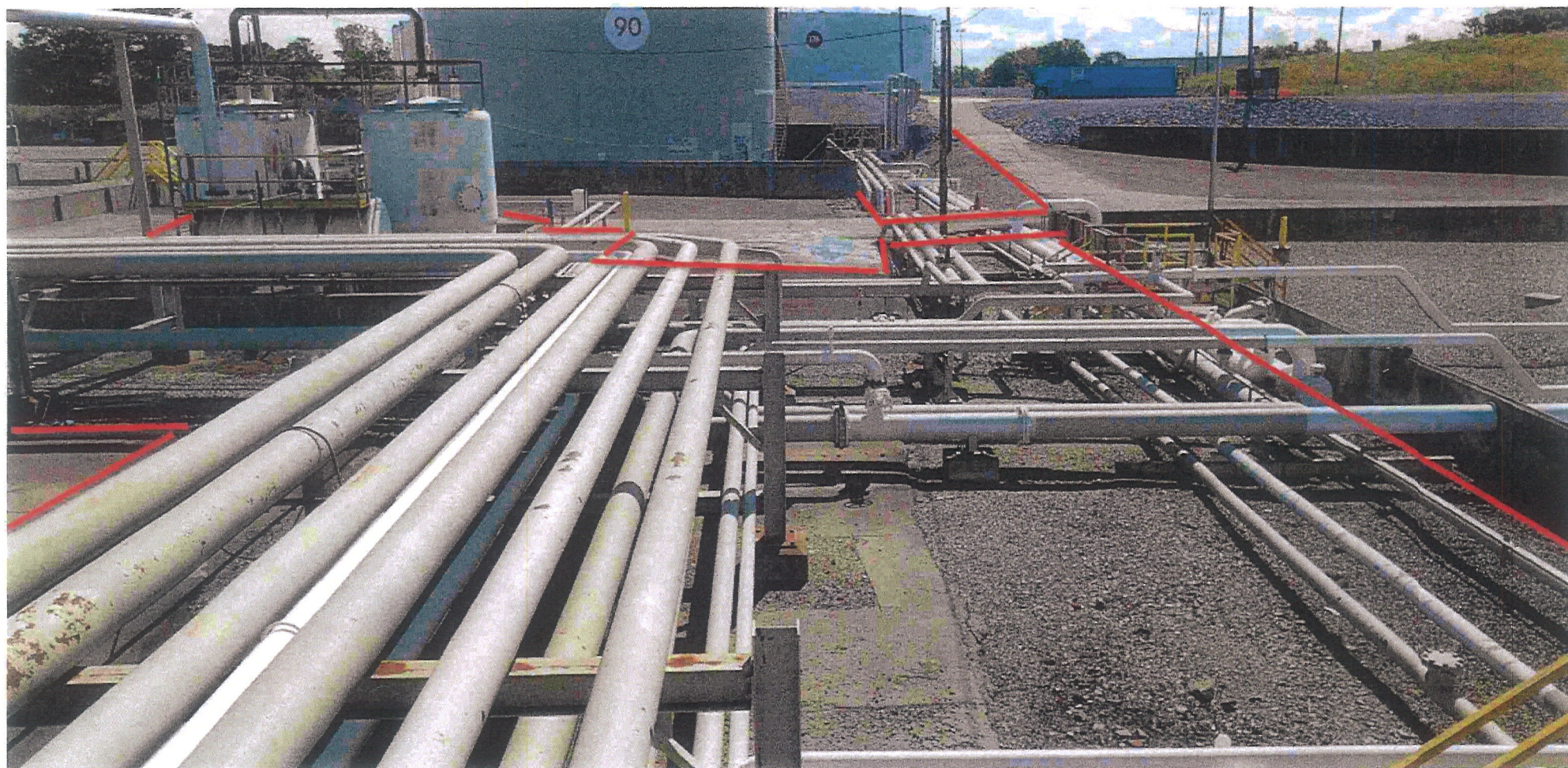
Buckeye pipelines and infrastructure limit access



PHOTOGRAPH No. 6

Photo showing area proposed to be removed from the BCA

Buckeye pipelines and infrastructure limit access



PHOTOGRAPH No. 7

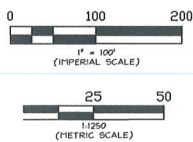
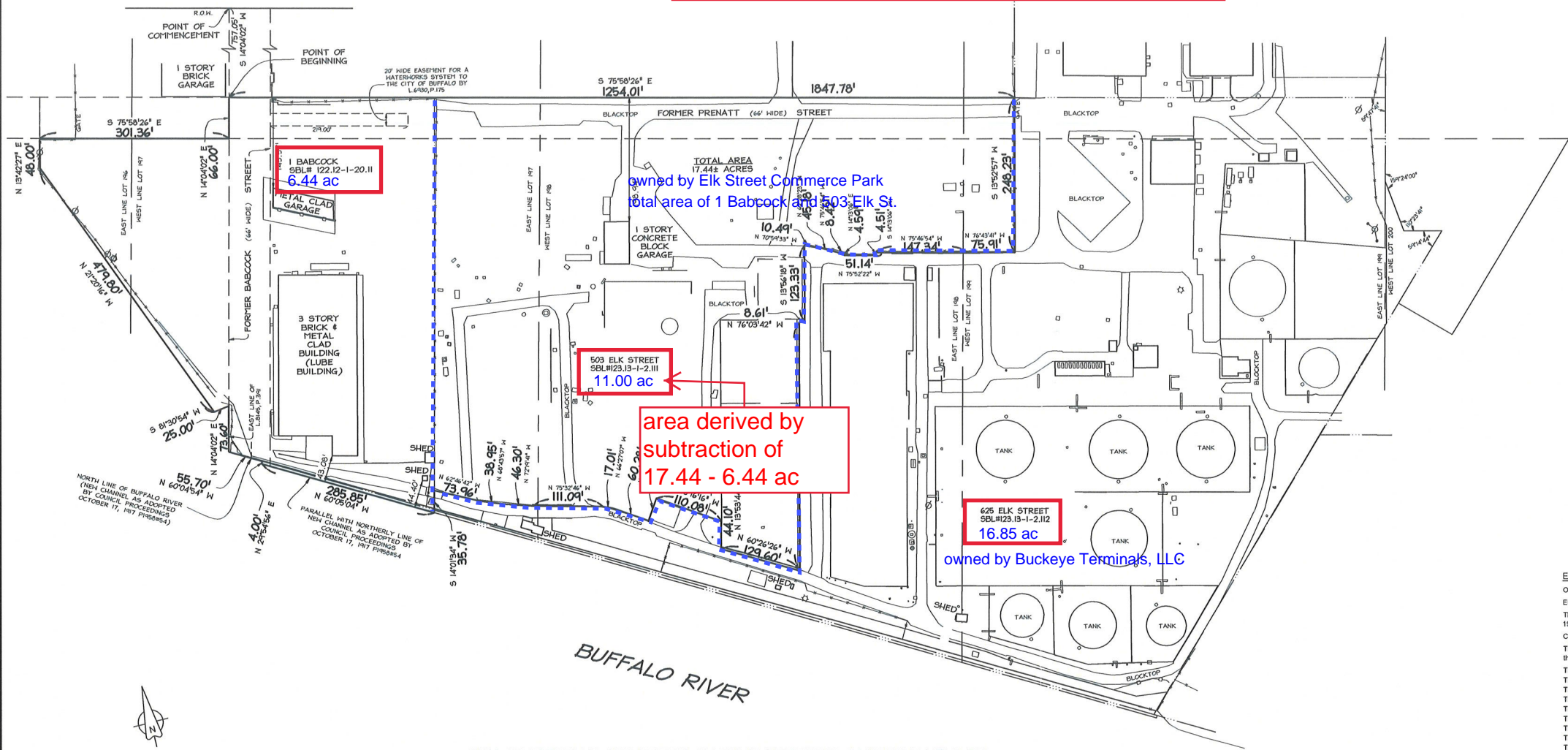
Photo showing area proposed to be removed from the BCA

Buckeye pipelines and infrastructure limit access



ELK (66' WIDE) STREET

Updated BCA Site Survey for Environmental Easement



LEGEND
— ON — OVERHEAD WIRES
☆ LIGHT POLE
Ø UTILITY POLE

NOTE:
BEARINGS AS SHOWN ARE REFERENCED TO NAD83.

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 THE NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CORTROL SECTION, 625 BROADWAY, ALBANY, NY 12233 OR AT DERWEB@DEC.NY.GOV

ENVIRONMENTAL EASEMENT LEGAL DESCRIPTION

Operating Unit 3 (OUG)
Elk Street Commerce Park LLC
THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie, and State of New York, being part of Lots 196, 197, 198, 199 and 200, Township 10, Range 8 of the Buffalo Creek Reservation, bound and described as follows:
Commencing at a point in the south line of Elk Street at its intersection with the west line of former Babcock Street;
THENCE S 14°04'02" W along the west line of former Babcock Street, to the north line of former Prenatt Street, a distance of 757.05 feet, being the point of BEGINNING;
THENCE S 75°58'26" E, along the north line of former Prenatt Street, a distance of 1254.01 feet;
THENCE S 13°52'57" W, a distance of 248.23 feet;
THENCE N 76°43'41" W, a distance of 75.91 feet;
THENCE N 75°46'54" W, a distance of 147.34 feet;
THENCE S 14°13'06" W, a distance of 4.51 feet;
THENCE N 75°52'22" W, a distance of 51.14 feet;
THENCE N 14°13'06" E, a distance of 4.59 feet;
THENCE N 75°46'54" W, a distance of 8.42 feet;
THENCE N 62°28'23" W, a distance of 45.18 feet;
THENCE N 70°59'33" W, a distance of 10.49 feet;
THENCE S 13°56'16" W, a distance of 123.33 feet;
THENCE N 76°03'42" W, a distance of 8.81 feet;
THENCE S 13°53'44" W, a distance of 398.93 feet;
THENCE N 60°26'28" W, a distance of 129.60 feet;
THENCE N 13°53'44" E, a distance of 44.10 feet;
THENCE N 50°16'16" W, a distance of 110.08 feet;
THENCE S 33°38'09" W, a distance of 38.12 feet;
THENCE N 58°30'49" W, a distance of 69.28 feet;
THENCE N 69°27'07" W, a distance of 17.01 feet;
THENCE N 75°32'46" W, a distance of 111.09 feet;
THENCE N 72°19'41" W, a distance of 48.30 feet;
THENCE N 68°43'57" W, a distance of 38.95 feet;
THENCE N 62°46'42" W, a distance of 73.96 feet;
THENCE S 14°01'34" W, a distance of 35.78 feet;
THENCE N 60°05'04" W, along a line being measured 4 feet perpendicular to the north line of the New Channel of the Buffalo River as adopted by Council Proceedings on October 17, 1917 P195854 a distance of 285.55 feet;
THENCE N 23°54'59" E, to the said north line of the New Channel of the Buffalo River, a distance of 4.00 feet;
THENCE N 60°04'54" W, along the said north line of the New Channel of the Buffalo River, to the east line of lands conveyed by deed recorded in the Erie County Clerk's Office in Liber 8145 of Deeds page 391, also being the west line of former Babcock Street, a distance of 55.70 feet;
THENCE N 14°04'02" E, along the east line of said lands of Liber 8145, page 391 and the west line of former Babcock Street, a distance of 73.60 feet;
THENCE S 81°30'54" W, a distance of 25.00 feet;
THENCE N 21°20'16" W, a distance of 479.80 feet;
THENCE N 13°42'27" E, to the south line of former Prenatt Street, a distance of 48.00 feet;
THENCE S 75°58'26" E, along the south line of former Prenatt Street, a distance of 301.36 feet;
THENCE N 14°04'02" E, a distance of 68.00 feet, to the point of BEGINNING, containing 17.44 acres, more or less.



3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
p (716) 827-8000 f (716) 270-6091 www.nussclark.com

NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON

This survey was prepared without the benefit of an authorized professional surveyor's review, drawing, design, specification, or report. No warranty or liability is made by the engineer or surveyor for any errors or omissions that may be revealed by an examination of such.

ENVIRONMENTAL EASEMENT SURVEY
Operating Unit 3
Elk Street Commerce Park LLC
Part of Lot 197,198,199,200 Township 10, Range 8
Buffalo Creek Reservation, City of Buffalo
County of Erie, State of New York
Date of Survey: 08/28/18 Lic. No. 50415 Scale: 1" = 100'

Project No. - 1812-0381BC6c

[illegible]

Operating Unit 3 (OU3)

THAT TRACT OR PARCEL OF LAND, SITUATE IN THE CITY OF BUFFALO, COUNTY OF ERIE, AND STATE OF NEW YORK, BEING PART OF LOTS 198, 197, 198, 199 AND 200, TOWNSHIP 10, RANGE 9 OF THE BUFFALO CREEK RESERVATION, BOUND AND DESCRIBED AS FOLLOWS;

COMMENCING AT A POINT IN THE SOUTH LINE OF ELK STREET AT ITS INTERSECTION WITH THE WEST LINE OF FORMER BABCOCK STREET AS SHOWN ON A MAP RECORDED IN THE ERIE COUNTY CLERK'S OFFICE IN LIBER 428 OF DEEDS AT PAGE 155;

THENCE SOUTH ALONG THE WEST LINE OF FORMER BABCOCK STREET A DISTANCE OF 757.05 FEET, TO THE NORTH LINE OF FORMER PRENATT STREET; SAID POINT BEING THE POINT OF BEGINNING;

THENCE EAST ALONG THE NORTH LINE OF FORMER PRENATT STREET A DISTANCE OF 1847.78 FEET;

THENCE SOUTH AT AN INTERIOR ANGLE OF 69°47'41" A DISTANCE OF 134.59 FEET;

THENCE SOUTH AT AN EXTERIOR ANGLE OF 189°40'00" A DISTANCE OF 48.81 FEET;

THENCE EAST AT AN EXTERIOR ANGLE OF 107°23'41" A DISTANCE OF 60.53 FEET;

THENCE SOUTHWEST AT AN INTERIOR ANGLE OF 59°14'44" A DISTANCE OF 302.41 FEET TO THE NORTH LINE OF THE NEW CHANNEL OF THE BUFFALO RIVER AS ADOPTED BY COUNSEL PROCEEDINGS ON OCTOBER 17, 1917 P195864

THENCE EAST ALONG THE NORTH LINE OF SAID NEW CHANNEL OF THE BUFFALO RIVER A DISTANCE OF 5.71 FEET;

THENCE SOUTH AT RIGHT ANGLES A DISTANCE OF 4.00 FEET;

THENCE WEST ALONG A LINE MEASURED 4 FEET PERPENDICULAR TO THE NORTH LINE OF SAID NEW CHANNEL OF THE BUFFALO RIVER A DISTANCE OF 1485.00 FEET;

THENCE NORTH AT RIGHT ANGLES A DISTANCE OF 4 FEET TO A POINT ON THE NORTH LINE OF SAID NEW CHANNEL OF THE BUFFALO RIVER;

THENCE WEST ALONG THE NORTH LINE OF SAID NEW CHANNEL OF THE BUFFALO RIVER A DISTANCE OF 55.70 FEET, TO THE EAST LINE OF LANDS CONVEYED BY DEED RECORDED IN THE ERIE COUNTY CLERK'S OFFICE IN LIBER 8145 OF DEEDS PAGE 391, ALSO BEING THE WEST LINE OF FORMER BABCOCK STREET;

THENCE NORTH ALONG THE WEST LINE OF FORMER BABCOCK STREET A DISTANCE OF 73.80 FEET;

THENCE WEST AT AN EXTERIOR ANGLE OF 67°26'52" A DISTANCE OF 25.00 FEET;

THENCE NORTHWEST AT AN INTERIOR ANGLE OF 102°51'10" A DISTANCE OF 479.80 FEET;

THENCE NORTH AT AN INTERIOR ANGLE OF 144°57'11" A DISTANCE OF 48.00 FEET TO THE SOUTH LINE OF FORMER PRENATT STREET;

THENCE EAST ALONG THE SOUTH LINE OF SAID FORMER PRENATT STREET A DISTANCE OF 301.38 FEET TO THE WEST LINE OF FORMER BABCOCK STREET;

THENCE NORTH ALONG THE WEST LINE OF SAID FORMER BABCOCK STREET A DISTANCE OF 68.00 FEET TO THE NORTH LINE OF FORMER PRENATT STREET, TO THE POINT OF BEGINNING, CONTAINING 34.30 ACRES, MORE OR LESS.

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
P (716) 627-8000 F (716) 270-0360 www.nutsclairke.com

THIS DRAWING WAS PREPARED FOR THE USE OF THE CLIENT AND IS NOT TO BE USED FOR ANY OTHER PROJECT. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN CONSENT OF NUTSCLAIRKE & ASSOCIATES, INC. IS PROHIBITED. THE CLIENT AGREES TO HOLD NUTSCLAIRKE & ASSOCIATES, INC. HARMLESS FROM ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING ATTORNEY'S FEES, THAT MAY BE INCURRED BY NUTSCLAIRKE & ASSOCIATES, INC. AS A RESULT OF ANY SUCH REUSE OR MODIFICATION.

ENVIRONMENTAL EASEMENT SURVEY
Operating Unit 3
Part of 503 & 625 Elk Street
Part of Lot 197,198,199,200 Township 10, Range 8
Buffalo Creek Reservation, City of Buffalo
County of Erie, State of New York

Date of Survey: 04/04/18 Lic. No. 50415 Scale: 1" = 100'

Project No.: 832-0516G6c

NUTSCLAIRKE & ASSOCIATES, INC.
BUSINESS AND SURVEYORS
INC. 1912

**RECORDED
DEED
1933**
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1933

