

September 16, 2020

Mr. Bruno DiBella
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

**RE: Permit Modification Request – Permit No. 9-1402-00977/00004
Extension of Existing Steel Bulkhead in the Vicinity of the Babcock Street CSO Outfall
ExxonMobil Former Buffalo Terminal Operable Unit No. 3, 1 Babcock Street, Buffalo, NY
NYSDEC Site No. C915201D/NYSDEC Spill No.2003976**

Dear Mr. DiBella:

As the Department is aware, a petroleum spill was reported in the Buffalo River in the vicinity of the Babcock Street combined sewer overflow (CSO) outfall on August 7, 2020 and lead to a multi-agency response that included the New York State Department of Environmental Conservation (NYSDEC), United States Coast Guard (USCG) and City of Buffalo Fire Department. The CSO outfall is located within the property formerly occupied by a petroleum refinery and terminal, owned and operated by ExxonMobil and its predecessor companies, which was recently acquired and remediated by Elk Street Commerce Park, LLC (ESCP) under the NYS Brownfield Clean Program (BCP). The source of the spill could not be pinpointed, but historic petroleum contamination remaining in the subsurface in the vicinity of the CSO outfall structure has been identified as a potential source.

ESCP voluntarily initiated spill response and containment measures following the discovery of the spill and has continued such operations to date. Additionally, ESCP has been issued both an Administrative Order by the USCG and a Corrective Measures request from the NYSDEC that require the continuation of current containment and recovery actions as well as the rapid development and implementation of a permanent remedy to prevent further impacts to the river. As discussed during our project status meeting on September 10, 2020, ESCP is advancing a permanent remedy that involves the extension of the existing approximately 1,400-foot long steel bulkhead to the west approximately 67-feet across the face of the existing CSO outfall structure to isolate soil contamination known to exist beneath this structure from the river. The area of the proposed bulkhead extension is depicted on the attached aerial site map.

As reflected by Figure 1, the CSO outfall would be extended through the new steel bulkhead at its current location and remain functional during construction, and the void between the bulkhead and the existing concrete outfall structure would be filled with concrete. Sealed interlocks would be used to connect the new bulkhead to the existing bulkhead. The existing bulkhead was installed by ESCP in 2018-2019 pursuant to the above referenced permit as part of the site remedy constructed under the NYS Brownfield Cleanup Program. The new bulkhead segment would be placed inboard of the existing steel bulkhead using construction and erosion and silt control measures consistent with those that were effectively applied during the installation of the existing bulkhead. Additionally, current spill containment and recovery measures required by USCG and NYSDEC will continue during construction for pollution control purposes.

The hydraulic analysis completed in connection with permitting process for the original bulkhead isolation project determined that the 1,400-foot long bulkhead would not cause an impact to water surface elevations or negatively impact ice flows or jams at or around the structure. Given the



relatively minor bulkhead extension described herein and its inboard position relative to the existing steel bulkhead, no changes to the conclusions drawn in the previous analysis are expected.

Pursuant to our September 10, 2020 meeting, LaBella Associates, DPC has prepared this request on behalf of Elk Street Commerce Park, LLC (ESCP) to modify the above referenced permit. As described above, the purpose of this requested modification is to enable the extension of the existing steel bulkhead in the vicinity of the Babcock Street CSO outfall to isolate soil contamination known to exist beneath this outfall structure from the river. In an effort to comply with USCG and NYSDEC directives to prevent the ongoing leaching of petroleum suspected to be emanating from residual contamination situated beneath the CSO structure, ESCP seeks to construct this project before the end of 2020.

Based upon guidance received from the United States Army Corps of Engineers (USACE) Buffalo District, a parallel submittal has been made for the proposed bulkhead extension to the USACE consisting of an application for a Nationwide Permit No. 38 (NWP-38). Your office was copied on the submittal to the USACE.

Thank you for your assistance with this process and please do not hesitate to contact me should you have any questions or require additional information regarding this request.

Respectfully submitted,

LaBella Associates

Robert R. Napieralski, CPG
Regional Manager

Cc: Steven Metivier (USACE)
Chad Stiniszewski (NYSDEC)
Eugene Melnyk (NYSDEC)
Andrea Caprio (NYSDEC)
Commander McKinstry (USCG)
LT Jillian Hoffman (USCG)
Paul Neureuter (ESCP)
Benjamin Genes (ESCP)
Arnie Cubins (ESCP)



JOINT APPLICATION FORM

For Permits for activities affecting streams, waterways, waterbodies, wetlands, coastal areas, sources of water, and endangered and threatened species.

You must separately apply for and obtain Permits from each involved agency before starting work. Please read all instructions.

1. Applications To:
>NYS Department of Environmental Conservation
Check all permits that apply: Stream Disturbance, Dams and Impoundment Structures, Tidal Wetlands, Water Withdrawal, etc.
>US Army Corps of Engineers
Check all permits that apply: Section 404 Clean Water Act, Section 10 Rivers and Harbors Act
>NYS Office of General Services
Check all permits that apply: State Owned Lands Under Water, Utility Easement, Docks, Moorings or Platforms
>NYS Department of State
Check if this applies: Coastal Consistency Concurrence

2. Name of Applicant
Mailing Address, Telephone, Email, Taxpayer ID, Post Office / City, State, Zip
Applicant Must be (check all that apply): Owner, Operator, Lessee

3. Name of Property Owner (if different than Applicant)
Mailing Address, Telephone, Email, Post Office / City, State, Zip

For Agency Use Only Agency Application Number:

4. Name of Contact / Agent

Mailing Address _____ Post Office / City _____ State _____ Zip _____

Telephone _____ Email _____

5. Project / Facility Name _____ Property Tax Map Section / Block / Lot Number: _____

Project Street Address, if applicable _____ Post Office / City _____ State _____ Zip _____

_____ NY _____

Provide directions and distances to roads, intersections, bridges and bodies of water

Town Village City County _____ Stream/Waterbody Name _____

Project Location Coordinates: Enter Latitude and Longitude in degrees, minutes, seconds:

Latitude: _____° _____' _____" Longitude: _____° _____' _____"

6. Project Description: Provide the following information about your project. Continue each response and provide any additional information on other pages. **Attach plans on separate pages.**

a. Purpose of the proposed project:

b. Description of current site conditions:

c. Proposed site changes:

d. Type of structures and fill materials to be installed, and quantity of materials to be used (e.g., square feet of coverage, cubic yards of fill material, structures below ordinary/mean high water, etc.):

e. Area of excavation or dredging, volume of material to be removed, location of dredged material placement:

f. Is tree cutting or clearing proposed? Yes If Yes, explain below. No

Timing of the proposed cutting or clearing (month/year): _____

Number of trees to be cut: _____ Acreage of trees to be cleared: _____

g. Work methods and type of equipment to be used:

h. Describe the planned sequence of activities:

i. Pollution control methods and other actions proposed to mitigate environmental impacts:

j. Erosion and silt control methods that will be used to prevent water quality impacts:

k. Alternatives considered to avoid regulated areas. If no feasible alternatives exist, explain how the project will minimize impacts:

l. Proposed use: Private Public Commercial

m. Proposed Start Date: Estimated Completion Date:

n. Has work begun on project? Yes If Yes, explain below. No

o. Will project occupy Federal, State, or Municipal Land? Yes If Yes, explain below. No

p. List any previous DEC, USACE, OGS or DOS Permit / Application numbers for activities at this location:

q. Will this project require additional Federal, State, or Local authorizations, including zoning changes?

Yes If Yes, list below. No

7. Signatures.

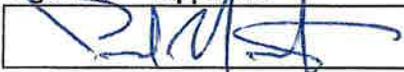
Applicant and Owner (If different) must sign the application. If the applicant is the landowner, the **landowner attestation form** can be used as an electronic signature as an alternative to the signature below, if necessary. Append additional pages of this Signature section if there are multiple Applicants, Owners or Contact/Agents.

I hereby affirm that information provided on this form and all attachments submitted herewith is true to the best of my knowledge and belief.

Permission to Inspect - I hereby consent to Agency inspection of the project site and adjacent property areas. Agency staff may enter the property without notice between 7:00 am and 7:00 pm, Monday - Friday. Inspection may occur without the owner, applicant or agent present. If the property is posted with "keep out" signs or fenced with an unlocked gate, Agency staff may still enter the property. Agency staff may take measurements, analyze site physical characteristics, take soil and vegetation samples, sketch and photograph the site. I understand that failure to give this consent may result in denial of the permit(s) sought by this application.

False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the NYS Penal Law. Further, the applicant accepts full responsibility for all damage, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and agrees to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from said project. In addition, Federal Law, 18 U.S.C., Section 1001 provides for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both where an applicant knowingly and willingly falsifies, conceals, or covers up a material fact; or knowingly makes or uses a false, fictitious or fraudulent statement.

Signature of Applicant



Date

9/15/20

Applicant Must be (check all that apply): Owner Operator Lessee

Printed Name

Paul Neureuter, Elk Street Commerce Park, LLC

Title

Co-Manager

Signature of Owner (if different than Applicant)

Date

Printed Name

Title

Signature of Contact / Agent



Date

9/15/20

Printed Name

Robert Napieralski

Title

Vice President

For Agency Use Only

DETERMINATION OF NO PERMIT REQUIRED

Agency Application Number

(Agency Name) has determined that No Permit is required from this Agency for the project described in this application.

Agency Representative:

Printed Name

Title

Signature

Date



Former ExxonMobil Buffalo Terminal Operational Unit 3 (OU-3) Boundary (approx.)

Proposed Bulkhead Extension

Approx. Location of Babcock Street CSO Outfall

Existing Steel Isolation Bulkhead

Buffalo River

Buffalo River

Babcock St

SITE AERIAL

Elk Street Commerce Park
Buffalo, New York



N
↑
○
↓
NOT TO SCALE

NOT FOR CONSTRUCTION

It is a violation of New York Education Law Article 145 Sec.7209, for any person, unless acting under the direction of a licensed architect, professional engineer, or land surveyor, to alter an item in any way. If an item bearing the seal of an architect, engineer, or land surveyor is altered, the altering architect, engineer, or land surveyor shall affix to the item their seal and notation "altered by" followed by their signature and date of such alteration, and a specific description of the alteration.

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**ELK STREET
COMMERCE PARK LLC**

4 CENTRE DRIVE
ORCHARD PARK, NY 14127

**ELK STREET
COMMERCE PARK**

625 ELK STREET
BUFFALO, NEW YORK

NO.	DATE	DESCRIPTION

PROJECT NUMBER: 2200012

DRAWN BY: TAP

REVIEWED BY: CTB

ISSUED FOR:

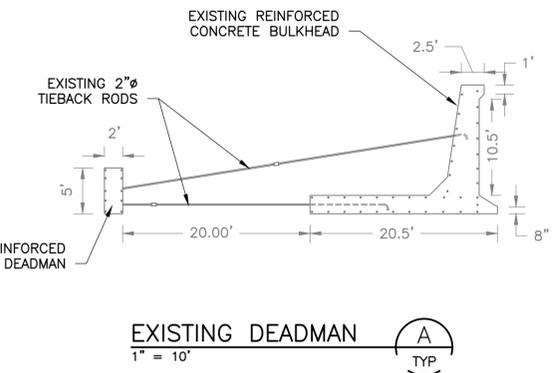
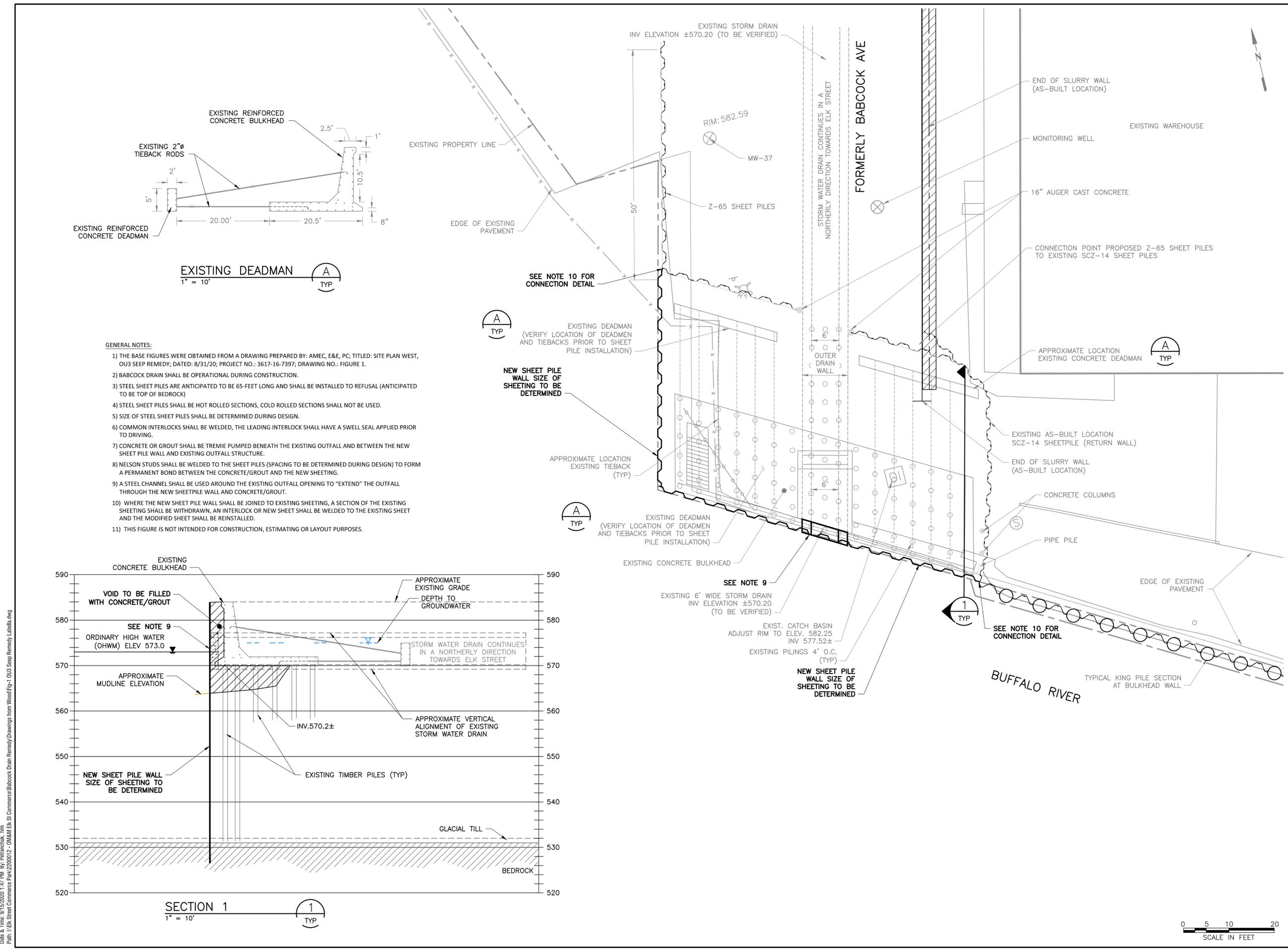
DATE: SEPTEMBER 15, 2020

DRAWING NAME:

SITE PLAN WEST

DRAWING NUMBER:

FIGURE 1



- GENERAL NOTES:**
- 1) THE BASE FIGURES WERE OBTAINED FROM A DRAWING PREPARED BY: AMEC, E&E, PC; TITLED: SITE PLAN WEST, OUS SEEP REMEDY; DATED: 8/31/20; PROJECT NO.: 3617-16-7397; DRAWING NO.: FIGURE 1.
 - 2) BABCOCK DRAIN SHALL BE OPERATIONAL DURING CONSTRUCTION.
 - 3) STEEL SHEET PILES ARE ANTICIPATED TO BE 65-FEET LONG AND SHALL BE INSTALLED TO REFUSAL (ANTICIPATED TO BE TOP OF BEDROCK)
 - 4) STEEL SHEET PILES SHALL BE HOT ROLLED SECTIONS, COLD ROLLED SECTIONS SHALL NOT BE USED.
 - 5) SIZE OF STEEL SHEET PILES SHALL BE DETERMINED DURING DESIGN.
 - 6) COMMON INTERLOCKS SHALL BE WELDED, THE LEADING INTERLOCK SHALL HAVE A SWELL SEAL APPLIED PRIOR TO DRIVING.
 - 7) CONCRETE OR GROUT SHALL BE TREMIE PUMPED BENEATH THE EXISTING OUTFALL AND BETWEEN THE NEW SHEET PILE WALL AND EXISTING OUTFALL STRUCTURE.
 - 8) NELSON STUDS SHALL BE WELDED TO THE SHEET PILES (SPACING TO BE DETERMINED DURING DESIGN) TO FORM A PERMANENT BOND BETWEEN THE CONCRETE/GROUT AND THE NEW SHEETING.
 - 9) A STEEL CHANNEL SHALL BE USED AROUND THE EXISTING OUTFALL OPENING TO "EXTEND" THE OUTFALL THROUGH THE NEW SHEETPILE WALL AND CONCRETE/GROUT.
 - 10) WHERE THE NEW SHEET PILE WALL SHALL BE JOINED TO EXISTING SHEETING, A SECTION OF THE EXISTING SHEETING SHALL BE WITHDRAWN, AN INTERLOCK OR NEW SHEET SHALL BE WELDED TO THE EXISTING SHEET AND THE MODIFIED SHEET SHALL BE REINSTALLED.
 - 11) THIS FIGURE IS NOT INTENDED FOR CONSTRUCTION, ESTIMATING OR LAYOUT PURPOSES.

Date & Time: 01/15/2020 1:47 PM By: Paterashuk, Tim Path: I:\Elk Street Commerce Park\2200012 - OMA&M E&E St Commerce\Babcock Drain Remedy\Drawings from WoodFig-1 OUS Seep Remedy\Labella.dwg