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VIA FEDERAL EXPRESS

October 21, 2008

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Environmental Quality Board
Rachel Carson State Office Building
16th Floor
400 Market Street
Harrisburg, PA 17101-2301

ENVIRONMENTAL QUALITY BOARD

Re: Proposed Rulemaking - Bluff Recession and Setback Regulations

Dear Board Members:

Enclosed, please find the following documents.

1. Written Comments to Proposed Rulemaking - Bluff Recession and Setback Regulations
2. Summary of SB3 LLC's Written Comments Regarding Proposed Rulemaking - Bluff Recession and Setback Regulations
3. Aerial Photos of the City of Erie – Lake Erie Coastal Zone (2 photos)

Please include a copy of these written comments in the administrative record for the proposed rulemaking.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Melani Scott'.

Melani Scott
Property Manager

Enclosures

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INDEPENDENT REGULATORY
REVIEW COMMISSION



Written Comments to Proposed Rulemaking - Bluff Recession and Setback Regulations

Dear Board Members:

These comments are in response to the proposed rulemaking revising the regulations found at 25 Pa. Code Chapter 85. The proposed rulemaking was published Saturday, August 23, 2008. These comments objecting to the proposed rulemaking are being submitted by SB3 LLC and Lake Erie Biofuels ("LEB"). SB3 LLC is the owner of the former International Paper site located in the City of Erie. This property contains several hundred feet of shoreline along Lake Erie east of Presque Isle bay. In Section II of the DEP 2004 Report, SB3 LLC's property runs from Transect 87E through Transect 113E on the aerial photos of the City of Erie. (See Exhibit 1). Since these aerial photos were taken, most of the former IP site has been cleared of the buildings shown on the photographs. The SB3 LLC property is primarily zoned industrial, is a brownfield site and is the largest site available in the City of Erie for industrial and commercial redevelopment. The current principal tenant of the SB3 LLC property is the LEB biodiesel plant. The LEB facility is a 45 million gallons a year biofuels production plant. This plant represents a significant capital investment and is providing valuable employment in the Erie area. LEB intends to expand its plant in the future and is very concerned about the restrictions to site development in the proposed rulemaking.

Under the current regulations found at 25 Pa. Code Chap. 85, properties in the City of Erie, including the SB3 LLC property, are not subject to the requirements of these regulations. The proposed rulemaking purports to add the City of Erie as a municipality containing bluff recession hazard areas but does not specifically designate where in the City of Erie specific bluff recession hazard areas are located. SB3 LLC objects to the addition of the City of Erie as a covered municipality and specifically to any attempt to restrict the future development of the SB3 LLC property by creating bluff setbacks. DEP has not established the need for these proposed restrictions in the City of Erie and the objective data published by the DEP does not support these restrictions. The Board should reject the addition of the City of Erie to this program or, at a minimum, more clearly define those areas of the City of Erie that contain actual bluff recession hazards and exclude the SB3 LLC property from that designated area.

The City of Erie has not been covered by the Bluff Recession and Setback Act since it first went in to effect in 1980. DEP offers no evidence as part of the rulemaking package that the lack of the application of the Act or its regulation for the past 28 years has created problems in the City

Written Comments to Proposed Rulemaking - Bluff Recession and Setback Regulations - Continued

of Erie or that there was any great outcry from the City government or Erie citizens demanding these regulations be applied to the City. Instead, the DEP makes the generic statement that if the City of Erie is left unregulated, existing and future development will be subject to property damage from bluff recession. However, this statement is not consistent with the data in DEP's own report that it relies on in support of the proposed rulemaking.

DEP published a study to tentatively designate Bluff Recession Hazard Areas in Erie County in November 2004 ("2004 Report"). The study was an attempt to evaluate the Erie County shoreline to determine which areas should be designated as bluff hazard areas. The study relied principally on the use of historic and current aerial photos and control point measurements. Section II of the 2004 Report is labeled "Aerial Photography Depicting Geographic Locations of Proposed Tentatively Designated Bluff Recession Hazard Areas". Each of the aerial photos are labeled with a series of transects set approximately 100 feet apart at which DEP or its consultant estimated the amount of bluff recession that would occur by the year 2050 based on historic recession rates derived from aerial photos. There are seven aerial photos depicting the City of Erie contained in Section II of the 2004 Report. These seven aerial photos show 146 transect points in the City of Erie but ten (10) of the points are discarded for undefined reasons. Only six (6) of the 136 valid transect points in the City of Erie are predicted to show any bluff recession by 2050. The DEP's own report predicts that there will no bluff recession at the other 130 transect points. DEP does make the statement that for many of the transect points there is no measurable change in bluff location, but instability and/or signs of bluff recession were observed near the transect. However, DEP provides no information or data in the 2004 Report to allow anyone to evaluate this statement. In the absence of a measurable change in bluff location, we do not see how the EQB can find that these areas meet the definition of a bluff recession hazard area which is defined as "an area or zone where the rate of progressive bluff recession creates a substantial threat to the safety or stability of nearby existing or future structures or utility facilities." (emphasis added).

A review of the 2004 Report data specific to the SB3 LLC property offers no objective data evidencing that the rate of progressive bluff recession creates a bluff recession hazard along this portion of the Lake Erie shoreline. City of Erie aerial photos 5 and 6 in Section II of the 2004 Report (Exhibit 1) incorporate the SB3 LLC property located from approximately Transect 87E through Transect 113E. The data on the aerial photos predicts zero bluff recession by 2050 from Transect 87E through 112E and a rate of recession of 0.0 ft./yr. The eastern most transect on the SB3 LLC property, 113 E, is the only transect showing any estimated recession by 2050. The predicted rate of bluff recession at this transect (113E) is 0.3 feet per year but it should be noted that at the transect 200 feet further east, 115E, the estimated recession again returns to zero with little to no additional recession predicted for the remaining eastern portion of the City of Erie. None of the data in the 2004 Report supports designation of the SB3 LLC property as containing a bluff recession hazard.

There are two primary physical reasons why there is a lack of bluff recession in the SB3 LLC shoreline area. This property sits just east of the Presque Isle Peninsula and therefore is partially

Written Comments to Proposed Rulemaking - Bluff Recession and Setback Regulations - Continued

protected from the wave action of Lake Erie. It simply does not receive the pounding wave action at the level of more exposed portions of the Lake Erie shoreline. In addition, because of the long industrial history of the property, much of the shoreline is protected by man-made structures that were installed by the prior owners of the property. As such, the types of risks that the Act is designed to prevent simply have not been shown to exist in this section of the City of Erie.

The EQB should not finalize the proposed rulemaking as it is currently drafted. Doing so would create a burden on the future development of the SB3 LLC property, including any proposed expansion of the LEB facility, without any identified benefit to either the property owner or general citizenry. At a minimum, the proposed rulemaking should be amended to leave out the SB3 LLC property from Transect 85E to 112E from any designated bluff recession hazard area in the City of Erie.

Please include a copy of these written comments in the administrative record for the proposed rulemaking.



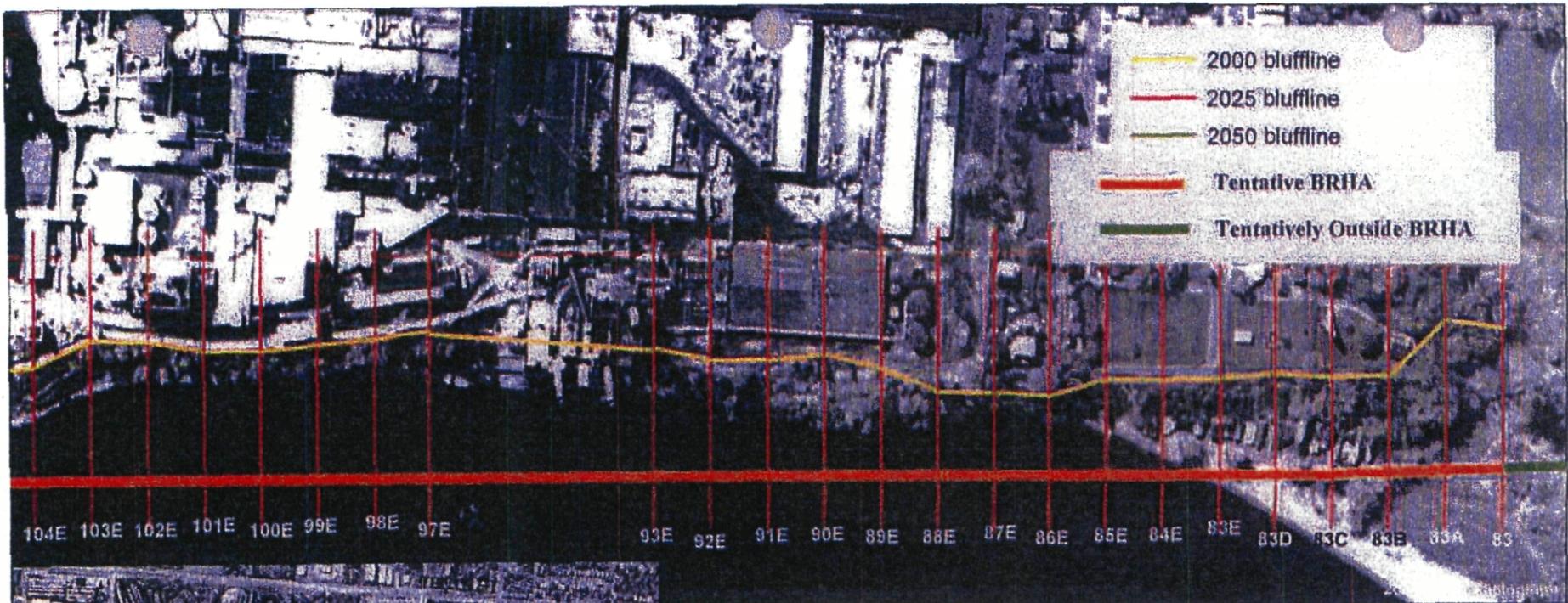
**Summary of SB3 LLC's Written Comments Regarding Proposed Rulemaking -
Bluff Recession and Setback Regulations**

Dear Board Members:

SB3 LLC owns several hundred feet of shoreline along Lake Erie located in the City of Erie. SB3 LLC objects to the proposed rulemaking for the following reasons:

1. The proposed rulemaking purports to add the City of Erie as a municipality containing bluff recession hazard areas but DEP has failed to produce any objective data justifying the addition of the City of Erie. DEP's own data contained within its 2004 Report on the study of bluff recession issues along the Lake Erie shoreline does not identify bluff recession as a significant issue in the City of Erie.
2. The proposed rulemaking does not designate specific geographic areas within the City of Erie as bluff recession hazard areas. Failure of the proposed rulemaking to designate specific areas within the City of Erie is contrary to the requirements of the Act and regulation and results in a blanket designation that is not supported by actual data. In fact, under the current regulation as amended by the proposed rulemaking, all of the City of Erie, including the area inside Presque Isle Bay, would be covered by the setback requirements.
3. The proposed rulemaking would require the creation of bluff setback restrictions on the SB3 LLC property where there is no objective data to demonstrate that bluff recession hazards actually exist on this property. DEP's own data in the 2004 Report predicts that there will be no bluff recession along the SB3 LLC property by the year 2050. In the absence of any evidence that there is a bluff recession hazard risk along this property, it is arbitrary and capricious for the EQB to designate the SB3 LLC property as containing a bluff recession hazard area.

We specifically request that any designation of bluff recession hazard areas in the City of Erie exclude the portion of the Lake Erie shoreline owned by SB3 LLC. Any designation and any bluff setback restrictions placed on this property will restrict SB3 LLC's ability to redevelop this brownfield site and bring in job creating industries to the City of Erie.



104E 103E 102E 101E 100E 99E 98E 97E

93E 92E 91E 90E 89E 88E 87E 86E 85E 84E 83E 83D 83C 83B 83A 83



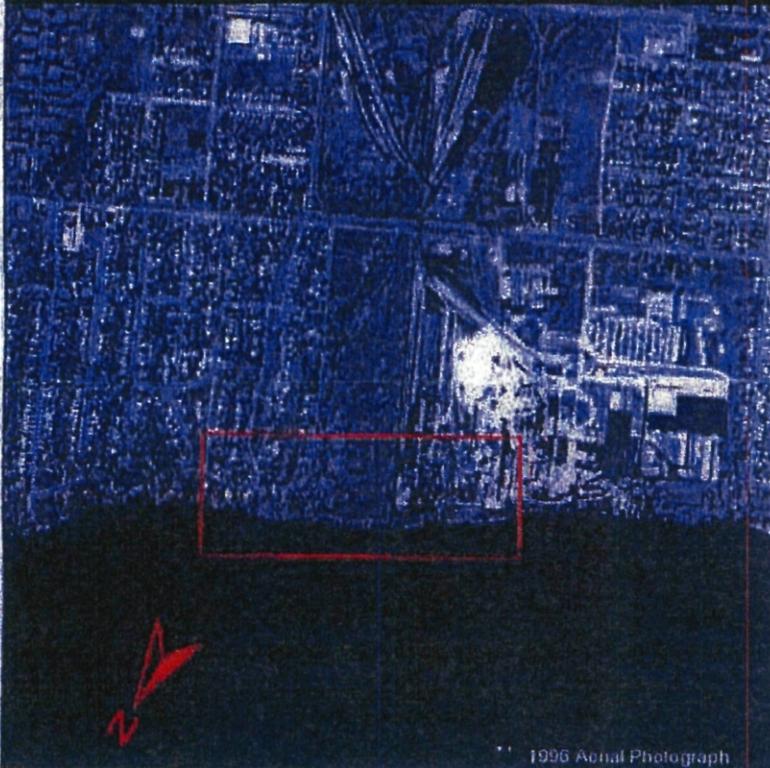
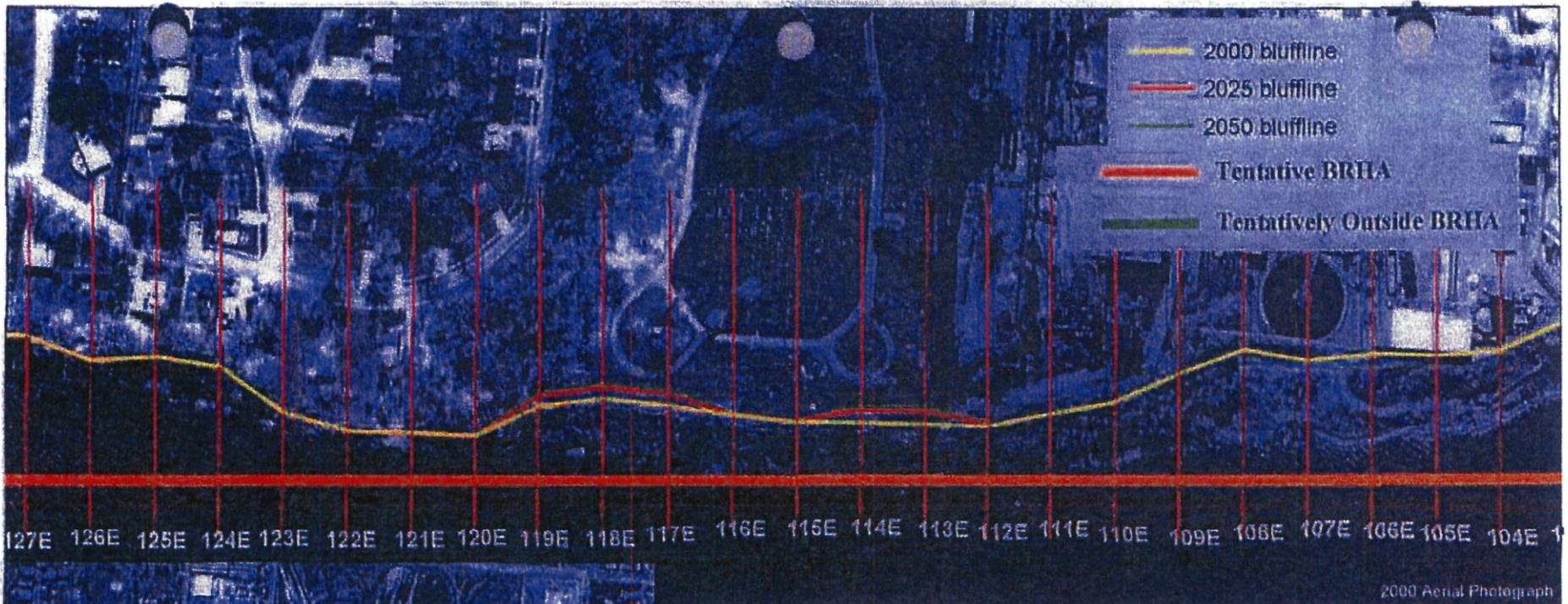
1996 Aerial Photograph

Transect	83	83A	83B	83C	83D	83E	84
predicted recession by 2025	0.0	0.0	0.0	0.0	0.0	0.0	0.0
predicted recession by 2050	0.0	0.0	0.0	0.0	0.0	0.0	0.0
recession rate (ft/yr)	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Transect	85	86	87	88	89	90	91
predicted recession by 2025	0.0	0.0	0.0	0.0	0.0	0.0	0.0
predicted recession by 2050	0.0	0.0	0.0	0.0	0.0	0.0	0.0
recession rate (ft/yr)	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Transect	92	93	94	95	96	97	98
predicted recession by 2025	0.0	0.0				0.0	0.0
predicted recession by 2050	0.0	0.0				0.0	0.0
recession rate (ft/yr)	0.0	0.0	discard	discard	discard	0.0	0.0

Transect	99	100	101	102	103	104
predicted recession by 2025	0.0	0.0	0.0	0.0	0.0	0.0
predicted recession by 2050	0.0	0.0	0.0	0.0	0.0	0.0
recession rate (ft/yr)	0.0	0.0	0.0	0.0	0.0	0.0



430 215 0 430 Feet

Transect	105	106	107	108	109	110	111
predicted recession by 2025	0.0	0.0	0.0	0.0	0.0	0.0	0.0
predicted recession by 2050	0.0	0.0	0.0	0.0	0.0	0.0	0.0
recession rate (ft/yr)	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Transect	112	113	114	115	116	117	118
predicted recession by 2025	0.0	19.5	18.1	0.0	0.0	17.8	17.0
predicted recession by 2050	0.0	28.1	25.1	0.0	0.0	24.6	23.0
recession rate (ft/yr)	0.0	0.3	0.3	0.0	0.0	0.3	0.2

Transect	119	120	121	122	123	124	125
predicted recession by 2025	16.8	0.0	0.0	0.0	0.0	0.0	0.0
predicted recession by 2050	22.5	0.0	0.0	0.0	0.0	0.0	0.0
recession rate (ft/yr)	0.2	0.0	0.0	0.0	0.0	0.0	0.0

Transect	119	120	121	122	123	124	126
predicted recession by 2025	16.8	0.0	0.0	0.0	0.0	0.0	0.0
predicted recession by 2050	22.5	0.0	0.0	0.0	0.0	0.0	0.0
recession rate (ft/yr)	0.2	0.0	0.0	0.0	0.0	0.0	0.0

Yellow No measurable change in bluff location, but instability and/or signs of bluff recession were observed near transect, therefore this transect is in a Bluff Recession Hazard Area

