

Environmental Covenant

When recorded, return to: John "Casey" Wells
Erie County Convention Center Authority
809 French Street, Erie, PA 16501

The Property consists of two tax parcels, which have Erie County Tax Parcel Index Nos.(17) 4048-207 and (17) 4048-102, respectively.

GRANTOR: Erie County Convention Center Authority
PROPERTY ADDRESS: 218 West Bayfront Parkway, Erie, PA 16501

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed pursuant to the Pennsylvania Uniform Environmental Covenants Act, Act No. 68 of 2007, 27 Pa. C.S. §§ 6501 – 6517 (UECA). This Environmental Covenant subjects the Property identified in Paragraph 1 to the activity and/or use limitations in this document. As indicated later in this document, this Environmental Covenant has been approved by the Pennsylvania Department of Environmental Protection (Department).

1. **Property affected.** The Property affected by this Environmental Covenant is located in the City of Erie, Erie County, Pennsylvania.

The postal street address of the Property is: 218 West Bayfront Parkway, Erie, PA 16501. The latitude and longitude of the center of the Property affected by this Environmental Covenant is: Lat. 42deg. 08' 3.84" Long. 80 deg 05' 39.12".

The Property has been known by the following name(s): Former CSX Site. The DEP Primary Facility ID# is 765682

A complete description of the Property is attached to this Environmental Covenant as Exhibit A. A map of the Property is attached to this Environmental Covenant as Exhibit B.

2. **Property Owner / GRANTOR / GRANTEE.** The Erie County Convention Center Authority (ECCCA) is the owner of the Property and the GRANTOR and GRANTEE of this Environmental Covenant.

3. **The mailing address of the owner is:** Erie County Convention Center Authority, 809 French Street, Erie, PA 16501.

4. **Description of Contamination & Remedy.** ECCCA submitted a Notice of Intent to Remediate (NIR) the Site to the Act 2 Site Specific Standard (SSS) to the Pennsylvania Department of Environmental Protection (PADEP) on April 26, 2013 and

made appropriate public notifications. The City of Erie did not request a Public Involvement Plan. A combined Act 2 Remedial Investigation/Risk Assessment and Cleanup Plan was submitted to PADEP in June 2013; Amec Foster Wheeler's response to technical deficiencies was submitted to PADEP in October 2013, and PADEP approved the document on January 2, 2014. PADEP has assigned the Site Preliminary Facility ID # 765682.

The entire CSX Site is approximately 1.57 acres of level ground extending west from Sassafras Street for approximately 1,600 feet along the Bayfront Parkway and adjacent to both the GAF site and Erie City Water Authority property which are north. The CSX Site was used for railroad purposes since at least the late 1800's until CSX removed the tracks in 2013. The Site is located in a historically highly industrialized part of the City of Erie that was serviced by the railroad.

Because of the CSX Site's past non-residential use, and the different future uses of the immediately adjacent properties (the City of Erie Water Authority property is non-residential and the former GAF Site may be residential), it is determined appropriate and logical to separate the CSX Site into two parts, CSX East and CSX West (Exhibit B).

The City of Erie has an ordinance prohibiting the use of groundwater. Concentrations of arsenic, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene and dibenz(a,h)anthracene in several soil samples from the CSX East Parcel (Exhibit B) exceeded the respective Act 2 Residential Non-Use Aquifer Soil Medium Specific Concentrations (MSCs). Arsenic was detected in one sample from the CSX West Parcel that exceeded the Act 2 Residential Non-Use Aquifer Soil MSC.

Groundwater analytical data from MW-1 indicate that the concentration of dissolved iron in groundwater samples from MW-1 exceeded the Secondary Maximum Contaminant Level (SMCL) for dissolved iron of 300 µg/l. No other Residential Non-Use Aquifer MSCs were exceeded in groundwater.

The CSX RI concluded that the source of impacted soil was likely historic railroad operations, and; impacted soil and groundwater are not migrating from the CSX Site. The results of the risk assessment indicate that the PADEP cumulative risk management benchmarks of 1E-04 for carcinogens was exceeded for the potential future resident child based on total risk from exposure to Site soils. Based on these results and the intended future land use of the CSX East Parcel as residential and CSX West Parcel as non-residential, a cleanup plan was implemented that included covering the CSX East Parcel with a marker layer and one foot of clean cover. The CSX West Parcel will remain non-residential as required by Activity & Use Limitations of Section 5, below; and as a non-residential use, it does not need a cover similar to the CSX East Parcel.

5. **Activity & Use Limitations.** The CSX East Property is subject to the following activity and use limitations, which the then current owner of the Property, and its tenants, agents, employees and other persons under its control, shall abide by:

- The groundwater beneath the Site shall not be used for any purpose;
- Subsurface structures such as basements shall not be constructed on Site;
- The cover system shall be maintained as described in the Post Remediation Care Plan presented in the Act 2 Final Report. That Plan includes procedures to be followed if excavations extend below the cover system marker layer to protect worker health and safety; manage excavated materials; and, reestablish the cover system.

The CSX West Property is subject to the following activity and use limitations, which the then current owner of the Property, and its tenants, agents, employees and other persons under its control, shall abide by:

- The Site shall not be used for any residential purpose; and
- The groundwater beneath the Site shall not be used for any purpose.

6. **Notice of Limitations in Future Conveyances.** Each instrument hereafter conveying any interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of this Environmental Covenant.

7. **Compliance Reporting.** After written request by the Department, the then current owner of the Property shall submit to the Department written documentation stating whether or not the activity and use limitations in this Environmental Covenant are being abided by. In addition, within 1 month after any of the following events, the then current owner of the Property shall submit, to the Department, written documentation of:

- Noncompliance with the activity and use limitations in this Environmental Covenant;
- Transfer of the Property;
- Changes in use of the Property; or
- Filing of applications for building permits for the Property and any proposals for any site work, if the building or proposed site work will affect the contamination on the Property subject to this Environmental Covenant.”

8. **Access by the Department.** In addition to any rights already possessed by the Department, this Environmental Covenant grants to the Department a right of reasonable access of the Property in connection with implementation or enforcement of this Environmental Covenant.

9. **Recording & Proof & Notification.** Within 30 days after the date of the Department’s approval of this Environmental Covenant, the Erie County Convention Center Authority shall file this Environmental Covenant with the Recorder of Deeds for each County in which the Property is located, and send a file-stamped copy of this Environmental Covenant to the Department within 60 days of recording. Within that time period, the Erie County Convention Center Authority also shall send a file-stamped

copy to each of the following: the City of Erie and Erie County; any Holder identified in this Environmental Covenant listed in Paragraph 3.

10. **Termination or Modification.**

(a) This Environmental Covenant may only be terminated or modified in accordance with 27 Pa. C.S. §§ 6509 or 6510, or in accordance with this paragraph.

(b) This Environmental Covenant may be amended or terminated as to any portion of the Property that is acquired for use as state highway right-of-way by the Commonwealth provided that: (1) the Department waives the requirements for an environmental covenant and for conversion pursuant to 27 Pa. C.S. §6517 to the same extent that this Environmental Covenant is amended or terminated; (2) the Department determines that termination or modification of this Environmental Covenant will not adversely affect human health or the environment; and (3) the Department provides 30-days advance written notice to the current property owner, each holder, and, as practicable, each person that originally signed the Environmental Covenant or successors in interest to such persons.

(c) This Environmental Covenant shall terminate upon attainment, in accordance with 35 P.S. §§ 6026.101 – 6026.908, with an unrestricted use remediation standard for the above-described contamination at the Property. The Department must approve, in writing, of such termination.

(d) In accordance with 27 Pa. C.S. § 6510(a)(3)(i), Grantor hereby waives the right to consent to any amendment or termination of the Environmental Covenant by consent; it being intended that any amendment to or termination of this Environmental Covenant by consent in accordance with this Paragraph requires only the following signatures on the instrument amending or terminating this Environmental Covenant: (i) the Holder at the time of such amendment or termination; (ii) the then current owner of the Property and (iii) the Department.

11. **Department's address.** Communications with the Department regarding this Environmental Covenant shall be sent to:

Anita M. Stainbrook
Northwest Regional Environmental Cleanup & Brownfields Manager PADEP
230 Chestnut St.
Meadville, PA 16335

12. **Severability.** The paragraphs of this Environmental Covenant shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

ACKNOWLEDGMENTS by Owner(s) and any Holder(s), in the following form:

EXHIBIT A
CSX LEGAL DESCRIPTION

CSX West Legal Description

All that certain piece or parcel of land situate in the City of Erie, Erie County, Pennsylvania, as shown on an ALTA/ACSM Land Title Survey for CSX Transportation, Inc., prepared by Sanford Surveying & Engineering, P.C., dated January 21, 2013 and being more particularly bounded and described as follows to-wit:

Beginning at the southeasterly corner of the parcel herein described, at a point at the intersection of the former westerly right-of-way line of Myrtle Street (formerly a sixty foot wide right-of-way), and the northerly right-of-way line of Front Street (formerly a two hundred foot wide right-of-way);

thence S. 48°-49'-09" W., along the northerly right-of-way line of Front Street, 32.19 feet to a point in the northerly right-of-way line of Bayfront Parkway, State Route 4034 (a variable width right-of-way);

thence S. 64°-13'-44" W., along the northerly right-of-way line of Bayfront Parkway, 112 feet more or less to a point at the intersection of the northerly right-of-way line of Bayfront Parkway, State Route 4034 and the southerly line of Substitute right-of-way in fee for Conrail;

thence S. 64°-13'-44" W., along the northerly right-of-way line of Bayfront Parkway, 37 feet more or less to a point of curvature;

thence continuing along the northerly right-of-way line of Bayfront Parkway, it being a curve to the left, having a radius of 1939.86 feet, a central angle of 11°36'13" and an arc distance of 392.87 feet, having a chord bearing of S. 58°-33'-10" W. and a chord distance of 392.20 feet to a point;

thence S. 52°-45'-04" W., continuing along the northerly right-of-way line of Bayfront Parkway, 34.21 feet to a point at a southeasterly corner of land now or formerly of Erie Western Pennsylvania Port Authority (Record Book 809, page 2250);

thence N. 25°-56'-20" W., along an easterly line of land of Erie Western Pennsylvania Port Authority, 45.89 feet to a point;

thence N. 52°-45'-04" E., along the southerly lines of land of Erie Western Pennsylvania Port Authority and land now or formerly of Bureau of Water (Deed Book 126, Pg. 344), 25.21 feet to a point of curvature;

thence continuing along the southerly line of land of Bureau of Water, it being a curve to the right, having a radius of 1984.86 feet, a central angle of 14°36'13" and an arc distance of 505.91 feet, having a chord bearing of N. 60°-03'-10" E. and a chord distance of 504.54 feet to a point;

thence N. 54°-02'-36" E., continuing along the southerly line of land of Bureau of Water, passing over the former westerly right-of-way line of Myrtle Street, aforesaid, at a distance of 76.40 to a point,

thence S 26°-21'-15" E, along the former westerly right-of-way line of Myrtle Street, 26 feet more or less to the Place of Beginning.

Containing 0.63 acre of land.

CSX East Legal Description

All that certain piece or parcel of land situate in the City of Erie, Erie County, Pennsylvania, as shown on an ALTA/ACSM Land Title Survey for CSX Transportation, Inc., prepared by Sanford Surveying & Engineering, P.C., dated January 21, 2013 and being more particularly bounded and described as follows to-wit:

Beginning at the southwesterly corner of the parcel herein described, at a point at the intersection of the former easterly right-of-way line of Myrtle Street (formerly a sixty foot wide right-of-way) and the northerly right-of-way line of Front Street (formerly a two hundred foot wide right-of-way), said point also being a point in an easterly line of Parcel "G" as recorded in Erie County, PA as Map Number 2005-296;

thence N. 26°-21'-15" W., along the former easterly right-of-way line of Myrtle Street and an easterly line of Parcel "G", 31 feet more or less to a point at the southwesterly corner of Substitute right-of-way in fee for Conrail;

thence easterly, along the southerly line of Substitute right-of-way in fee for Conrail, 196 feet more or less to point in the westerly line of land now or formerly of Erie County Convention Center Authority (Instrument Number 2010-029901);

thence S. 26°-21'-15" E., along the westerly line of land of Erie County Convention Center Authority, 146.44 feet to a point;

thence N. 72°-40'-58" E, along the southerly line of land of Erie County Convention Center Authority, 122.76 feet to a point;

thence N. 74°-58'-15" E., continuing along the southerly line of land of Erie County Convention Center Authority, 382.11 feet to a point in the westerly right-of-way of Sassafras Street (a sixty foot wide right-of-way);

thence S. 26°-21'-15" E., along the westerly right-of-way of Sassafras Street, 28.63 feet to a point in the northerly right-of-way line of Front Street, aforesaid;

thence S. 74°-58'-03" W., along the northerly right-of-way line of Front Street, 460.28 feet to a point in the northerly right-of-way line of Bayfront Parkway, State Route 4034 (a variable width right-of-way);

thence S. 78°-31'-30" W., along the northerly right-of-way line of Bayfront Parkway, 6.76 feet to point;

thence S. 74°-59'-07" W., continuing along the northerly right-of-way line of Bayfront Parkway, 171.31 feet to point;

thence S. 64°-12'-52" W., continuing along the northerly right-of-way line of Bayfront Parkway, 2.54 feet to point in the northerly right-of-way line of Front Street, aforesaid;

thence S. 74°-58'-03" W., along the northerly right-of-way line of Front Street, 33.51 feet to the former easterly right-of-way line of Myrtle Street, aforesaid, the Place of Beginning.

Containing 0.70 acre of land.

AND ALSO:

Beginning at a point at the intersection of the former westerly right-of-way line of Myrtle Street (formerly a sixty foot wide right-of-way) and the northerly right-of-way line of Front Street (formerly a two hundred foot wide right-of-way);

thence N. 26°-21'-15" W., along the former westerly right-of-way line of Myrtle Street, 47.01 feet more or less to a point in the northerly line of Conrail right-of-way (Deed Book 1323, Page 197 and Deed Book 1323, Page 211);

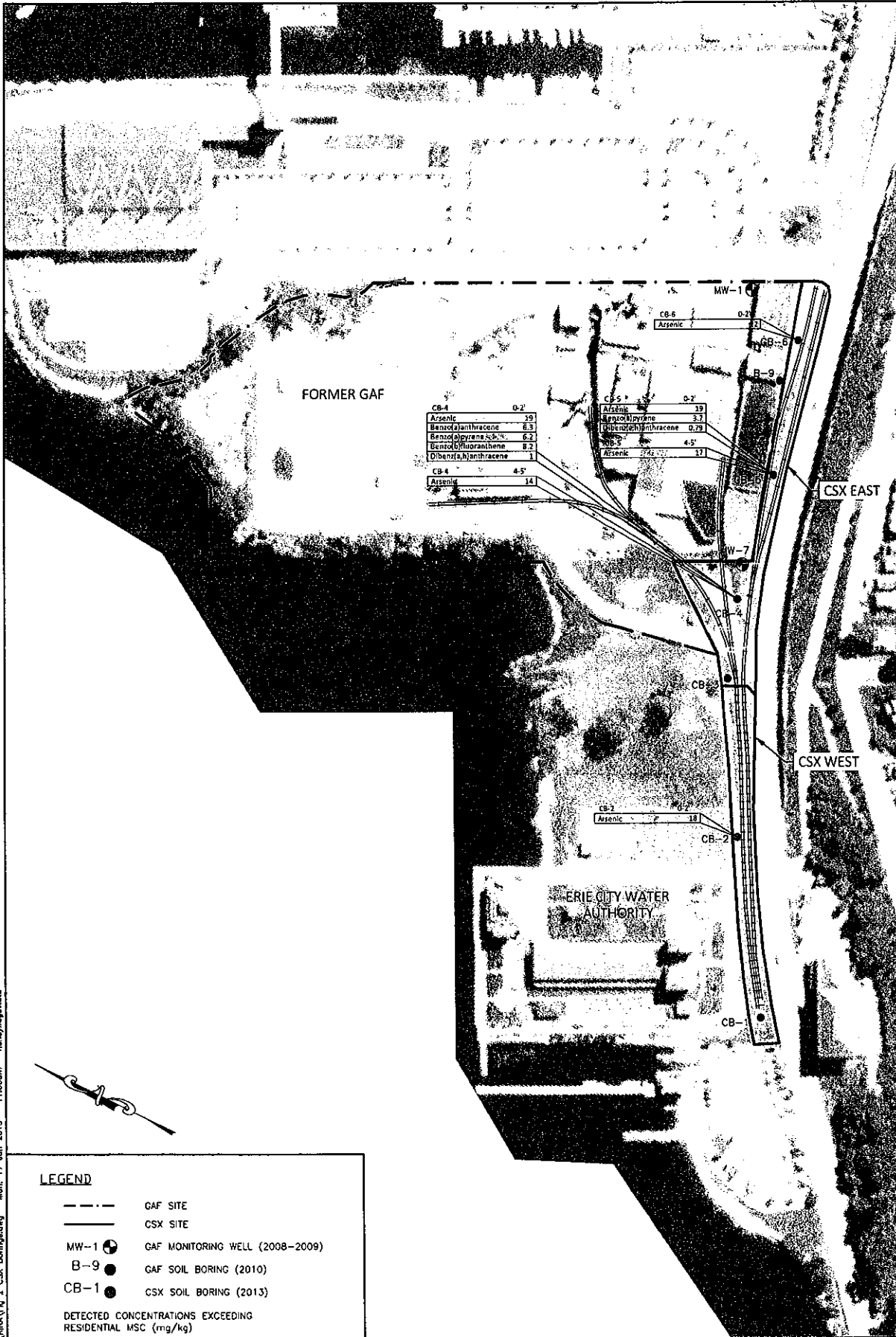
thence N. 54°-02'-36" E, 60.85 feet across the former right-of-way of Myrtle Street, to a point;

thence S. 26°-21'-15" E., along the former easterly right-of-way line of Myrtle Street, 4.86 feet to an angle point in the southerly line of land now or formerly of Erie County Convention Center Authority (Instrument Number 2010-029901), also being known as Parcel "G" as recorded in Erie County, PA as Map Number 2005-296;

thence N. 37°-19'-24" E., along a southerly line of Parcel "G", 184.43 feet to point in the westerly line of land now or formerly of Erie County Convention Center Authority (Instrument Number 2010-029901);

thence westerly, along the northerly line of Conrail right-of-way (Deed Book 1323, Page 197 and Deed Book 1323, Page 211), 196 feet more or less to the former easterly right-of-way line of Myrtle Street;

EXHIBIT B
CSX PROPERTY MAP

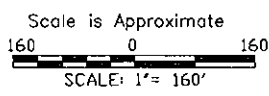


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LEGEND

- GAF SITE
- CSX SITE
- MW-1 ● GAF MONITORING WELL (2008-2009)
- B-9 ● GAF SOIL BORING (2010)
- CB-1 ● CSX SOIL BORING (2013)

DETECTED CONCENTRATIONS EXCEEDING RESIDENTIAL MSC (mg/kg)



Former CSX Bayfront Site
 Bayfront Parkway
 Erie, Pennsylvania

Project No.: 3410110844

amec

Environment & Infrastructure - Pittsburgh
 800 North Bell Avenue
 Carnegie, Pennsylvania 15106

2200 Georgetown Drive
 Sewickley, Pennsylvania 15143

Act 2 RIRA/Cleanup Plan
 Site and Sample Location Map

Figure: 2