



State of Ohio Environmental Protection Agency

STREET ADDRESS:

MAILING ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

P.O. Box 1049
Columbus, OH 43216-1049

June 20, 2008

Mr. Alan McKnight, Director
City of Columbus
Parks and Recreation Department
1111 East Broad Street
Columbus, OH 43205

CERTIFIED MAIL

RECEIVED

JUN 23 2008

OHIO EPA/CDO

**RE: Issuance of Covenant Not to Sue for the
Whittier Peninsula Grange – Audubon Nature Center Property
(NFA # 07NFA278; Project ID # 125-001668-007)**

Dear Mr. McKnight:

I am pleased to inform you that on June 19, 2008, the Director of the Ohio Environmental Protection Agency issued a Covenant Not to Sue (Covenant) to the city of Columbus for the Whittier Peninsula Grange – Audubon Nature Center property located at 420 – 460 West Whittier Street, Columbus, Franklin County, Ohio. The Covenant was issued as Final Findings and Orders pursuant to Ohio Revised Code (ORC) Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300.

Based on the No Further Action (NFA) Letter and subject to all conditions outlined in the Covenant, Ohio EPA hereby covenants not to sue and releases the city of Columbus, and its agents, employees, officers, directors, successors and assigns, and successors and assigns of the property, from all civil liability to the State of Ohio to perform additional investigational and remedial activities at the property for the releases of hazardous substances or petroleum identified and addressed in the Phase I Property Assessment and Phase II Property Assessment conducted in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.

You will find the certified copy of the Covenant enclosed. When filing the Covenant and its exhibits at the Franklin County Recorder's Office, please use the enclosed affidavit from Ohio EPA to guide the recording of the documents in the county's deed records.

As stated under the "Conditions and Limitations" of the Covenant (or "CNS"), the Environmental Covenant for the Property - attached as CNS Exhibit 4 - must be recorded with the Franklin County Recorder's Office within 30 days of the CNS issuance date, as a separate document from the required recording of the CNS and its remaining

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korteski, Director

exhibits. The CNS becomes effective on the recording date of the Environmental Covenant. The CNS also requires the City to submit to Ohio EPA a copy of the Environmental Covenant showing the filing date stamp of the Franklin County Recorder's Office.

Please be aware that Ohio EPA charges pursuant to OAC 3745-300-03(F) for its actual costs incurred related to the monitoring of compliance with the Operation and Maintenance (O&M) Agreement and its O&M Plan and the Risk Mitigation Plan, including the review of the submitted reports. This agency will contact you through a separate correspondence to provide the number of the VAP technical assistance account established for the Property and to ask you to verify the billing information.

This action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Commission at the following address: Environmental Review Appeals Commission, 309 South Fourth Street, Room 222, Columbus, OH 43215.

Many persons within the agency, the city of Columbus and Burgess & Niple, Inc., among others, worked hard to remove the environmental barriers associated with redeveloping this property. Congratulations on the issuance of this Covenant. If you have any questions or concerns, please feel free to contact me at (614) 644-2285 or amy.yersavich@epa.state.oh.us.

Sincerely,



Amy Yersavich, Manager
Division of Emergency and Remedial Response
Voluntary Action Program

Enclosure

c: Thomas J. Mignery, Certified Professional, Burgess & Niple, Inc., 5085 Reed

Letter to City of Columbus
Whittier Peninsula Grange – Audubon Property
Page 3

Road, Columbus, OH 43220

Lawrence J. Peck, Deputy Director, Columbus & Franklin County Metropolitan
Park District, 1069 West Main Street, Westerville, OH 43081

Jerry Tinianow, Director, Audubon Ohio, 692 North High Street, Suite 303,
Columbus, OH 43215

Sarah Harrell, Assistant City Attorney, City of Columbus, 90 W. Broad St.,
Columbus, OH 43215

Raymond R. Moreno, DERR-CDO

Deborah Strayton, DERR-CDO

Sue Kroeger, Legal Office

CO DERR-VAP Files



State of Ohio Environmental Protection Agency

Central District Office

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 728-3778 FAX: (614) 728-3898
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

MEMORANDUM

RECEIVED

JUN 23 2008

OHIO EPA/CDO

TO: Shelley Wilson, Executive Administrator for Real Property, Tax
Equalization Division, Dept. of Taxation

Amy Alduino, Office of Urban Development, Dept. of Development

FROM: Chris Korleski, Director, Ohio Environmental Protection Agency

DATE: 6/19/08

RE: Covenant Not to Sue Issued to the City of Columbus for the Whittier
Peninsula Grange – Audubon Nature Center Property

As Director of the Ohio Environmental Protection Agency, I certify that the city of Columbus has performed investigational and remedial activities at the property listed below and has been issued a Covenant Not to Sue under the authority of Ohio Revised Code (ORC) Chapter 3746. This information is being provided in satisfaction of ORC 5709.87(B).

Property name: Whittier Peninsula Grange – Audubon Nature Center

Property address: 420 – 460 West Whittier Street, Columbus, Ohio 43215

Property owner: City of Columbus

Property owner address: 1111 East Broad Street, Columbus, OH 43205

Parcel number(s): All or portions of Parcels 010-023620, 010-062252, 010-053355, 010-033476, 010-025987 and 010-038179, and all or portions of several unidentified parcels. See attached figures for property boundary and parcel locations.

County: Franklin

Taxing District: City of Columbus (010)

JUN 19 2008

Date Covenant Not to Sue Issued: _____

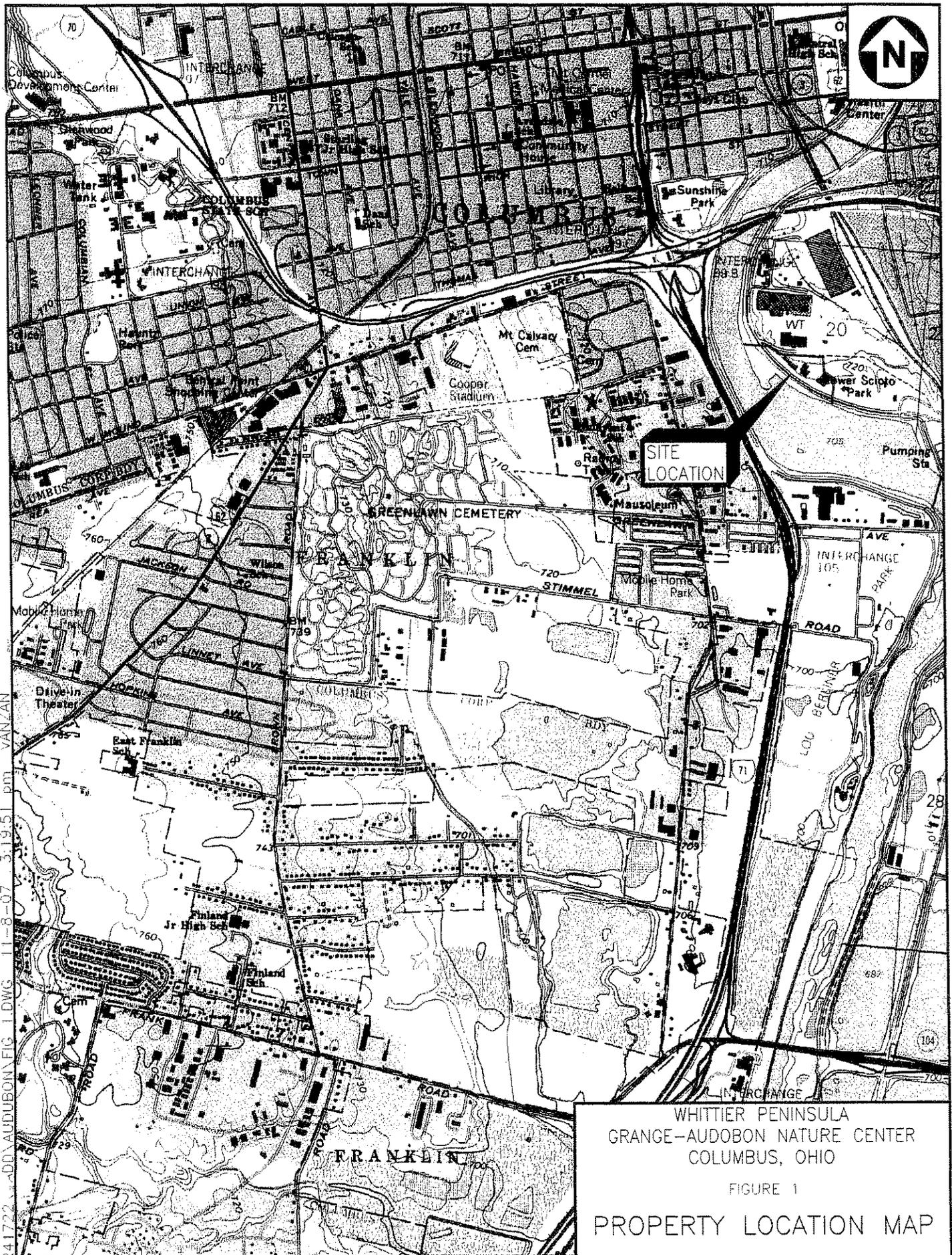
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Chris Korleski, Director

Whittier Peninsula Grange – Audubon Nature Center Property
Page 2

Attached, for your information, is a copy of the legal description of the property along with parcel location figures.

If additional information regarding the property or the voluntary action is required, I suggest you first contact Thomas J. Mignery, the certified professional for the property, at (614) 459-2050. In the alternative, you can contact Ray Moreno with the Ohio Environmental Protection Agency at (614) 728-3833.

c: Alan McKnight, Director, Recreation and Parks Dept.,
City of Columbus, 1111 East Broad St., Columbus, OH 43205
Thomas J. Mignery, Certified Professional, Burgess & Niple, Inc.,
5085 Reed Road, Columbus, OH 43220
Joseph W. Testa, Franklin County Auditor
373 S. High Street, 21st Floor, Columbus, OH 43215
Amy Yersavich, VAP Manager, Ohio EPA
DERR-CO, VAP Files 07NFA278



WHITTIER PENINSULA
 GRANGE-AUDOBON NATURE CENTER
 COLUMBUS, OHIO

FIGURE 1

PROPERTY LOCATION MAP

SOURCE: SOUTHWEST COLUMBUS, OHIO
 7.5 MINUTE U.S.G.S. QUADRANGLE MAP

BURGESS AND NIPLE, INC.
 ENGINEERS & ARCHITECTS

SCALE: 1"=2000'
 DATE: NOV. 2007

P:\PR41722 -00\AUDUBON\FIG 1.DWG 11-8-07 3:19:51 pm VANZAN



BURGESS & NIPILE 		GRANGE AUDUBON NATURE CENTER PROPERTY		PARCEL MAP AND PROPERTY LINES	
PROJECT NO. 41732 SHEET NO. 1 OF 1		DATE 01/22/2024 DRAWN BY DJJ CHECKED BY DJJ PROJECTED BY DJJ APPROVED BY DJJ DATE 01/22/2024		SCALE 1" = 200' SHEET NO. 1 OF 1	

NO.	DATE	BY	CHK.

Burgess & Niple, Limited

DESCRIPTION OF 26.611 ACRES
WHITTIER PENINSULA - CITY OF COLUMBUS PROPERTY

Situated in the State of Ohio, County of Franklin, City of Columbus, being a tract of land located on the Whittier Peninsula, both sides of Whittier Street, centered approximately 2800 feet west of the intersection of Front Street, and being more particularly described as follows:

Beginning at a point on the east bank of the Scioto River (State Plane Coordinates {SPC} of which are N 709550.335, E 1824888.464) located South 74°58'19" West, a distance of 218.57 feet from that concrete Project Control Monument No. 3 (SPC of N 709606.955, E 1825099.616);

Thence South 84°44'19" East, passing a PK Nail set in an asphalt bike trail at 65.00 feet (SPD N 709544.374, E 1824953.190), then crossing Whittier Street, a total distance of 485.95 feet to an iron pin set (SPC N 709505.773, E 1825372.369);

Thence South 69°11'39" East, a distance of 295.44 feet to an iron pin set (SPC N 709400.833, E 1825648.542) approximately one foot south of a steel fence post;

Thence continuing one foot south of and parallel to an existing chain link fence the following courses:

1. South 73°52'51" East, a distance of 250.05 feet to an iron pin set (SPC N 709331.410, E 1825888.762) at an angle point;
2. North 87°19'30" East, a distance of 222.01 feet to an iron pin set (SPC N 709341.772, E 1826110.531) at an angle point;
3. North 81°18'40" East, a distance of 291.64 feet to an iron pin set (SPC N 709385.829, E 1826398.824);

Thence South 48°12'49" East, a distance of 25.46 feet to an iron pin set (SPC N 709368.866, E 1826417.805) approximately one foot west of an existing chain link fence which surrounds the current City of Columbus automobile impounding lot;

Thence continuing one foot west of and parallel to said chain link fence the following courses:

1. South 02°15'41" West, a distance of 309.42 feet to an iron pin set (SPC N 709059.683, E 1826405.595) at an angle point;
2. South 55°44'25" East, a distance of 202.82 feet to an iron pin set (SPC N 708945.506, E 1826573.224) at an angle point;
3. South 02°03'19" West, leaving said fence and crossing Whittier Street, passing an iron pin set (SPC N 708665.686, E 1826563.182) at 280.00 feet, said iron pin being located South 68°31'45" East, a distance of 518.49 feet from that Project Control Monument No. 4 (SPC N 708855.470, E 1826080.667), a total distance of 422.64 feet to a point near the bank of the Scioto River (SPC N 708523.138, E 1826558.067);

Thence up the bank of the Scioto River the following courses:

1. North 65°22'53" West, a distance of 987.64 feet to a point (SPC N 708934.565, E 1825660.197);
2. North 51°24'48" West, a distance of 226.73 feet to a point (SPC N 709075.976, E 1825482.969);

Thence along the perimeter of a projection into said River the following courses:

1. North 74°49'03" West, a distance of 59.32 feet to a point (SPC N 709091.512, E 1825425.719);
2. South 43°19'47" West, a distance of 98.88 feet to a point (SPC N 709019.587, E 1825357.870);
3. South 07°19'53" West, a distance of 140.97 feet to a point (SPC N 708879.769, E 1825339.881);

DESCRIPTION OF 26.611 ACRES

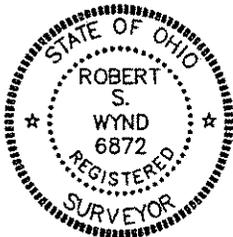
Page 2

4. North 85°00'43" East, a distance of 153.15 feet to a point (SPC N 708893.085, E 1825492.450);
5. South 22°00'22" East, a distance of 37.34 feet to a point (SPC N 708858.461, E 1825506.443);
6. South 51°01'48" West, a distance of 53.99 feet to a point (SPC N 708824.507, E 1825464.468);
7. South 01°44'08" West, a distance of 70.61 feet to a point (SPC N 708753.925, E 1825462.329);
8. South 45°14'03" East, a distance of 321.46 feet to a point (SPC N 708527.549, E 1825690.563);
9. South 62°47'04" East, a distance of 655.02 feet to a point (SPC N 708227.983, E 1826273.064);
10. South 07°58'30" East, a distance of 85.94 feet to a point (SPC N 708142.878, E 1826284.987);
11. South 79°16'18" East, a distance of 466.32 feet to a point (SPC N 708056.072, E 1826743.154);
12. North 65°34'05" East, a distance of 41.15 feet to a point (SPC N 708073.093, E 1826780.622);
13. South 87°36'08" East, a distance of 60.50 feet to a point (SPC N 708070.562, E 1826841.069);
14. South 35°51'23" East, a distance of 65.52 feet to a point (SPC N 708017.456, E 1826879.450);
15. South 53°55'24" West, a distance of 29.22 feet to a point (SPC N 708000.247, E 1826855.831);
16. South 83°59'57" West, a distance of 423.08 feet to a point (SPC N 707956.017, E 1826435.067);
17. North 79°17'41" West, a distance of 142.10 feet to a point (SPC N 707982.413, E 1826295.442);
18. North 66°12'23" West, a distance of 273.45 feet to a point (SPC N 708092.734, E 1826045.236);
19. North 51°03'51" West, a distance of 1038.91 feet to a point (SPC N 708745.639, E 1825237.118);
20. North 28°12'27" West, a distance of 486.91 feet to a point (SPC N 709174.727, E 1825006.971);
21. North 17°30'39" West, a distance of 393.86 feet to the place of beginning and containing 26.611 acres of land.

Bearings herein are based on the NAD 83 Ohio State Plane Coordinate System, South Zone, utilizing monuments COC 13-83 and COC 18-83.

Iron pins set consist of a 1" (O.D.) pipe, 30" long with a plastic cap inscribed "M-E COMPANIES/S-6872".

This description was prepared by M•E Companies, Inc., Civil Engineering Group, based on information obtained from an actual field survey performed in January 2007.



M•E Companies, Inc.
Civil Engineering Group

By Robert S. Wynd 1/21/08
Robert S. Wynd
Registered Surveyor No. 6872

TO BE RECORDED IN DEED RECORDS,
PURSUANT TO R.C. 317.08(A)

AFFIDAVIT

RECEIVED

JUN 23 2008

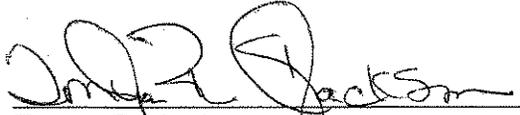
STATE OF OHIO)

COUNTY OF FRANKLIN)

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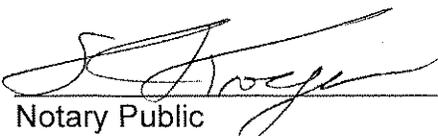
OHIO EPA/CDO

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Tonya R. Jackson, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA; and (ii) the attached document is a true and correct copy of the Covenant Not to Sue/Director's Final Findings and Orders issued by the Director on June 19, 2008, and entered in the Ohio EPA Director's Journal on June 20, 2008 regarding the property known as Whittier Peninsula Grange-Audubon Nature Center, located at 420-460 West Whittier Street in Columbus, Franklin County, Ohio, and further described in Exhibit 1 of the attached Covenant Not to Sue.



Tonya R. Jackson
Records Management Officer
Ohio EPA Legal Office

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 20th day of June, 2008.



Notary Public
State of Ohio

Permanent Commission
No expiration, R.C. 147.03

This instrument prepared by:
Sue Kroeger, Attorney
Ohio EPA Legal Office
P.O. Box 1049
Columbus, Ohio 43216-1049



SUSAN C. KROEGER
Attorney at Law
Notary Public
State of Ohio
Lifetime Commission

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.



OHIO E.P.A.

JUN 20 2008

ENTERED DIRECTOR'S JOURNAL

By: [Signature] Date: 6-20-08



**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the matter of:

City of Columbus
1111 East Broad Street
Columbus, Ohio 43205

Covenant Not to Sue

**Director's Final Findings
and Orders**

Regarding property known as:

Whittier Peninsula
Grange - Audubon Nature Center
420 - 460 West Whittier Street
Columbus, OH 43215

Pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, the Director of the Ohio Environmental Protection Agency ("Director") hereby makes the following Findings and issues the following Orders ("Findings and Orders").

FINDINGS

1. A No Further Action Letter, No. 07NFA278 ("NFA Letter"), was submitted on November 20, 2007 to the Director under the Voluntary Action Program on behalf of the city of Columbus ("Volunteer") by Thomas J. Mignery, a certified professional, No. CP 125, as defined in ORC 3746.01(E) and OAC 3745-300-01(A)(8) ("Certified Professional").
2. The Certified Professional submitted to the Director addenda to the NFA Letter, dated May 22, 2008 and June 4, 2008. For the purposes of these Findings and Orders, the term "NFA Letter" includes the addenda.

3. The NFA Letter describes the investigational and remedial activities undertaken at the approximately 26.611-acre property, currently known as the Whittier Peninsula Grange – Audubon Nature Center Property, located at 420 - 460 West Whittier Street, in Columbus, Franklin County, Ohio (“Property”). An exact legal description of the Property is attached hereto as Exhibit 1. A property location map is attached hereto as Exhibit 2. Based on information in the NFA Letter, the current owner of the Property is the city of Columbus.
4. The Certified Professional prepared pursuant to OAC 3745-300-13(J) an Executive Summary of the NFA Letter, which is attached hereto as Exhibit 3.
5. Based upon the information contained in the NFA Letter, the Volunteer undertook or completed the following investigational and remedial activities regarding the Property:
 - a. A Phase I Property Assessment, in accordance with OAC 3745-300-06, to determine whether there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on, underlying or is emanating from the Property.
 - b. A Phase II Property Assessment, in accordance with OAC 3745-300-07, including but not limited to investigations of identified areas and affected media, to assess environmental conditions related to releases of hazardous substance and petroleum.
 - c. Identification, in the Phase I Property Assessment or Phase II Property Assessment, of one or more releases of hazardous substances or petroleum with chemicals of concern (“COCs”) that include but are not limited to certain volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs,” primarily polycyclic aromatic hydrocarbons or “PAHs”), metals, polychlorinated biphenyls (“PCBs”), herbicides and pesticides, and total petroleum hydrocarbons (“TPH”), for which the Volunteer determined the applicable standards.
 - d. Activity and use limitations contained in a proposed Environmental Covenant prepared pursuant to ORC 5301.80 to 5301.92, subject to execution by the Director and recording as described in these Findings and Orders;
 - e. Remedial activities for implementation and maintenance under an Operation and Maintenance (“O&M”) Plan, pursuant to OAC 3745-300-15.

The O&M Plan, dated May 2008, provides for the performance of remedial activities that will allow the Property to achieve applicable standards for land use and protect the unimpacted bedrock ground water during deep building pier and geothermal well installations and the reporting, record keeping and other requirements as set forth in the O&M Plan.

- f. A Risk Mitigation Plan ("RMP"), prepared in accordance with OAC 3745-300-15, that provides various risk mitigation measures for construction or excavation activities at the Property.
 - g. A demonstration that the Property complies with applicable standards, following completion of remedial activities, for the identified COCs in the identified areas and affected media at the Property, through the use of generic numerical standards in accordance with OAC 3745-300-08 and a property-specific risk assessment in accordance with OAC 3745-300-09.
6. The Certified Professional has verified by affidavit that the investigational and remedial activities undertaken at the Property comply with the applicable standards established in ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible to receive a covenant not to sue under the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws and regulations.
 7. At the time that analyses were performed, TestAmerica Laboratories, Inc., Dayton, Ohio and TestAmerica Laboratories, Inc., Nashville, Tennessee were each certified laboratories, Nos. CL0018 and CL0033 respectively, as defined in ORC 3746.01(D) and OAC 3745-300-01(A), whose services were used in support of the NFA Letter ("Certified Laboratories").
 8. The Certified Laboratories have declared in affidavits contained in the NFA Letter that they each performed analyses for which they were certified and qualified pursuant to ORC Chapter 3746 and OAC 3745-300-04, which formed the basis for the issuance of the NFA Letter by the Certified Professional.
 9. The Environmental Covenant will be recorded in the Franklin County Recorder's Office as described in the Environmental Covenant and Order No. 2 herein. A copy of the executed Environmental Covenant is attached hereto as Exhibit 4. The Environmental Covenant upon recording will:
 - a. Restrict the use of the Property to recreational, commercial or industrial land uses only.

- b. Prohibit the extraction of ground water at or underlying the Property for any purpose, potable or otherwise, except for investigation, monitoring, or remediation of the ground water or in conjunction with construction and excavation activities or maintenance of subsurface utilities.
10. To provide for implementation of the activities specified in the O&M Plan herein, Ohio EPA and the city of Columbus have entered into an O&M Agreement, which is incorporated by reference as if fully written into these Findings and Orders. The O&M Agreement includes and incorporates by reference an approved O&M Plan dated May 2008. The O&M Plan provides for placement of a minimum of two feet of clean fill on designated property areas to achieve the applicable standards for land use and terms for verifying the Property meets the standards. The O&M Plan provides for the use of interim measures, such as fencing and vegetative cover, until the standards are met. The O&M Plan also provides for measures to be taken during construction of building piers installed to bedrock and geothermal wells installed in bedrock, to protect the unimpacted ground water in the bedrock aquifer. The O&M Agreement is attached hereto as Exhibit 5 and incorporated by reference herein.
11. The RMP, dated May 2008, was developed in accordance with OAC 3745-300-15. The RMP is attached hereto as Exhibit 6 and incorporated by reference herein. The implementation of the RMP is necessary to mitigate or eliminate human exposure to PAHs and metals in soil at the Property, during construction or excavation activities. The RMP applies to the construction or excavation activities that occur at the Property below the two-foot point of compliance for land use standards.

Applicable Standards

12. Based on the information contained in the NFA Letter, the implementation of the O&M Agreement and all conditions set forth in these Findings and Orders, the Property meets the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for recreational, commercial and industrial land uses. The applicable standards, the methods of achieving compliance with the standards, and the associated points of compliance for the standards for each complete exposure pathway, are identified in the NFA Letter and its various tables. The applicable standards include but are not limited to:
 - a. Recreational, commercial and industrial land use standards for direct contact to COCs related to hazardous substances in soil. The standards

consist of generic numerical standards from Tables III and V of OAC 3745-300-08 and standards derived through property-specific risk assessment procedures in accordance with OAC 3745-300-09(D). The standards apply at a point of compliance from the ground surface to a depth of two feet.

- b. Recreational, commercial and industrial land use standards for direct contact to COCs related to petroleum in soil. The standards consist of generic numerical standards in accordance with OAC 3745-300-08(B)(3)(a)(i) - (ii). The standards apply at a point of compliance from the ground surface to a depth of two feet.
- c. Soil standards and ground water standards for direct contact by construction or excavation workers to COCs in soil and ground water. The standards consist of generic numerical standards from Table IV of OAC 3745-300-08 and standards derived through property-specific risk assessment procedures in accordance with OAC 3745-300-09(D). The standards apply at a point of compliance from the ground surface to bedrock. If the RMP is implemented as provided by that plan for subsurface activities occurring at any depth below the two-foot point of compliance for land use standards, then the pathway for direct contact by construction or excavation workers to the COCs in soil and shallow ground water is rendered incomplete, thereby eliminating the pathway from further consideration.
- d. Ground water standards based on unrestricted potable use, for the deep bedrock aquifer (beginning approximately 75 feet below ground surface), including an evaluation in accordance with OAC 3745-300-07(D)(4)(a) to satisfy the requirements in OAC 3745-300-10(E) ensuring the protection of the ground water zone. The standards consist of generic numerical standards from Tables VI and VII of OAC 3745-300-08, and apply at all points underlying the Property. The bedrock aquifer will maintain continued compliance with the unrestricted potable use standards based on a weight of evidence demonstration in accordance with OAC 3745-300-07(D)(4)(a)(ii).
- e. Ground water standards based on potable use, for the ground water in the shallow unconsolidated ground water zone (approximately 20 feet to approximately 50 feet below ground surface) emanating from the Property. The standards consist of generic numerical standards from Tables VI and VII of OAC 3745-300-08 and standards derived through property-specific

risk assessment procedures in accordance with OAC 3745-300-09(D). For the shallow ground water on or underlying the Property, the standards are met through the ground water limitation in the Environmental Covenant.

- f. Ground water standards for potential human exposures and important ecological resources to the COCs in the ground water emanating from the Property to surface water in the Scioto River. The standards were derived using water quality standards in accordance with OAC 3745-300-08(E).
13. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, a covenant not to sue may be issued for the Property in accordance with ORC 3746.12(A), and upon implementation of the O&M Agreement, the voluntary action for the Property is protective of public health and safety and the environment.

ORDERS

Covenant

1. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, including but not limited to the terms and conditions of the O&M Agreement, Ohio EPA hereby covenants not to sue and releases the city of Columbus, and its agents, employees, officers, directors, successors and assigns, and successors and assigns of the Property, from all civil liability to the State of Ohio ("State") to perform additional investigational and remedial activities at the Property for the releases of hazardous substances or petroleum identified and addressed in the Phase I Property Assessment or Phase II Property Assessment conducted in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.

Conditions and Limitations

Effectiveness of the Covenant Not to Sue – Recording of the Environmental Covenant

2. The Covenant provided in Order No. 1 herein shall become effective upon the date the Environmental Covenant is recorded in accordance with this Order. The Environmental Covenant shall be filed as a document separate from the filing required by Order No. 3 herein. Within 30 days after the issuance of these Findings and Orders, the city of Columbus shall:

- a. File with the Franklin County Recorder's Office for recording, in the same manner as a deed to the Property pursuant to ORC 3746.14 and 5301.88, the Environmental Covenant as executed and attached hereto as Exhibit 4. The document for recording may be an executed original or a copy of the same authenticated by Ohio EPA.
- b. Submit to Ohio EPA a copy of the recorded Environmental Covenant that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the document in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Environmental Covenant for NFA Letter No. 07NFA278.*" The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, *and* Ohio EPA Central District Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Whittier Peninsula Grange – Audubon Nature Center.

Requirement to Record These Findings and Orders / Covenant Not to Sue

3. Within 30 days after the issuance of these Findings and Orders the city of Columbus shall:
 - a. File with the Franklin County Recorder's Office, for recording in the same manner as a deed to the Property pursuant to ORC 3746.14, a copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Property Location Map), 3 (Executive Summary), 5 (O&M Agreement), and 6 (Risk Mitigation Plan).
 - b. Submit to Ohio EPA a copy of the Findings and Orders that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the Findings and Orders in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Covenant Not to Sue for NFA Letter No. 07NFA278.*" The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, *and* Ohio EPA Central District Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Whittier Peninsula Grange – Audubon Nature Center.

Requirement to Submit Annually a Risk Mitigation Plan Notification

4. Pursuant to ORC 3746.12(A) and OAC 3745-300-15(G), the Covenant provided in Order No. 1 of these Findings and Orders is conditioned on Ohio EPA's receipt of a notification regarding the RMP, as attached hereto as Exhibit 6 and referenced in the Findings herein.
 - a. The notification shall be submitted annually, beginning on the anniversary date of the effective date of these Findings and Orders.
 - b. Each notification shall be submitted under affidavit by the person(s) who have knowledge of RMP implementation for the applicable notification period. The notification shall address:
 - i. Whether implementation of the RMP occurred during the notification period.
 - ii. If implemented, the events that required the implementation of the RMP, the exposures to hazardous substances or petroleum that may have occurred, and the risk mitigation measures that were undertaken in accordance with the RMP.
 - c. The submission shall include a cover letter that identifies "*Risk Mitigation Plan Annual Report for NFA Letter No. 07NFA27.8*" The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, *and* Ohio EPA Central District Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Whittier Peninsula Grange – Audubon Nature Center.
 - d. This condition in no way supersedes any separate notification requirement included in the RMP.

Requirement to Include Notice of Activity and Use Limitations upon Property
Conveyance

5. Each instrument the city of Columbus uses to convey the Property or any portion of the Property shall include a notice of the activity and use limitations for the Property in accordance with paragraph 9 of the Environmental Covenant attached hereto as Exhibit 4. The submission to Ohio EPA required by the

Environmental Covenant shall include a cover letter that identifies "*Conveyance of Property Subject to Activity and Use Limitations - NFA Letter No. 07NFA278.*" The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA Central District Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Whittier Peninsula Grange – Audubon Nature Center.

Scope of Covenant

6. The Covenant provided in Order No. 1 shall only apply to the approximately 26.611- acre Property described in the NFA Letter, these Findings and Orders, and the exhibits attached hereto, upon which the investigational and remedial activities specified in the NFA Letter were conducted and upon which remedial activities will be conducted in compliance with the O&M Agreement.
7. Pursuant to ORC 3746.12(B), the Covenant shall remain in effect for as long as the Property continues to comply with the applicable standards upon which the Covenant is based, as referenced in these Findings and Orders.
8. Pursuant to ORC 3746.05, any use of the Property that does not comply with the institutional controls identified herein (i.e., the activity and use limitations contained in the Environmental Covenant), voids the Covenant on and after the date of the commencement of the non-complying use.
9. The Covenant shall not apply to releases of hazardous substances or petroleum:
 - a. That occur after the issuance of the NFA Letter to the Volunteer, including but not limited to, releases of asbestos that may occur from asbestos-containing materials remaining at the Property that were not abated or required to be abated pursuant to OAC Chapter 3745-20.
 - b. On or emanating from the Property, that are not identified and addressed in the Phase I Property Assessment or not addressed in the Phase II Property Assessment of the NFA Letter.
 - c. For which investigational or remedial activities were conducted that were not in compliance with ORC Chapter 3746 or OAC Chapter 3745-300.

10. The Covenant shall not apply:
 - a. To claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607 and 9613, as amended.
 - b. To claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency.
 - c. As otherwise specifically provided in ORC Chapter 3746, including but not limited to obligations arising under other applicable laws.
11. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from the Property, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
12. Nothing in the Covenant shall be construed to limit or waive the Director's authority to revoke the Covenant in response to any of the circumstances for revocation of a covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300. Pursuant to ORC 3746.12(A)(2)(c), the Covenant shall be revoked if the engineering controls are violated or are no longer in place and the Volunteer or subsequent property owner has not reinstated the controls within a reasonable period of time as determined by the Director in accordance with the Covenant.

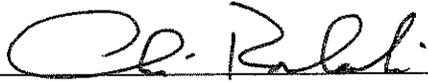
Ohio EPA Access to Property

13. Pursuant to ORC 3746.21 or 3746.171, or the Environmental Covenant, authorized representatives of the Director shall be granted access to the Property for inspection or investigation purposes, including but not limited to determining whether the Property is being used in compliance with the activity and use limitations contained in the Environmental Covenant.

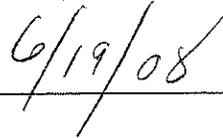
Transfer

14. Pursuant to ORC 3746.14 and OAC 3745-300-13(L), the NFA Letter, the Covenant Not to Sue/Findings and Orders, and the O&M Agreement may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.

IT IS SO ORDERED:



Chris Korleski, Director
Ohio Environmental Protection Agency



Date

Whittier Peninsula Grange-Audubon Nature Center
Director's Final Findings and Orders / Covenant Not to Sue

Exhibit 1
Legal Description

DESCRIPTION OF 26.611 ACRES
WHITTIER PENINSULA - CITY OF COLUMBUS PROPERTY

Situated in the State of Ohio, County of Franklin, City of Columbus, being a tract of land located on the Whittier Peninsula, both sides of Whittier Street, centered approximately 2800 feet west of the intersection of Front Street, and being more particularly described as follows:

Beginning at a point on the east bank of the Scioto River (State Plane Coordinates {SPC} of which are N 709550.335, E 1824888.464) located South 74°58'19" West, a distance of 218.57 feet from that concrete Project Control Monument No. 3 (SPC of N 709606.955, E 1825099.616);

Thence South 84°44'19" East, passing a PK Nail set in an asphalt bike trail at 65.00 feet (SPD N 709544.374, E 1824953.190), then crossing Whittier Street, a total distance of 485.95 feet to an iron pin set (SPC N 709505.773, E 1825372.369);

Thence South 69°11'39" East, a distance of 295.44 feet to an iron pin set (SPC N 709400.833, E 1825648.542) approximately one foot south of a steel fence post;

Thence continuing one foot south of and parallel to an existing chain link fence the following courses:

1. South 73°52'51" East, a distance of 250.05 feet to an iron pin set (SPC N 709331.410, E 1825888.762) at an angle point;
2. North 87°19'30" East, a distance of 222.01 feet to an iron pin set (SPC N 709341.772, E 1826110.531) at an angle point;
3. North 81°18'40" East, a distance of 291.64 feet to an iron pin set (SPC N 709385.829, E 1826398.824);

Thence South 48°12'49" East, a distance of 25.46 feet to an iron pin set (SPC N 709368.866, E 1826417.805) approximately one foot west of an existing chain link fence which surrounds the current City of Columbus automobile impounding lot;

Thence continuing one foot west of and parallel to said chain link fence the following courses:

1. South 02°15'41" West, a distance of 309.42 feet to an iron pin set (SPC N 709059.683, E 1826405.595) at an angle point;
2. South 55°44'25" East, a distance of 202.82 feet to an iron pin set (SPC N 708945.506, E 1826573.224) at an angle point;
3. South 02°03'19" West, leaving said fence and crossing Whittier Street, passing an iron pin set (SPC N 708665.686, E 1826563.182) at 280.00 feet, said iron pin being located South 68°31'45" East, a distance of 518.49 feet from that Project Control Monument No. 4 (SPC N 708855.470, E 1826080.667), a total distance of 422.64 feet to a point near the bank of the Scioto River (SPC N 708523.138, E 1826558.067);

Thence up the bank of the Scioto River the following courses:

1. North 65°22'53" West, a distance of 987.64 feet to a point (SPC N 708934.565, E 1825660.197);
2. North 51°24'48" West, a distance of 226.73 feet to a point (SPC N 709075.976, E 1825482.969);

Thence along the perimeter of a projection into said River the following courses:

1. North 74°49'03" West, a distance of 59.32 feet to a point (SPC N 709091.512, E 1825425.719);
2. South 43°19'47" West, a distance of 98.88 feet to a point (SPC N 709019.587, E 1825357.870);
3. South 07°19'53" West, a distance of 140.97 feet to a point (SPC N 708879.769, E 1825339.881);

DESCRIPTION OF 26.611 ACRES

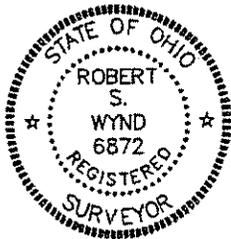
Page 2

4. North 85°00'43" East, a distance of 153.15 feet to a point (SPC N 708893.085, E 1825492.450);
5. South 22°00'22" East, a distance of 37.34 feet to a point (SPC N 708858.461, E 1825506.443);
6. South 51°01'48" West, a distance of 53.99 feet to a point (SPC N 708824.507, E 1825464.468);
7. South 01°44'08" West, a distance of 70.61 feet to a point (SPC N 708753.925, E 1825462.329);
8. South 45°14'03" East, a distance of 321.46 feet to a point (SPC N 708527.549, E 1825690.563);
9. South 62°47'04" East, a distance of 655.02 feet to a point (SPC N 708227.983, E 1826273.064);
10. South 07°58'30" East, a distance of 85.94 feet to a point (SPC N 708142.878, E 1826284.987);
11. South 79°16'18" East, a distance of 466.32 feet to a point (SPC N 708056.072, E 1826743.154);
12. North 65°34'05" East, a distance of 41.15 feet to a point (SPC N 708073.093, E 1826780.622);
13. South 87°36'08" East, a distance of 60.50 feet to a point (SPC N 708070.562, E 1826841.069);
14. South 35°51'23" East, a distance of 65.52 feet to a point (SPC N 708017.456, E 1826879.450);
15. South 53°55'24" West, a distance of 29.22 feet to a point (SPC N 708000.247, E 1826855.831);
16. South 83°59'57" West, a distance of 423.08 feet to a point (SPC N 707956.017, E 1826435.067);
17. North 79°17'41" West, a distance of 142.10 feet to a point (SPC N 707982.413, E 1826295.442);
18. North 66°12'23" West, a distance of 273.45 feet to a point (SPC N 708092.734, E 1826045.236);
19. North 51°03'51" West, a distance of 1038.91 feet to a point (SPC N 708745.639, E 1825237.118);
20. North 28°12'27" West, a distance of 486.91 feet to a point (SPC N 709174.727, E 1825006.971);
21. North 17°30'39" West, a distance of 393.86 feet to the place of beginning and containing 26.611 acres of land.

Bearings herein are based on the NAD 83 Ohio State Plane Coordinate System, South Zone, utilizing monuments COC 13-83 and COC 18-83.

Iron pins set consist of a 1" (O.D.) pipe, 30" long with a plastic cap inscribed "M-E COMPANIES/S-6872".

This description was prepared by M•E Companies, Inc., Civil Engineering Group, based on information obtained from an actual field survey performed in January 2007.

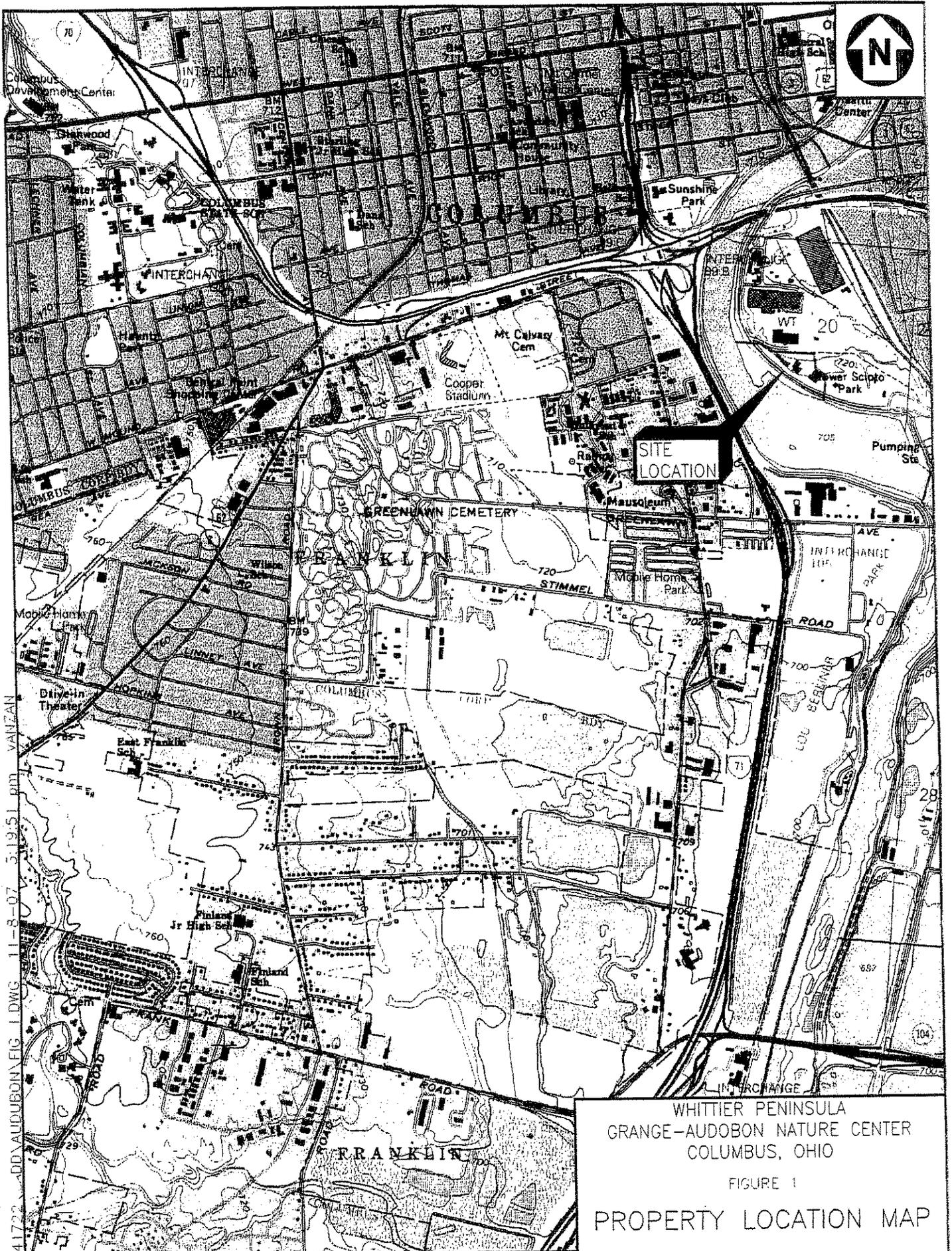


M•E Companies, Inc.
Civil Engineering Group

By Robert S. Wynd 1/21/08
Robert S. Wynd
Registered Surveyor No. 6872

Whittier Peninsula Grange-Audubon Nature Center
Director's Final Findings and Orders / Covenant Not to Sue

Exhibit 2
Property Location Map



WHITTIER PENINSULA
 GRANGE-AUDOBON NATURE CENTER
 COLUMBUS, OHIO

FIGURE 1

PROPERTY LOCATION MAP

BURGESS AND NIPLE, INC.
 ENGINEERS & ARCHITECTS

SCALE: 1"=2000'
 DATE: NOV. 2007

P:\PR41722\100\AUDOBON\FIG 1.DWG 11-8-07 3:19:51 PM VANZAN

SOURCE: SOUTHWEST COLUMBUS, OHIO
 7.5 MINUTE U.S.G.S. QUADRANGLE MAP

Whittier Peninsula Grange-Audubon Nature Center
Director's Final Findings and Orders / Covenant Not to Sue

Exhibit 3
Executive Summary

**SECTION B
OHIO ENVIRONMENTAL PROTECTION AGENCY
VOLUNTARY ACTION PROGRAM**

**EXECUTIVE SUMMARY AND FILING DOCUMENT FOR THE
NO FURTHER ACTION LETTER-ADDENDUM NO. 2
NOVEMBER 2007
REVISED JUNE 2008**

FOR

**WHITTIER PENINSULA
GRANGE AUDUBON NATURE CENTER PROPERTY
COLUMBUS, OHIO**

VOLUNTEER:

**City of Columbus
109 North Front Street
Ground Floor
Columbus, Ohio 43215**

CERTIFIED PROFESSIONAL ISSUING THE NFA:

**Thomas J. Mignery
CP 125
Telephone: (614) 459-2050; Fax: (614) 451-1385**

**BURGESS & NIPLE, INC.
Engineers and Architects
5085 Reed Road
Columbus, Ohio 43220**

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1.0 INTRODUCTION

This executive summary of the No Further Action (NFA) Letter and its addenda has been prepared pursuant to Ohio Administrative Code (OAC) 3745-300-13(I). The purpose of the summary is to meet the requirements of OAC 3745-300-13 (H) and (J), to use the format provided by the Ohio Environmental Protection Agency (EPA) for submitting the NFA Letter and its addenda, and OAC 3745-300-13 (J) for recording a summary of the NFA Letter and its addenda with the County Recorder's Office. A complete copy of the original NFA letter and its addenda is on file and will be made available to the Ohio EPA, Division of Emergency of Remedial Response (DERR) Voluntary Action Program (VAP) in accordance with OAC 3745-300-13(J).

The original NFA letter was submitted to the Ohio EPA, DERR VAP on behalf of the City of Columbus (City) on November 14, 2007 by Mr. Thomas J. Mignery, VAP-Certified Professional (CP) 125 of Burgess & Niple, Inc. (B&N). The NFA Letter addenda were submitted to the Ohio EPA, DERR VAP on behalf of the City on May 22, 2008 and June 4, 2008 by Mr. Thomas J. Mignery, CP 125 of B&N.

The original NFA and its addenda herein describes the Phase I and Phase II Property Assessments (Phase I and Phase II), for the approximate 26.611-acre property known as the Grange Audubon Nature Center Property (Property), located at the Whittier Peninsula with frontage addresses of 420, 440, and 460 West Whittier Street, Columbus, Ohio. The Phase II Property Assessment involved collecting soil, groundwater, and surface water samples and a conducting Human Health Risk Assessment (HHRA).

2.0 SUMMARY OF NO FURTHER ACTION LETTER

The CP, Mr. Thomas J. Mignery, issued an NFA Letter and its addenda based upon the Phase I, Phase II, HHRA, and Risk Mitigation Plan (RMP). An Environmental Covenant (Covenant) will be filed with the Franklin County Recorder's Office for modified residential land use, and restrictions on the use of groundwater for potable purposes on the Property. The RMP addresses health and safety requirements for construction workers if work is to be performed below the 2-foot Point of Compliance (POC).

A summary of the Phase I, Phase II, and HHRA is provided below. Complete copies of the Phase I, Phase II, and HHRA are contained in the original NFA Letter submittal and its addenda.

2.1 Phase I Property Assessment

A Phase I was completed in June 2005 to determine if Identified Areas (IAs) exist on the Property. A Phase I Update was performed in November 2007 to verify site conditions had not changed. The Phase I Update is summarized in the Phase II.

The Phase I included a determination of eligibility for entry into the Ohio VAP, a review of historic and current uses of the Property and surrounding properties, an environmental history review, a review of the history of hazardous substances or petroleum releases, a Property inspection, and identification of IAs as defined in OAC 3745-300-06(F). The following is a summary of the Phase I.

The Whittier Peninsula, the area containing the Property and surrounding areas, has historically been used for a number of industrial facilities and processing plants, as well as being owned, in part, by railroad companies. Specific land uses have included, or currently include, a railroad transportation corridor, concrete manufacturing, reported use as a landfill, recreation and parks department office space and light equipment repair, and a police impound lot. The following discusses historical practices particular to the Property, 420 to 460 Whittier Street, and the bike path along the Scioto River, west of Whittier Street.

The Recreation and Parks buildings (420 to 460 West Whittier Street) are located on the east side of Whittier Street in the central portion of the Property. The aerial photographs of these parcels depict a former gravel pit lake and the southern portions of the Universal Concrete operation on the Property. Judging from the aerial photos, the lake appears to have been gradually filled from sometime after 1938 to approximately 1957. This portion of the Property was reported to be the location of the City refuse dump

as well. The first apparent building development is viewed on the 1964 aerial photograph. This development appears to be in the same location as the present day 440 West Whittier Street building (Parks Maintenance). By 1980, development of this portion of the Property is depicted by 420 and 460 West Whittier Street buildings. The 2000 aerial depicts the Property in the same general configuration and stage of development as was observed during the B&N Phase I site investigation.

At the time of the Phase II, the Property consisted of the three Recreation and Parks buildings: the Parks Maintenance building; the buildings located at 420, 440, and 460 West Whittier Street; and several greenhouse structures. It is intended for the Recreation and Parks buildings to be razed in the spring of 2008 in preparation for site development for the Grange Audubon Nature Center.

A bike/walking path is located along the Scioto River, west of Whittier Street, and is currently occupied by dense shrubbery and mature tree growth. This area of the Property also extends along the Property interface with the Scioto River to the north where it terminates at an intersection with Interstate 70 (I-70). Currently, there are no plans to redevelop this portion of the Property.

The June 2005 B&N Phase I Property Assessment included the entire approximate 80-acre Southern Tier. The initial Grange Audubon VAP Property represented only 16.381 acres, which is included in the June 2005 Property Assessment. The revised Property was extended to include the "baja" located west-southwest of the Property to address Ohio EPA comments in March 2008. The revised Property is 26.611 acres. The newly added "baja" did not represent historic operations therefore; there is no potential for environmental impacts. On the basis of the June 2005 Phase I Property Assessment and November 2007 Phase I Update, seven IAs were identified on the Property based on the current practices and historical uses for those portions of the Property:

- **IA-1:** 460 West Whittier Street – Location of former heating oil underground storage tank (UST). This was a non-Bureau of Underground Storage Tank Regulations (BUSTR) UST removed in 1998. B&N Southern Tier Phase I designation was IA-1.
- **IA-2:** 460 West Whittier Street – Equipment storage, empty drums, reportedly a former landfill. B&N Southern Tier Phase I designation was IA-2.
- **IA-3:** 420 West Whittier Street – three USTs. B&N Southern Tier Phase I designation was IA-3. Two diesel USTs and one gasoline UST were removed and received BUSTR NFAs in 1990 and 1998.

- **IA-4:** 420 and 440 West Whittier Street – storage area and former dump. B&N Southern Tier Phase I designation was IA-4.
- **IA-5:** 440 West Whittier Street – asbestos-containing materials (ACMs) within the building. B&N Southern Tier Phase I designation was IA-12. It should be noted that no friable ACMs were found, therefore, no subsurface investigation is required. The IA designation is only to inform future developers of the need to properly abate ACMs prior to demolition.
- **IA-6:** 420 West Whittier Street – potential ACMs within the building. B&N Southern Tier Phase I designation was IA-13. It should be noted that no friable ACMs were found, therefore, no subsurface investigation is required. The IA designation is only to inform future developers of the need to properly abate ACMs prior to demolition.
- **IA-7:** Area behind 420 and 440 West Whittier Street - general fill and dump area. This IA was added during the Phase II and was not designated in the B&N Southern Tier Phase I.

2.2 Phase II Property Assessment

The purpose of the Phase II was to determine if chemicals of concern (COCs) exist at concentrations above applicable standards within each IA. As part of the Phase II, a subsurface investigation was conducted from September 2005 to January 2006, which included advancing 34 soil probes throughout accessible areas of the Property. Soil probe services were provided by EnviroCore, Limited (EnviroCore). Soil samples collected during the subsurface investigation were submitted for analysis to TestAmerica Laboratories, Inc. (TestAmerica), a VAP-certified laboratory.

Three monitoring wells were installed by Wright's Drilling, Inc. (Wrights Drilling) at the Property. Selected soil samples collected from each of the monitoring well borings were submitted for analysis to TestAmerica as a supplement to the soil probe samples. In addition to the three monitoring wells installed by B&N, six existing wells installed by DLZ at the Property were developed and sampled during the Phase II. Additional groundwater sampling was conducted per Ohio EPA recommendations during the comment response period in January 2008. All groundwater samples were submitted to TestAmerica for analysis.

One surface water sample was collected by B&N from the Scioto River adjacent to the Property. The surface water sample was collected to confirm that potentially impacted groundwater leaving the Property and possibly entering the Scioto River as surface water was not resulting in surface water concentrations above surface water standards. The surface water sample was submitted to TestAmerica for analysis.

As noted in Section 2.1, above, IA-5 and IA-6 were designated as such based upon suspicion of ACMs in the buildings. An ACM investigation was completed by Triad Environmental Consulting, Inc. and a report was submitted to B&N in February 2006 documenting the findings. Section 2.2.1.5 discusses the findings of the reports.

A summary of the Phase II findings is provided below.

2.2.1 Soil Investigation and Findings

Soil samples were collected primarily from soils identified as fill material from across the Property. Thirty-four direct push soil borings were advanced by EnviroCore during the course of the Phase II. In addition, Columbus Testing Labs (CTL) advanced geotechnical soil borings as part of an investigation for the entire Southern Tier of the Whittier Peninsula. Two of these soil borings advanced by CTL were located on the Property. Soil samples for chemical analysis were also collected from these borings. Soil samples were also collected during the installation of monitoring wells by Wright's Drilling. Data gathered from a previous Phase II completed by DLZ, which included 11 soil probes and six monitoring wells, was used during data evaluation. One soil boring to bedrock completed by Wrights Drilling in April 2008 and four soil borings completed to bedrock by a separate contractor were used in the POGWMUPUS. In general, one soil sample from each boring location was collected and analyzed for all or a combination of inorganics, volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs) (base-neutral fraction), polynuclear aromatic hydrocarbons (PAHs), total petroleum hydrocarbon (TPH) Diesel Range Organics/Gas Range Organics (DRO/GRO), herbicides, and pesticides.

Soil samples were collected from a variety of intervals based upon visual observation of a zone that appeared anomalous to the other samples collected within the soil boring, i.e., discoloration of soil, unusual odor, a change in soil type, etc., or if nothing appeared anomalous, depth to the first zone of saturation.

Direct push soil samples were collected in a large-bore, steel soil core sampler (4-foot-long by 2-inch diameter) attached to 1-inch-outside-diameter (OD) steel rods. The soil core sampler was lined with a new, clean, disposable acetate coring tube before collection of each soil sample. The sampler was driven into the ground by the static weight of the carrier vehicle and hydraulic hammer percussion. The soil was collected at 4-foot intervals until the desired termination depth was reached.

A hollow-stem auger (HSA) drill rig was used to advance the monitoring well borings into the unconsolidated deposits underlying the Property. Four-and-one-quarter-inch-inside-diameter (ID) HSAs were used to advance each borehole. A 2-foot by 2-inch diameter split-spoon soil sampler was used to collect soil samples. The split-spoon sampler was driven ahead of the auger string. The split-spoon sampler was advanced 2 feet and removed, and the hole augured to the bottom of the sample depth. This process was repeated until the desired termination depth was reached.

Upon opening either the acetate liner or the split-spoon sampler, the soil was described by a B&N geologist and recorded on a boring log. In general, soil samples were collected in 2-foot intervals for both laboratory and headspace analysis. If soil recovery was low, samples were collected in 2- to 4-foot intervals for laboratory analysis. After recording the description, soil samples were collected in clean glass sample jars with Teflon®-lined lids provided by the laboratory. Each sample was collected using clean chemical-resistant nitrile gloves that were discarded after collection of the sample. The sample jars were properly labeled and placed into coolers chilled to 4 degrees Celsius (° C) with ice.

Samples were delivered to TestAmerica under proper chain-of-custody documentation. Soil samples submitted to the VAP-certified laboratory were analyzed for a combination of VOCs (Method 8260A), inorganics (Methods 335.4, 6010A, 7060A, 7470/7471A, and 7740), SVOCs base-neutrals (Method 8270B), PAHs (Method 8270C), TPH DRO/GRO (Method 8015A-M), polychlorinated biphenyls (PCBs) (Method 8082), and herbicides and pesticides.

A variety of inorganics, PAHs, VOCs, and TPH DRO were detected in the soil samples collected from the Property. Soil results of the detected constituents were compared with the VAP single-chemical direct-contact standards for commercial land use, construction/excavation worker exposure standards, and the recreational standards calculated by B&N. In general, exceedances of the standards occurred with inorganics, PAHs, and TPH DRO. The following summarizes the single-chemical results for recreational land use, commercial land use, and construction/excavation worker exposure. Tables 8A through 8E of the Phase II document present soil analytical results

2.2.1.1 IA-1 – Former Heating Oil UST

Four soil samples were collected from borings completed in IA-1 and submitted to TestAmerica for analysis. Soil samples were collected at intervals ranging from 0 to 2 feet below ground surface (bgs) to 8 to 10 feet bgs. The analytical results are summarized as follows.

- **Inorganics:** The concentration of arsenic in SP-23 (8-10) exceeded the calculated recreational standard. However, the sample was collected below the POC for recreational land use. No other inorganics were detected at levels equaling or exceeding the calculated recreational standard or the VAP soil standards for the construction worker scenario.
- **VOCs:** No VOCs were detected in IA-1 at levels equaling or exceeding the calculated recreational standard or the VAP soil standards for the construction worker scenario.
- **SVOCs:** The concentration of benzo(a)pyrene in SP-21 (8-10) exceeded the calculated recreational standard. However, the sample was collected below the POC for recreational land use. No other SVOCs were detected at levels equaling or exceeding the calculated recreational standard or the VAP soil standards for the construction worker scenario.
- A multiple chemical standard (MCS) determination was performed using the maximum soil concentrations of COCs in IA-1. The sum of the risk ratios for VAP construction standards in IA-1 was below one. Since the risk ratios were below one, an MCS was not calculated and the single chemical generic direct contact soil standard (SCGDCSS) are applicable for the soil samples collected in IA-1.

2.2.1.2 IA-2 – Equipment Storage, Empty Drums, and Reported Landfill Activities

Five soil samples were collected from borings completed in IA-2 and submitted to TestAmerica for analysis during the B&N Phase II. In a previous Phase II investigation, DLZ collected four soil samples in IA-2. Sample intervals from the B&N and the DLZ Phase II ranged from 0 to 2 feet bgs to 12 to 20 feet bgs. Analytical results are as follows:

- **Inorganics:** The concentrations of lead in 7-SB-65 (12-20) and SP-24 (6-8) exceeded the calculated recreational standard. However, the samples were collected at depths below the POC designated for recreational land use. No other inorganics were detected at levels

equaling or exceeding the calculated recreational standard or the VAP soil standard for the construction worker scenario.

- VOCs: No VOCs were detected in IA-2 soil samples at concentrations equaling or exceeding the calculated recreational standard or the VAP soil standard for the construction worker scenario.
- SVOCs: The concentrations of benzo(a)pyrene in 7-SB-33 (16-20) and 7-SB-66 (8-12) exceed the calculated recreational standard. However, the samples were collected at depths below the POC designated for recreational land use. No other SVOCs analyzed reported concentrations equaling or exceeding the calculated recreational standard or the VAP soil standard for the construction worker scenario.
- TPH DRO/GRO: Samples collected from 7-SB-33 (16-20), 7-SB-65 (12-20), 7-SB-66 (8-12), and 7-SB-67 (0-4) were analyzed for TPH DRO/GRO. Although TPH parameters were detected at levels above laboratory detection limits, they did not exceed VAP soil saturation standards.
- PCBs: Five samples were submitted from IA-2 for PCB analysis during the DLZ Phase II. No analyzed samples reported concentrations equaling or exceeding the calculated recreational standard or the VAP soil standard for the construction worker scenario.
- An MCS determination was performed using the maximum soil concentrations of COCs in IA-2. The sum of the risk ratios for construction VAP standards in IA-2 was below one. Since the risk ratios were below one, an MCS was not calculated, and the SCGDCSS are applicable for the soil samples collected in IA-2.

2.2.1.3 IA-3 – Three Former USTs Located at 420 West Whittier Street

Five soil samples were collected from borings completed in IA-3 and submitted to a laboratory for analysis. Collected sample intervals ranged from 0 to 2 feet bgs to 8 to 10 feet bgs. The analytical results are summarized as follows.

- Inorganics: The concentration of arsenic in SP-27 (6-8) exceeded the calculated recreational standard. Lead was reported above the calculated recreational standard in

SP-28 (8-10). However, samples collected were below the POC for recreational land use. No other inorganics were detected at levels equaling or exceeding the calculated recreational standard or the VAP soil standards for the construction worker scenario.

- VOCs: No VOCs were reported in IA-3 soil samples at levels equaling or exceeding the calculated recreational standard or the VAP soil standards for the construction worker scenario.
- SVOCs: No SVOCs were reported in IA-3 soil samples at levels equaling or exceeding the calculated recreational standard or the VAP soil standards for the construction worker scenario.
- TPH DRO/GRO: Sample SP-28 (8 to 10 feet) was analyzed for TPH DRO/GRO. Although TPH parameters were detected at levels above laboratory detection limits, they did not exceed VAP soil saturation standards.
- An MCS determination was performed using the maximum soil concentrations of COCs in IA-3. The sum of the risk ratios for construction VAP standards in IA-3 was below one. Since the risk ratios were below one, an MCS was not calculated, and the SCGDCSS are applicable for the soil samples collected in IA-3.

2.2.1.4 IA-4 – Storage Area and Reported Landfill Activities

Six soil samples were collected from borings completed in IA-4 during the B&N Phase II. One sample was collected during a previous B&N geotechnical investigation. In a previous Phase II investigation, DLZ collected three soil samples in IA-4. Sample intervals from the B&N and the DLZ Phase II ranged from 0 to 2 feet bgs to 12 to 20 feet bgs. The analytical results are summarized as follows:

- Inorganics: The concentration of arsenic in 7-SB-35 (8-12), SP-25 (0-2), and MW-46 (8-10) exceeded the calculated recreational standard. Although the results for these samples exceed the calculated recreational standard, only SP-25 (0-2) is within the POC for recreational land use. Lead concentrations were reported above the calculated recreational standard in 7-SB-34 (16-20). However the reported concentration was not within the POC for recreational land use.

- VOCs: No VOCs were detected in the ten soil samples collected in IA-4 that exceed the calculated recreational standard or the VAP soil standards for the construction worker scenario.
- SVOCs: Benzo(a)pyrene concentrations reported in SP-52 (0-2) exceeded the calculated recreational standard. The sample was collected within the POC for recreational land use. The laboratory detection limit for dibenzo(a,h)anthracene in SP-52 (0-2) exceeded the calculated recreational standard.
- TPH DRO/GRO: Three samples from IA-4 were submitted for TPH analyses, 7-SB-34 (16-20), 7-SB-35 (8-12), and 7-SB-36 (8-12). None of the TPH constituents were detected above VAP soil saturation concentrations.
- PCBs: Three samples were submitted from IA-4 for PCB analysis during the DLZ Phase II. No samples analyzed reported concentrations equaling or exceeding the calculated recreational standard or the VAP soil standard for the construction worker scenario.
- An MCS determination was performed using the maximum soil concentrations of COCs in IA-4. The sum of the risk ratios for construction VAP standards in IA-4 was below one. Since the risk ratios were below one, an MCS was not calculated, and the SCGDCSS are applicable for the soil samples collected in IA-4.

2.2.1.5 IA-5 and IA-6 – ACMs at 420 and 440 West Whittier Street

IA-5 and IA-6 were designated as IAs in the B&N Phase I due to potential ACMs. ACM reports were completed in February 2006 by Triad Environmental Consulting, Inc. and are contained in Appendix I of the Phase II document. The ACM investigations reported no friable ACMs, therefore no soil or groundwater samples were collected in these IAs.

2.2.1.6 IA-7 – General Fill and Possible Landfill Activities

Twenty soil samples were collected from borings completed in IA-7 during the B&N Phase II. One soil sample was collected during a B&N geotechnical investigation. In a previous Phase II investigation, DLZ collected four soil samples in IA-7. Sample intervals from the B&N and the DLZ

Phase II ranged from 0 to 2 feet bgs to 12 to 20 feet bgs. The analytical results are summarized as follows.

- Inorganics: Concentrations of arsenic in MW-46 (8-10), SP-48 (0-2), and SP-54 (0-2) exceeded the calculated recreational standard. Soil samples collected from SP-48 (0-2), and SP-54 (0-2) were within the POC for recreational land use. Lead concentrations were reported above the calculated recreational standard in 7-SB-30 (12-20), 7-SB-31 (0-8), 7-SB-32 (12-20), MW-48 (4-6), SP-44 (4-6), and SP-48 (0-2). However only 7-SB-31 (0-8) and SP-48 (0-2) are within the POC for recreational land use. Lead concentrations in 7-SB-32 (0-8) and MW-48 (4-6) exceed the VAP soil standard for the construction worker scenario and are within the POC designation.
- VOCs: No VOCs were detected in any of the soil samples at concentrations equaling or exceeding the calculated recreational standard or the VAP soil standard for the construction worker scenario.
- SVOCs: No SVOCs were detected in any of the soil samples at levels exceeding calculated recreational standards or VAP standards for the construction worker scenario.
- TPH DRO/GRO: Four of the soil samples were analyzed for TPH. TPH concentrations reported in 7-SB-32 (12-20) exceeded the VAP soil saturation concentrations for light and heavy hydrocarbons.
- PCBs: Four samples were submitted from IA-7 for PCB analysis during the DLZ Phase II. No samples analyzed reported concentrations equaling or exceeding the calculated recreational standard or the VAP soil standard for the construction worker scenario.
- Herbicides and Pesticides: Two samples were submitted from IA-7 for herbicide and pesticide analysis. No samples analyzed reported concentrations equaling or exceeding the calculated recreational standard or the VAP soil standard for the construction worker scenario.
- An MCS determination was performed using the maximum soil concentrations of COCs in IA-7. The sum of the risk ratios for construction VAP standards in IA-7 was below

one. Since the risk ratios were below one, an MCS was not calculated, and the SCGDCSS are applicable for the soil samples collected in IA-7.

2.2.2 Groundwater Investigation and Findings

Groundwater sampling was performed to determine if various historical operations had impacted groundwater underlying the Property, and if potentially impacted groundwater was migrating off the Property. Groundwater samples were collected from the Property monitoring well network. The groundwater monitoring network consists of five monitoring wells installed during the DLZ Phase II and three monitoring wells installed during the B&N Phase II. Although it was noted that DLZ had installed six monitoring wells, it should be noted that monitoring well MW-7S was consistently dry throughout the B&N Phase II. The three monitoring wells installed by B&N were advanced by Wright's Drilling.

Groundwater samples were initially collected from the DLZ monitoring wells post installation in August 2002, and again by B&N in September 2005. B&N redeveloped the DLZ monitoring wells prior to sampling in September 2005. Wells installed by B&N were sampled in October 2005 and November 2005. With the exception of monitoring well MW-48, each monitoring well was sampled twice during B&N Phase II activities.

Depths of the monitoring wells within the network range from 21 feet to 30 feet bgs. Top-of-casing elevations were surveyed by B&N at each of the monitoring wells, including those installed by DLZ. After well development, samples were collected during subsequent sampling events using low-flow sampling techniques. A Grundfos® pump was used to evacuate water from the groundwater monitoring wells. The Grundfos® pumping rate can be adjusted to a rate sufficiently slow enough so as not to agitate the water within the well, resulting in less-turbid samples. The Grundfos® pump used disposable polyethylene tubing to evacuate the water from the well. The pump tubing was lowered into the well and groundwater was pumped at a rate between approximately 100 and 500 milliliters per minute (ml/min) during purging and sampling. The monitoring wells were purged until the indicator parameters stabilized. Groundwater samples collected during each sampling event were analyzed for VOCs, SVOCs, and metals. Samples were collected in the order listed. As with the soil samples, collected groundwater samples were placed into coolers and chilled to 4 degrees ° C. with ice. Samples were then delivered to TestAmerica under proper chain-of-custody documentation.

Groundwater analytical results were compared to VAP Unrestricted Potable Use Standards (UPUS).

2.2.2.1 Groundwater Sampling Results

The groundwater analytical results are summarized as follows:

- **Inorganics:** All or a variety of the following were detected above UPUS in monitoring wells MW-7D, MW-8S, and MW-9S during the initial sampling event in August 2002 completed by DLZ: arsenic, barium, cadmium, chromium (total), lead, and mercury. It is important to note that groundwater samples collected for metal analysis during the initial DLZ sampling event were not believed to be field filtered. None of the metals stated above were detected above UPUS during the sampling event in September 2005. However, barium was detected above UPUS in monitoring well MW-47 during the sampling event in October 2005, the subsequent confirmation sampling event in November 2005, and the additional February 2008 sampling event per recommendations from the Ohio EPA NFA comment letter. No other inorganics were detected above UPUS in the groundwater samples collected.
- **VOCs:** No VOCs were detected above laboratory detection limits. However, it should be noted that the laboratory detection limit for 1,2,3-trichloropropane of 5 micrograms per liter ($\mu\text{g/l}$) in August 2002 and $0.97 \mu\text{g/l}$ in September 2005 was above the UPUS of $0.22 \mu\text{g/l}$. Although the detection limit is above UPUS, there is no reason to believe that this is a COC at the Property.
- **SVOCs:** PAHs were detected above UPUS in the groundwater samples collected from MW-7D, MW-8S, MW-46, and MW-47.
 - Benzo(a)pyrene was initially detected above UPUS in MW-7D during the August 2002 sampling event. The subsequent sampling event in September 2005 indicated concentrations below UPUS; however, benzo(b)fluoranthene was detected above UPUS in the September 2005 sampling event. Additional development and sampling of MW-7D was conducted during the NFA comment response period in February 2008. Groundwater was sent to a VAP-certified laboratory for PAH analysis. Concentrations from the February 2008 event were below UPUS. It is believed that high turbidity in the previous sampling events resulted in a false positive.

- Benzo(a)pyrene was also detected in MW-8S during the August 2002 sampling event. During the subsequent sampling event in September 2005, benzo(a)anthracene, benzo(a)pyrene, and benzo(b)fluoranthene were all detected above UPUS. Although various PAHs during the August 2002 and September 2005 were reported over UPUS in MW-8s, MW-8D reported no parameters above UPUS.

- Benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene and indeno(1,2,3-cd)pyrene were all detected above UPUS in monitoring well MW-46 during the October 2005 sampling event. Confirmation sampling conducted in November 2005 indicated the presence of these compounds still above UPUS. Additional development and sampling of MW-46 was conducted during the NFA comment response period in February 2008. Groundwater was sent to a VAP-certified laboratory for PAH analysis. Concentrations from the February 2008 event were below UPUS. It is believed that high turbidity in the previous sampling events resulted in a false positive.

- Lastly, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, and naphthalene were also detected in monitoring well MW-47 above UPUS during the October 2005 sampling event. Subsequent sampling in November 2005 indicated the presence of all but dibenzo(a,h)anthracene and naphthalene above UPUS. Additional development and sampling of MW-47 was conducted during the NFA comment response period in February 2008. Groundwater was sent to a VAP-certified laboratory for PAH analysis. Concentrations from the February 2008 event were below UPUS. It is believed that high turbidity in the previous sampling events resulted in a false positive.

It should be noted that several other PAHs were detected in monitoring wells MW-8S, MW-46, and MW-47 at concentrations below UPUS.

2.2.2.2 Groundwater Classification and Protection of Groundwater Meeting UPUS

When groundwater in a saturated zone underlying the Property complies with UPUS, any remedial activities undertaken at the Property must ensure that the migration of hazardous substances or petroleum from sources or source areas on the Property will not result in UPUS being exceeded anywhere

within the saturated zone. These remedial activities provide the protection of groundwater meeting the UPUS.

Two groundwater zones underlie the Property: shallow, unconsolidated sand and gravel and a consolidated bedrock saturated zone. Both zones are evaluated for protecting groundwater meeting unrestricted potable use standards (POGWMUPUS) applicability. The following presents the POGWMUPUS applicability for the Property.

2.2.2.1.1 **Shallow Saturated Zone**

Results of the groundwater sampling at the Property, discussed above indicate that the upper saturated zone underlying the Property has been impacted by historical operations at the Property. Groundwater results for monitoring wells MW-7D, MW-8S, MW-9S, MW-46, and MW-47 indicate concentrations of arsenic, barium, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, and naphthalene above UPUS. Multiple samples were collected from these wells to confirm these results, all collected within the requisite 90 days. Therefore, the provisions for POGWMUPUS do not apply to the shallow saturated zone because this zone of saturation does not meet UPUS. Additional development and sampling of MW-7D, MW-46, and MW-47 was conducted in February 2008 per Ohio EPA recommendations in the NFA comment letter. Groundwater collected from the three wells were submitted to a VAP certified laboratory for PAH analysis. Groundwater collected from MW-47 was also analyzed for barium. Only barium exceeded the UPUS in groundwater collected from MW-47. It is believed that high turbidity in the previous sampling events resulted in a false positive.

2.2.2.1.2 **Silurian-Devonian Bedrock Aquifer**

POGWMUPUS does apply to the deeper portions of the unconsolidated sand and gravel aquifer and the Silurian-Devonian aquifer underlying the Property. It applies in this situation because it is assumed that the groundwater in the limestone aquifer is not impacted due to the historical activities at the Property. There are several qualitative points of evidence indicating that the downward migration of contaminants has not and will not occur, and therefore the requirements of POGWMUPUS apply and will be maintained for the limestone aquifer. These points are as follows:

1. During the NFA comment period, a deep boring was completed near MW-47. The deep boring was completed to bedrock. A dry, tight, gray till was encountered at approximately 50 feet below ground surface and continued until a gray weathered shale was encountered at approximately 75 feet below ground surface. A separate geotechnical contractor completed 4 soil borings to bedrock in May 2007 around the proposed Grange Audubon Nature Center. Till was encountered in the separate contractors soil borings at the same elevation as the top of till in the deep boring completed near MW-47. B&N and the Ohio EPA believe that this till layer acts as a confining layer which prevents the vertical migration of impacted groundwater in the buried valley aquifer to the underlying limestone bedrock aquifer.
2. COCs, particularly PAHs, found in soils are generally found below the recreational and commercial 0- to 2-foot POC, usually at a depth of 6 to 10 feet, the expected depth of a UST. PAHs are characterized by being relatively insoluble in water and having high soil-water distribution coefficients. Therefore, PAHs are expected to remain bound to the shallow soils rather than leach into the groundwater.
3. PAHs have been detected in groundwater in exceedances of UPUS, primarily in the shallow monitoring wells. However, PAHs have been detected in the deeper monitoring wells below UPUS, indicating some downward vertical migration. As the USTs (assumed to be the source of the PAHs) have been removed, the source has therefore been removed. As a result, continued downward vertical migration of these compounds in exceedances of UPUS is unlikely.
4. As discussed in the Phase II document, groundwater in the sand and gravel aquifer and upper portion of the Silurian-Devonian aquifer (above the base of the Tymochtee Dolomite) is expected to discharge to the Scioto River. For the sand and gravel aquifer, the Property-specific groundwater elevation contour map indicates groundwater does indeed flow towards, and discharges to the Scioto River.

No Property-specific information exists for the underlying limestone aquifer. However, the hydrogeologic characteristics of both the sand and gravel buried valley aquifer and limestone aquifer south of downtown Columbus have been researched extensively by the U.S. Geological Survey (USGS) to determine the relationships between the two aquifers, the Scioto River, the City of Columbus South well field, various quarry operations and lakes, and solid waste landfills. In general, these publications

indicate that groundwater from the upper portion of the limestone aquifer discharges to the Scioto River south of the downtown Columbus area, except in the presence of dewatering stresses. These conclusions are based on groundwater elevation measurements.

2.2.3 Surface Water Investigation and Results

One surface water sample was collected during November 2007. The sample was collected from the Scioto River, which lies adjacent to western Property boundary, near the northern portion of the Property. The surface water sample was collected to confirm that potentially impacted groundwater entering the Scioto River would dilute to concentrations below the Ohio Surface Water Quality Standards.

Samples were collected by submerging a stainless steel sampling cup into the stream water and immediately transferring the water to appropriate sample containers supplied by the VAP-certified laboratory. The water was poured into the sample containers slowly in order to minimize turbulence. Samples were immediately placed in coolers and chilled with ice for delivery to TestAmerica. Surface water samples were analyzed for PAHs due to PAH exceedances in groundwater.

2.2.3.1 Surface Water Sampling Results

One surface water sample was collected during this sampling event. Results indicate that no PAHs were detected in the surface water sample above a detection limit of 0.1 µg/l.

2.2.4 Exposure Pathway Assessment

Under VAP (OAC 3745-300-7), existing and potential pathways must be evaluated to determine if they are complete for human and, if necessary, ecological receptors. This is based on current and future intended land use. As discussed in Section 2.1, the Property is currently used as the Recreation and Parks offices and maintenance buildings. Future intended land use is to be recreational, in particular, the Grange Audubon Nature Center. Potential receptors are:

- Commercial Worker - Exposure to an adult park worker;
- Recreational Visitor – The recreational visitor scenario accounts for the potential child and adult visiting the Property; and

- The Construction/Excavation Worker – There is the potential for a construction or excavation worker to perform work on or adjacent to the Property.

2.2.4.1 Human Health Exposure Pathways

Two environmental media exist on-Property or adjacent to the Property to which receptors can be exposed: soil and groundwater.

Potentially complete exposure pathways for soils on the Property for the recreational visitor (child and adult), the commercial worker, and the potential construction or excavation worker are:

- Ingestion;
- Dermal contact;
- Inhalation of fugitive dusts;
- Vapor migration from soil into slab-on-grade structures; and
- Soil COCs leaching to groundwater.

Potentially complete exposure pathways for groundwater for the child and adult recreational visitor, the commercial worker and the potential construction or excavation worker includes:

- Dermal contact of groundwater;
- Ingestion of groundwater;
- Vapor migration from groundwater into slab-on-grade structures; and
- Vapor migration from groundwater into an excavation.

2.3 Determination of Applicable Standards

Applicable standards were based on the future land uses of the Property. Intended future land use for the Property is mixed use, which includes recreational and possibly commercial land uses. Recreational land use is considered Modified Residential under the VAP and includes a park and nature preserve. It should be noted that Modified Residential land use will require an Environmental Covenant designating this portion of the Property as Modified Residential. The Grange Audubon Nature Center is planned for a portion of the Property.

2.3.1 Soil

Results of the B&N soil samples submitted for analysis, and those collected by DLZ, were compared to the Ohio VAP SCGDCSS for Commercial Land-Use (OAC 3745-300-08, Table III), the Construction and Excavation Worker Exposure standards (OAC 3745-300-08, Table IV), and the calculated recreational standards. However, the above-listed standards are for single-chemical exposures. When multiple chemicals are present, the adverse effects of the different chemicals are additive (U.S. EPA, 1989b). Therefore, the need for a multiple-chemical adjustment standard (MCS) is determined. The MCS may reduce the applicable standards or cleanup levels for a COC in a particular IA. As multiple chemicals were detected in soils at the Property, the MCS applicability was determined for each IA. Section 8.1.2.1 of the Phase II document discusses the MCS calculation in greater detail.

In a previous Phase II investigation for the northern portion of the Whittier Peninsula, off-site background sampling was performed to determine a background concentration for arsenic. The background determination was performed due to the amount of soil samples in which the residential arsenic standard was exceeded. Although the off-site background sampling was not performed for the Grange Audubon portion of the Whittier Peninsula in particular, sampling was performed in close proximity to the Southern Tier, so B&N feels the background sampling is also relevant to the Property.

Using the off-site background soil sampling results, an upper statistical limit was calculated for arsenic per OAC 3745-300-07(H)(1)(d). The background upper limit (or maximum allowable concentration), as determined from the off-site soil samples, was 24.3 milligrams per kilogram (mg/kg). Section 8.2.1 of the Phase II document discusses the background calculation in greater detail.

Since the intended future land use for a portion of the Property is that of an urban park (recreational) and since SCGDCSS have not been calculated for a recreational land-use scenario, single chemical direct-contact standards (based primarily on the ingestion pathway) were calculated for the potential recreational visitor. Since the child exposure is most conservative, calculated recreational standards are based on exposure to the child visitor. Section 8.2 of the Phase II discusses the recreational direct contact standards calculations.

As an MCS determination cannot be performed for the calculated recreational standards, nor do the SCGDCS account for all potential pathways, a HHRA was performed to determine what risk may apply to the receptors based on additional pathways and the recreational receptor population.

Single-chemical direct-contact soil standards have not been established for recreational land use. Results of soil and sediment samples were initially compared with the VAP single chemical direct contact soil standards for commercial land use and the construction worker scenario. Results of the HHRA were compared with the VAP risk standards of 1×10^{-5} for lifetime carcinogenic risk, and a noncancer hazard index of 1.0.

2.3.2 Groundwater

Groundwater analytical results were compared to the VAP Generic UPUS, OAC 3745-300-008, Table VI, the Risk-Based Generic UPUS for Groundwater (OAC 3745-300-008, Table VII), and the Supplemental UPUS table (DERR 10/21/02). An MCS is not performed on groundwater samples that are listed in the UPUS table (Table VI). However, if more than one compound is detected from the non-UPUS Risk-Based Table (OAC 3745-300-008, Table VII) or the Supplemental UPUS table, an MCS should be performed. Although several compounds were detected in the groundwater samples from the Supplemental Tables, an MCS was not performed for the groundwater sampling results. An Environmental Covenant in the form of a groundwater use restriction will be implemented for the Property. If Property conditions change, or if using the groundwater for potable purposes becomes an issue, the Environmental Covenant may be deemed void by operation of OAC 3746.05 and any future changes to the groundwater restriction will potentially need a new NFA letter for the Property.

2.4 Determination of Compliance with Applicable Standards

A HHRA was performed to determine whether or not VAP risk standards were met. To meet the noncancer and carcinogenic risk standards, several institutional controls were required. An environmental covenant, in the form of deed notations, included:

- A Modified Residential land-use designation for the Property; and
- Prohibition of the use of groundwater for potable purposes.

In addition, it was determined that a RMP was required for the construction/excavation worker if work is to be performed at the Property when work is to be performed below the 2-foot Modified Residential POC. Due to impacted groundwater at the Property (as discussed in Section 2.2.2), the RMP will also be required when work is to be performed within the saturated zone (located approximately 23 feet bgs). It should also be noted that construction/excavation workers exposure to impacted soils (more than 2 feet bgs) will be limited to working only 60 days per year across the site, which is most

likely not a reasonably anticipated exposure scenario based on the proposed remedy of 2 to 5 feet of clean fill placement.

2.4.1 Methods for Demonstrating Compliance

Compliance with applicable standards was demonstrated through the following:

- A. Soil results were compared with single chemical direct-contact soil standards for commercial land use and construction/excavation worker scenario.
- B. Due to the presence of more than one COC, it is assumed that adverse affects of each chemical is additive. Therefore, a MCS determination was performed using the maximum detected soil concentrations. Results indicate that the presence of multiple COCs at the Property does not warrant calculating an MCS, that the single chemical direct-contact standards are applicable.
- C. A HHRA was performed to determine whether VAP risk standards were met for current and future land use.
- D. A RMP was developed for construction or utility workers working below the 2-foot POC at the Property.

2.4.2 Compliance with Generic Numerical Standards

Section 2.2 discusses the soil, groundwater, and surface water results of the samples collected at the Property throughout Phase II activities. Results are compared with applicable Generic Numerical Standards. As discussed in Sections 2.3 and 2.4.1, an MCS determination was performed for commercial and construction worker scenarios. Based on the Phase II results, an MCS was not needed for the two pathways.

2.4.3 Human Health Risk Assessment Findings

A HHRA was performed for the Property to evaluate potential risk to human health from COCs detected on the Property during the Phase II. Results were used to determine if current and future level of risk to human health is at an acceptable level for future land use.

Exposure to potential receptor populations at the Property was evaluated using VAP human health risk assessment guidelines. An acceptable level of risk is defined as a hazard index of ≤ 1.0 for noncarcinogenic risk and a carcinogenic risk of 1×10^{-05} for each receptor population. Each IA was evaluated as part of the HHRA.

2.4.3.1 Identification of Pathways

Three environmental media exist on-Property or adjacent to the Property to which receptors can be exposed:

- Soil;
- Groundwater; and
- Surface water in the adjacent Scioto River.

The first two of three institutional controls in the form of an Environmental Covenant were imposed prior to determining complete exposure pathways. Institutional controls included:

- A Modified Residential land-use designation for the Property;
- Prohibition of the use of groundwater for potable purposes; and
- Construction/excavation workers exposure to impacted soils and groundwater will be limited to 60 days per year across the site.

Based on these institutional controls, the following summarizes complete pathways by environmental media.

2.4.3.1.1 Soils

Complete soil exposure pathways on the Property are:

- 3 Ingestion by child and adult recreational visitors, commercial workers, and potential construction/excavation workers,
- 4 Dermal contact by child and adult recreational visitors, commercial workers, and potential construction/excavation workers,

- 5 Inhalation of fugitive dusts by child and adult recreational visitors, commercial workers, and potential construction/excavation workers,
- 6 Vapor migration from soil into slab-on-grade structures for all three receptor populations, and
- 7 Soil COCs leaching to groundwater.

2.4.3.1.2 Groundwater

Complete exposure pathways for groundwater include:

- Vapor migration from groundwater into slab-on-grade structures for all three receptor populations,
- Dermal contact with groundwater in a construction worker excavation,
- Vapor migration from groundwater into a construction worker excavation, and
- Groundwater discharge to Scioto River.

2.4.3.2 Findings of the HHRA

VAP guidelines states that an acceptable level of noncarcinogenic risk is defined as a hazard index of ≤ 1.0 , and the acceptable level of carcinogenic risk is a calculated cancer risk of $\leq 1 \times 10^{-05}$. Based on the institutional controls implemented on the Property, the HHRA demonstrates an acceptable human health risk for exposure to the commercial worker, recreational visitor (child receptor), and construction worker across the entire Property, with the following institutional controls:

- A deed restriction designating the land use of the Property to be that of Modified Residential;
- A deed restriction prohibiting the use of groundwater for potable purposes; and
- A deed restriction on the construction/excavation workers exposure to impacted soils and groundwater will be limited to 60 days per year across the site.

An interim remedy is needed to address surficial soil exceedances for direct contact exposures. An Operations and Maintenance (O&M) Plan and Agreement is required to address the placement of clean fill on certain areas of the Property and the asbestos abatement and demolition of the Recreation and Parks buildings to meet VAP acceptable levels of risk for any of the potential receptor populations at the Property. It should be noted that an RMP will be implemented whenever construction or utility work is to be performed on the Property below the 2-foot POC or any excavation where subsurface work is to be performed within the saturated zone (located approximately 23 feet bgs).

2.4.4 Determination of Whether Remedial Activities Are Required

Based on the findings of the HHRA, it was determined that remedial activities are warranted to mitigate potential risk at the Property for any complete pathways. The purpose of the remedy is to create a procedure for implementing and maintaining a short-term interim measure to prevent exposure to PAHs and several metals (arsenic and lead) present in soil within the 2-foot POC, which continues to exist in soil from the time the No Further Action (NFA) Letter was issued.

2.5 Remedial Activities

Remedial activities are necessary to achieve compliance with applicable standards at the Property.

An OAC 3745-27-13 authorization was approved by the Ohio EPA for the Southern Tier of Whittier Peninsula which includes the Property. The OAC 3745-27-13 authorization for the Property outlines the former waste placement and authorized activities for the Property.

As of June 2008, asbestos abatement was performed on those buildings with documentation of ACM presence and includes 440 and 460 Whittier Street. All work was performed under National Emission Standard for Hazardous Air Pollutants (NESHAP) and Ohio EPA rules and guidelines. A 10-day notice of demolition and ACM removal was prepared and provided to Ohio EPA for approval.

The proposed mitigation method includes placement of clean fill on top of impacted soils across the Property. As stated before, the location of the areas that do not meet the applicable standards are somewhat random and therefore, require a more conservative mitigation program to ensure compliance for the proposed recreational land use, which includes a child and adult exposure pathway. A minimum of 2 feet of clean fill will be placed across the impacted soils on the eastern portion of Whittier Street.

Moreover, in the area of the proposed Grange Audubon Nature Center, 2 to 5 feet of clean fill will be placed in order to further protect the potential scenario of children playing in the soil for recreational use. It is a reasonably anticipated scenario of a child possibly digging into the soil from a maximum of 1.0 to 1.5 feet bgs. The anticipated timeframe to complete this work is for this activity is the second quarter 2008. VAP certified lab data has already been collected from the clean fill pile to support a demonstration that clean soil, which meets VAP recreational land use standards. This soil data will be provided with the O&M Report following completion of the interim measure.

Interim measures include the existing 4-foot tall metal chain-link type fence along the eastern edge and a 4-foot tall construction fence between the bike path and Whittier Street, which will encircle the impacted soils. Gates will be padlocked allowing limited access, except during the times of active remediation of the impacted soils as some portions of the fence will need to be removed to allow for various site grading activities or clean fill placement. No trespassing signs will be posted on the fence on all sides. An existing parking lot and intact vegetative cover along the southwestern portion of the Property will serve as an interim measure until the placement of the minimum 2-foot cover and/or the parking lot or vegetative cover is disturbed for construction activities. The Volunteer, or designated representative, will inspect the interim measures weekly to maintain the integrity of the signage, fencing, vegetative cover, and the existing parking lot until the clean fill placement and grading to achieve the POC is complete.

An RMP will be implemented by construction workers working on the Property if work is to be performed below the 2-foot POC or any excavation where subsurface work is to be performed within the saturated zone (located approximately 23 feet bgs).

2.6 Planned Operation and Maintenance Remedies

Interim measure(s) or remedy is required to allow the Property to meet VAP applicable standards for recreational (Modified Residential) land use. Therefore an O&M Plan is necessary. Upon execution of the final phase of remedy for which the O&M Plan was prepared, the Property will meet the modified residential land use or recreational land use standards. Interim measure for the Property relies on an aggressive ACM abatement/demolition phase, an existing 4-foot tall metal chain-link type fence along the eastern edge and a proposed 4-foot tall construction fence between the bike path and Whittier Street, an existing parking lot and intact vegetative cover along the southwestern portion of the Property, clean fill placement for the Property before the recreational land use and proposed Grange Audubon Nature Center is in use.

3.0 CONCLUSIONS

The HHRA demonstrates an acceptable human health risk for commercial, recreational (child exposure), and construction worker exposure within the 2-foot POC. However, the following restrictions will be implemented:

- An institutional control in the form of a deed restriction limiting land use of the Property to Modified Residential land use (prohibiting unrestricted residential land use), but not restricting the visitation of children to the Property.
- An institutional control prohibiting potable groundwater use at the Property.
- Construction/excavation workers exposure to impacted soils and groundwater will be limited to 60 days per year across the site.

The two institutional controls will be voluntarily implemented by the City through an environmental covenant that will be filed with the Franklin County recorders office within 60 days of the issuance of a Covenant Not to Sue from the Director of Ohio EPA. Additionally, an RMP will be implemented for construction or utility workers at the Property if work is to be performed below the 2-foot POC or any excavation where subsurface work is to be performed within the saturated zone (located approximately 23 feet bgs).

Upon completing the asbestos abatement, demolition, clean fill placement, and the interim measures (chain link fencing, construction fencing, the existing parking lot and intact vegetative cover) the Property will meet VAP applicable standards for soil. The Volunteer and CP will prepare a report documenting the asbestos abatement, demolition, and clean fill placement and any movement of affected soil, with a summary of the supporting certified data and certified laboratory reports. The report will meet the criteria of OAC 3745-300-15(E)(2), which includes an affidavit from the CP that the Property complies with the applicable standards. The criteria for the CP's affidavit are found in OAC 3745-300-13(O) (effective April 19, 2006). The report will be forwarded to Ohio EPA with a request to terminate this O&M Plan and associated Agreement.

Upon completion of the interim measure and filing of the Environmental Covenant, the Property meets all acceptable risk goals and is protective of public health and safety and the environment.

Whittier Peninsula Grange-Audubon Nature Center
Director's Final Findings and Orders / Covenant Not to Sue

Exhibit 4
Environmental Covenant

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the City of Columbus (Owner) and the Ohio Environmental Protection Agency (Ohio EPA) pursuant to Ohio Revised Code (ORC) §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Whereas, the City of Columbus, having offices at 90 West Broad Street, Columbus, Ohio 43215 has undertaken a voluntary action with respect to the Property described herein under Ohio's Voluntary Action Program (VAP), pursuant to ORC Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300;

Whereas, the Property is also owned by the City of Columbus (Owner);

Whereas, the voluntary action remedy for the Property includes the activity and use limitations set forth in this Environmental Covenant, Certified Professional, Thomas J. Mignery, Certified Professional 125, issued a no further action (NFA) letter for the Property on November 14, 2007 (NFA Letter) and submitted the NFA Letter to Ohio EPA, with a request for a covenant not to sue (CNS) (NFA Letter No. 07NFA278);

Whereas, the activity and use limitations support the issuance of the NFA Letter and a covenant not to sue for the Property. The activity and use limitations protect against exposure to the hazardous substances in soil on or underlying the Property;

Whereas, the 26.611-acre site is located along 420-460 Whittier Street, Columbus, Franklin County, Ohio. The property had been the primary headquarters of the Columbus Recreation and Parks Administration Offices, as well as a former debris landfill for the City of Columbus for almost 80 years. Environmental investigations of the site have been completed under the Ohio VAP. Phase I and II Property Assessments and a Human Health Risk Evaluation have been completed. Chemicals of concern (COCs) based on the environmental investigations include metals, volatile organic compounds (VOCs) and polynuclear aromatic hydrocarbons (PAHs). Based on the findings of the Phase II Property Assessment, no unacceptable risks are associated with the use of the property for recreational purposes, with the limitations of activities described in this Covenant;

Whereas, an overview of the voluntary action is contained in the NFA Letter Executive Summary. The Executive Summary may be reviewed as an exhibit to the CNS issued for the Property and recorded with the Franklin County Recorder's Office. You may also review the CNS, Executive Summary, or complete NFA Letter for the Property by contacting the Records Management Officer, Ohio EPA, Division of Emergency and Remedial Response, Voluntary Action Program, P.O. Box 1049, Columbus, Ohio 43216-1049, or by telephone at (614) 644-2924, or the Central District Office at 50 West Town Street, Columbus, Ohio 43215, or by telephone at

(614) 728-3778, or City of Columbus at 90 West Broad Street, Columbus, Ohio 43215, or by telephone at (614) 645-8430.

Now therefore, the City of Columbus and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns an approximately 26.611-acre of real property owned by the City of Columbus, located along Whittier Street, Columbus, Franklin County, Ohio, and more particularly described as Exhibit A attached hereto and hereby incorporated by reference herein (Property).
3. Owner. The City of Columbus (Owner) having offices at 90 West Broad Street, Columbus, Ohio 43215 is the owner of the Property.
4. Holder. Owner, identified above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations. As part of the voluntary action described in the NFA Letter, Owner hereby imposes and agrees to comply with the following activity and use limitations:

Limitation for Recreational, Commercial or Industrial Land Uses. The Property is hereby limited to "recreational" land use as defined herein, or "commercial" or "industrial" land use, as defined in OAC 3745-300-08(B)(2)(c)(ii) and (B)(2)(c)(iii) (effective October 21, 2002), or any combination of those uses.

- i. Recreational land use means surficial use of the Property, which include but are not limited to: picnic areas and shelters, playfields, open lawns, other green spaces, wildlife and city viewing opportunities, boardwalks, overlook decks, bike and multiple purpose trails including a pedestrian promenade, nature trails, paths and walkways, natural area amphitheater and other educational programming facilities, public art displays, pet play areas, restrooms, and any activities and uses incidental to such land use.

Recreational land use excludes any land use as residences (including single or multiple family housing, condominiums and apartments); day care facilities; schools, colleges, and other educational institutions; nursing homes, elder care and other long-term health care facilities; and correctional facilities.

- ii. OAC 3745-300-08(B)(2)(c)(ii) defines commercial land use as "land use with potential exposure of adult workers during a

business day and potential exposure of adults and children who are customers, patrons, or visitors to commercial facilities during the business day. Commercial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of commercial land uses include but are not limited to warehouses; building supply facilities; retail gasoline stations; automobile service stations; automobile dealerships; retail warehouses; repair and service establishments for appliances and other goods; professional offices; bank and credit unions; office buildings; retail businesses selling foods or merchandise; golf courses; hospitals and clinics; religious institutions; hotels; motels; and parking facilities."

- iii. OAC 3745-300-08(B)(2)(c)(iii) defines industrial land use as "land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are visitors to industrial facilities during the business day. Industrial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants and plastic plants; assembly plants; non-public airport areas; limited access highways; railroad switching yards; and marine port facilities."

Groundwater limitations: As a portion of the remedy under the Ohio EPA VAP to protect against exposure to hazardous substances in groundwater located at or underlying the Property described herein, no person shall extract the groundwater located at or underlying the Property or any portion thereof for any purpose, potable or otherwise, except for groundwater investigation, monitoring, or remediation, or in conjunction with construction or excavation activities or maintenance of subsurface utilities.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations

contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law. Pursuant to ORC § 3746.05, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the covenant not to sue issued for the Property by the Director of Ohio EPA under ORC § 3746.12 is void on and after the date of the commencement of the noncomplying use.

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2008, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE FRANKLIN COUNTY RECORDER ON _____, 2008, IN [DOCUMENT _____, OR BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

LIMITATION FOR RECREATIONAL, COMMERCIAL OR INDUSTRIAL LAND USES. THE PROPERTY IS HEREBY LIMITED TO "RECREATIONAL" LAND USE AS DEFINED HEREIN, OR "COMMERCIAL" OR "INDUSTRIAL" LAND USE, AS DEFINED IN OAC 3745-300-08(B)(2)(c)(ii) AND (B)(2)(c)(iii) (EFFECTIVE OCTOBER 21, 2002), OR ANY COMBINATION OF THOSE USES.

- i. RECREATIONAL LAND USE MEANS SURFICIAL USE OF THE PROPERTY, WHICH INCLUDE BUT ARE NOT LIMITED TO: PICNIC AREAS AND SHELTERS, PLAYFIELDS, OPEN LAWNS, OTHER GREEN SPACES, WILDLIFE AND CITY VIEWING OPPORTUNITIES, BOARDWALKS, OVERLOOK DECKS, BIKE AND MULTIPLE PURPOSE TRAILS INCLUDING A PEDESTRIAN PROMENADE, NATURE TRAILS, PATHS AND WALKWAYS, NATURAL AREA AMPHITHEATER AND OTHER EDUCATIONAL PROGRAMMING FACILITIES, PUBLIC ART DISPLAYS, PET PLAY AREAS, RESTROOMS, AND ANY ACTIVITIES AND USES INCIDENTAL TO SUCH LAND USE.

RECREATIONAL LAND USE EXCLUDES ANY LAND USE AS RESIDENCES (INCLUDING SINGLE OR MULTIPLE FAMILY HOUSING, CONDOMINIUMS AND APARTMENTS); DAY CARE FACILITIES; SCHOOLS, COLLEGES, AND OTHER EDUCATIONAL INSTITUTIONS; NURSING HOMES, ELDER CARE AND OTHER LONG-TERM HEALTH CARE FACILITIES; AND CORRECTIONAL FACILITIES.

- ii. OAC 3745-300-08(B)(2)(c)(ii) DEFINES COMMERCIAL LAND USE AS "LAND USE WITH POTENTIAL EXPOSURE OF ADULT WORKERS DURING A BUSINESS DAY AND POTENTIAL EXPOSURE OF ADULTS AND CHILDREN WHO ARE CUSTOMERS, PATRONS, OR VISITORS TO COMMERCIAL FACILITIES DURING THE BUSINESS DAY. COMMERCIAL LAND USE HAS POTENTIAL EXPOSURE OF ADULTS TO DERMAL CONTACT WITH SOIL, INHALATION OF VAPORS AND PARTICLES FROM SOIL AND INGESTION OF SOIL. EXAMPLES OF COMMERCIAL LAND USES INCLUDE BUT ARE NOT LIMITED TO WAREHOUSES; BUILDING SUPPLY FACILITIES; RETAIL GASOLINE STATIONS; AUTOMOBILE SERVICE STATIONS; AUTOMOBILE DEALERSHIPS; RETAIL WAREHOUSES; REPAIR AND SERVICE ESTABLISHMENTS FOR APPLIANCES AND OTHER GOODS; PROFESSIONAL OFFICES; BANK AND CREDIT UNIONS; OFFICE BUILDINGS; RETAIL BUSINESSES SELLING FOODS OR MERCHANDISE; GOLF COURSES; HOSPITALS AND CLINICS; RELIGIOUS INSTITUTIONS; HOTELS; MOTELS; AND PARKING FACILITIES."

GROUNDWATER LIMITATIONS: AS A PORTION OF THE REMEDY UNDER THE OHIO EPA VAP TO PROTECT AGAINST EXPOSURE TO HAZARDOUS SUBSTANCES IN GROUNDWATER LOCATED AT OR UNDERLYING THE PROPERTY DESCRIBED HEREIN, NO PERSON SHALL EXTRACT THE GROUNDWATER LOCATED AT OR UNDERLYING THE PROPERTY OR ANY PORTION THEREOF FOR ANY PURPOSE, POTABLE OR OTHERWISE, EXCEPT FOR GROUNDWATER INVESTIGATION, MONITORING, OR REMEDIATION, OR IN CONJUNCTION WITH CONSTRUCTION OR EXCAVATION ACTIVITIES OR MAINTENANCE OF SUBSURFACE UTILITIES.

10. Representations and Warranties. Owner hereby represents and warrants to the other signatories:

- That the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

- That the Owner is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered;
- That this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party of by which Owner may be bound or affected.

11. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee; and the Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Franklin County Recorder's Office, and shall provide a file-and date-stamped copy of the recorded instrument to Ohio EPA.

12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

14. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Franklin County Recorder's Office.

15. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Franklin County Recorder.

16. Distribution of Environmental Covenant. Within 30 days of recording the Environmental Covenant, the Owner shall distribute a file- and date-stamped

copy of the recorded Environmental Covenant to: Ohio EPA in accordance with the Notice paragraph herein.

17. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any notice, document or communication required by this Environmental Covenant shall be submitted to:

Ohio EPA: VAP Manager
Division of Emergency and Remedial Response
Ohio EPA
PO Box 1049
Columbus, Ohio 43216-1049

and

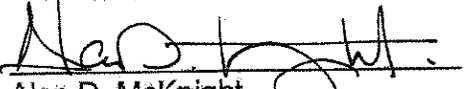
VAP Site Coordinator
Division of Emergency and Remedial Response
Ohio EPA, Central District Office
PO Box 1049
Columbus, Ohio 43216-1049

City of Columbus: City of Columbus
Real Estate Management Office
90 W Broad Street
Columbus, Ohio 43215

The undersigned Owner represents and certifies that he/she is authorized to execute this Environmental Covenant:

IT IS SO AGREED:

THE CITY OF COLUMBUS, OHIO


Alan D. McKnight

Director, Columbus Department of Recreation & Parks

As authorized by Columbus City Council Ordinance No. 0978-2008 passed on the

11th day of June, 2008.

June 10, 2008
Date

State of _____)
County of _____)

ss:



LYNDA ANDERSON
Notary Public, State of Ohio
My Commission Expires 10/05/2009

Before me, a notary public, in and for said county and state, personally appeared Alan D. McKnight, a duly authorized representative of the City of Columbus, who

acknowledged to me that he did execute the foregoing instrument on behalf of the City of Columbus, Ohio.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 11 day of June, 2008.

[Signature]
Notary Public

OHIO ENVIRONMENTAL PROTECTION AGENCY

[Signature]
Chris Korleski, Director

6/19/08
Date

State of OHIO)
County of FRANKLIN)

ss:

Before me, a notary public, in and for said county and state, personally appeared Chris Korleski, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19th day of June, 2008.

[Signature]
Notary Public



This instrument prepared by:
Sarah L. Harrell, Esq.
Assistant City Attorney
City of Columbus
90 W. Broad Street
Columbus, Ohio 43215

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

May 10, 2009

DESCRIPTION OF 26.611 ACRES
WHITTIER PENINSULA - CITY OF COLUMBUS PROPERTY

Situated in the State of Ohio, County of Franklin, City of Columbus, being a tract of land located on the Whittier Peninsula, both sides of Whittier Street, centered approximately 2800 feet west of the intersection of Front Street, and being more particularly described as follows:

Beginning at a point on the east bank of the Scioto River (State Plane Coordinates {SPC} of which are N 709550.335, E 1824888.464) located South $74^{\circ}58'19''$ West, a distance of 218.57 feet from that concrete Project Control Monument No. 3 (SPC of N 709606.955, E 1825099.616);

Thence South $84^{\circ}44'19''$ East, passing a PK Nail set in an asphalt bike trail at 65.00 feet (SPD N 709544.374, E 1824953.190), then crossing Whittier Street, a total distance of 485.95 feet to an iron pin set (SPC N 709505.773, E 1825372.369);

Thence South $69^{\circ}11'39''$ East, a distance of 295.44 feet to an iron pin set (SPC N 709400.833, E 1825648.542) approximately one foot south of a steel fence post;

Thence continuing one foot south of and parallel to an existing chain link fence the following courses:

1. South $73^{\circ}52'51''$ East, a distance of 250.05 feet to an iron pin set (SPC N 709331.410, E 1825888.762) at an angle point;
2. North $87^{\circ}19'30''$ East, a distance of 222.01 feet to an iron pin set (SPC N 709341.772, E 1826110.531) at an angle point;
3. North $81^{\circ}18'40''$ East, a distance of 291.64 feet to an iron pin set (SPC N 709385.829, E 1826398.824);

Thence South $48^{\circ}12'49''$ East, a distance of 25.46 feet to an iron pin set (SPC N 709368.866, E 1826417.805) approximately one foot west of an existing chain link fence which surrounds the current City of Columbus automobile impounding lot;

Thence continuing one foot west of and parallel to said chain link fence the following courses:

1. South $02^{\circ}15'41''$ West, a distance of 309.42 feet to an iron pin set (SPC N 709059.683, E 1826405.595) at an angle point;
2. South $55^{\circ}44'25''$ East, a distance of 202.82 feet to an iron pin set (SPC N 708945.506, E 1826573.224) at an angle point;
3. South $02^{\circ}03'19''$ West, leaving said fence and crossing Whittier Street, passing an iron pin set (SPC N 708665.686, E 1826563.182) at 280.00 feet, said iron pin being located South $68^{\circ}31'45''$ East, a distance of 518.49 feet from that Project Control Monument No. 4 (SPC N 708855.470, E 1826080.667), a total distance of 422.64 feet to a point near the bank of the Scioto River (SPC N 708523.138, E 1826558.067);

Thence up the bank of the Scioto River the following courses:

1. North $65^{\circ}22'53''$ West, a distance of 987.64 feet to a point (SPC N 708934.565, E 1825660.197);
2. North $51^{\circ}24'48''$ West, a distance of 226.73 feet to a point (SPC N 709075.976, E 1825482.969);

Thence along the perimeter of a projection into said River the following courses:

1. North $74^{\circ}49'03''$ West, a distance of 59.32 feet to a point (SPC N 709091.512, E 1825425.719);
2. South $43^{\circ}19'47''$ West, a distance of 98.88 feet to a point (SPC N 709019.587, E 1825357.870);
3. South $07^{\circ}19'53''$ West, a distance of 140.97 feet to a point (SPC N 708879.769, E 1825339.881);

DESCRIPTION OF 26.611 ACRES

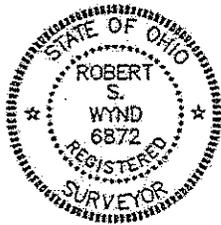
Page 2

4. North 85°00'43" East, a distance of 153.15 feet to a point (SPC N 708893.085, E 1825492.450);
5. South 22°00'22" East, a distance of 37.34 feet to a point (SPC N 708858.461, E 1825506.443);
6. South 51°01'48" West, a distance of 53.99 feet to a point (SPC N 708824.507, E 1825464.468);
7. South 01°44'08" West, a distance of 70.61 feet to a point (SPC N 708753.925, E 1825462.329);
8. South 45°14'03" East, a distance of 321.46 feet to a point (SPC N 708527.549, E 1825690.563);
9. South 62°47'04" East, a distance of 655.02 feet to a point (SPC N 708227.983, E 1826273.064);
10. South 07°58'30" East, a distance of 85.94 feet to a point (SPC N 708142.878, E 1826284.987);
11. South 79°16'18" East, a distance of 466.32 feet to a point (SPC N 708056.072, E 1826743.154);
12. North 65°34'05" East, a distance of 41.15 feet to a point (SPC N 708073.093, E 1826780.622);
13. South 87°36'08" East, a distance of 60.50 feet to a point (SPC N 708070.562, E 1826841.069);
14. South 35°51'23" East, a distance of 65.52 feet to a point (SPC N 708017.456, E 1826879.450);
15. South 53°55'24" West, a distance of 29.22 feet to a point (SPC N 708000.247, E 1826855.831);
16. South 83°59'57" West, a distance of 423.08 feet to a point (SPC N 707956.017, E 1826435.067);
17. North 79°17'41" West, a distance of 142.10 feet to a point (SPC N 707982.413, E 1826295.442);
18. North 66°12'23" West, a distance of 273.45 feet to a point (SPC N 708092.734, E 1826045.236);
19. North 51°03'51" West, a distance of 1038.91 feet to a point (SPC N 708745.639, E 1825237.118);
20. North 28°12'27" West, a distance of 486.91 feet to a point (SPC N 709174.727, E 1825006.971);
21. North 17°30'39" West, a distance of 393.86 feet to the place of beginning and containing 26.611 acres of land.

Bearings herein are based on the NAD 83 Ohio State Plane Coordinate System, South Zone, utilizing monuments COC 13-83 and COC 18-83.

Iron pins set consist of a 1" (O.D.) pipe, 30" long with a plastic cap inscribed "M-E COMPANIES/S-6872".

This description was prepared by M-E Companies, Inc., Civil Engineering Group, based on information obtained from an actual field survey performed in January 2007.



M-E Companies, Inc.
Civil Engineering Group

By Robert S. Wynd 1/21/08
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