IN THE COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

STATE OF OHIO, ex rel. MICHAEL DEWINE, ATTORNEY GENERAL	:	**CASE NO. 03-CV-36440**
Plaintiff,	:	**JUDGE JAMES N. SCHMENK**
v.	:	
ENVIRO ARTSCAPING, INC. et al.	:	
Defendants.	:	

FILED
IN COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO
JUN 20 2012
Amy M. Halbrath
CLERK

Consent Order for Permanent Injunctive Relief and Civil Penalty

Plaintiff State of Ohio, on relation of Michael DeWine, Ohio Attorney General, at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), filed a Complaint initiating this action against Defendants Enviro Artscaping, Inc. ("Enviro Artscaping") and Gerald L. Richter (collectively "Defendants") to enforce provisions of Ohio's solid waste laws set forth in Ohio Revised Code Chapter 3734, water pollution control laws set forth in Ohio Revised Code Chapter 6111, and to pursue other legal and equitable relief.

Plaintiff filed its first Amended Complaint against Defendants Enviro Artscaping, Inc., Gerald L. Richter, and Prescription Soils, LLC. Plaintiff voluntarily dismissed, without prejudice, its case against Prescription Soils, LLC. Plaintiff also filed a Second and a Third Amended Complaint against Defendants Enviro Artscaping, Inc. and Gerald L. Richter.

Plaintiff and Defendants consent to the entry of this Consent Order without trial of any issue of fact or law, and upon consent of the Parties hereto, it is hereby ORDERED,

ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Chapters 3734 and 6111 of the Ohio Revised Code. Venue is proper in this Court. The Complaint and the three Amended Complaints (collectively, "Complaint") state a claim upon which relief can be granted against Defendants.

II. DEFINITIONS

2. Unless otherwise stated, all terms used in this Consent Order shall have the same meaning as used in Ohio Revised Code Chapters 3734 and 6111, and the Ohio Administrative Code rules adopted thereunder.

3. As used in this Consent Order, "Property" means the property owned by Enviro Artscaping, Inc., located at or near 05557 State Route 66 North, Defiance, Defiance County, Ohio, and identified by the Defiance County Auditor as Parcels Nos. K140025000201, K140025000203, and K140025000502.

4. "Ohio EPA" means the Ohio Environmental Protection Agency.

III. PARTIES BOUND

5. The provisions of this Consent Order shall apply to and be binding upon Plaintiff, Defendants, their successors in interest, heirs, devisees and assigns, and others to the extent provided by Civil Rule 65(D).

IV. SITE ACCESS

6. Defendants agree and consent that the Ohio Environmental Protection Agency, Defiance County, and their employees and agents, shall have full access to the Property at all reasonable times without the need for a warrant, as may be necessary to implement this Consent

Order and/or to monitor compliance with this Consent Order and/or Ohio environmental laws. Defendants further agree and consent that any and all contractors, subcontractors, consultants, or other persons working for or on behalf of or with the authorization of the Ohio Environmental Protection Agency and/or Defiance County shall have full access to the Property at all reasonable times without the need for a warrant, as may be necessary to perform inspections, assessments, closure, post-closure care, sampling, monitoring, surveying, mitigation, remediation and/or emergency response work. Exhibit A, entitled Access Easement Agreement, is incorporated by reference as if fully restated herein. This paragraph shall not be construed to require Defendants to obtain the consent of the Farmers & Merchants State Bank or any person with an ownership or possessory interest in the Property, authorizing the access described in this paragraph.

7. Paragraph 6 of this Consent Order shall not be construed to eliminate or restrict any right Ohio Environmental Protection Agency or Defiance County may otherwise have under federal, state or local law to seek access to the Property; nor does Paragraph 6 impose any obligation on the Ohio Environmental Protection Agency and/or Defiance County to perform inspections, assessments, closure, post-closure care, sampling, monitoring, surveying, mitigation, remediation and/or emergency response work.

V. SATISFACTION OF LAWSUIT AND EFFECT OF CONSENT ORDER

8. Defendants are hereby permanently enjoined and ordered to immediately comply with the requirements of Ohio Revised Code Chapters 3734 and 6111 and the rules adopted thereunder. Compliance with Paragraphs 13, 14, 15, 16, and 19 of this Consent Order shall be deemed compliance with those laws and rules. Nothing herein shall be construed to relieve Defendants of their obligation to comply with all other applicable federal, state, or local statutes, regulations, or ordinances.

9. The parties have agreed to resolve the disputed issues in this matter without adjudication or admission of any issues of fact or law. Entering into this Consent Order, the Consent Order itself, or the implementation of any action pursuant to this Consent Order does not constitute an admission of any liability, wrongdoing, or misconduct by Defendants, its officers, employees, or representatives.

10. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order, and the Access Easement Agreement and Environmental Covenant attached hereto, shall constitute full satisfaction of any civil and administrative liability (including but not limited to injunctive relief, civil penalties, and investigative or other costs or expenses) of Defendants, Prescription Soils, LLC, and their officers, shareholders, agents, employees, successors in interest and assigns for the claims alleged or that could have been alleged in the State's Complaint, claims known by the State at the time this Consent Order is entered by the Court, claims related to or arising out of conditions that continue or recur at the Property after the entry of this Consent Order, or claims related to the fly ash, manure, yard waste, compost, leachate, clean hard fill, other wastes, or wastewater left on or generated on the Property after the entry of this Consent Order. Except as provided in this paragraph, nothing in this Consent Order, or the attachments hereto, shall be construed to limit the authority of the State to seek relief from Defendants for: (A) claims or violations not referenced in the Complaint that were not known to the State; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et. seq. or R.C. §§3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Defendants retain all rights, defenses, and/or claims they may legally raise to

the extent that the State seeks further relief from Defendants in the future, or in any action brought to enforce the terms of this Consent Order. Because Defendants are relinquishing all ownership, operation, and possession of the Property, as provided in paragraph 19 below, this paragraph does not apply to conditions or claims described in Paragraph 10 above that continue or recur at the Property after the entry of this Consent Order, nor does this paragraph apply to any claims related to the fly ash, manure, yard waste, compost, leachate, clean hard fill, other wastes, or wastewater left on or generated on the Property after the entry of this Consent Order, so long as Defendants comply with this Consent Order and the attachments hereto.

11. Nothing in this Consent Order shall constitute or be construed as a satisfaction of lawsuit, release, or a covenant not to sue regarding any claim alleged in the Complaint, or any other claim or cause of action, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity whose liability is not released or satisfied under Paragraph 10 of this Consent Order for any liability they may have arising out of, or relating to, the Facility including, but not limited to, those identified in the Complaint.

12. Immediately upon entry of this Consent Order, Defendants shall cease acceptance of "solid waste" as defined in R.C. Chapter 3734, and "industrial waste" and "other waste" as defined in R.C. §6111.01 at the Property.

13. Defendants agree that Ohio EPA, Defiance County, and/or their contractors and/or subcontractors may have full use of the Property or any portion thereof for stream and/or wetlands mitigation and/or conservation purposes.

14. Defendants agree that the Access Easement Agreement and Environmental Covenant set forth in Exhibits A and B, respectively and attached to this Consent Order, may be placed on the Property.

15. Defendants agree that Ohio EPA, Defiance County, and/or their contractors and/or subcontractors may use earthen material and/or clean hard fill and/or stone and/or any other material which is stockpiled upon and/or located on the Property for closure of the Facilities and/or to bring the Property into compliance with R.C. Chapters 3734 and 6111, and the rules adopted thereunder, and/or for purposes of stream and/or wetlands mitigation and/or grading of the Property. Defendants further agree that earthen material and/or clean hard fill and/or stone and/or any other material which is stockpiled upon and/or located on and/or within the Property shall not be sold, given away, removed, or used for any purpose other than closure of the Facilities and/or to bring the Property into compliance with R.C. Chapters 3734 and 6111, and the rules adopted thereunder, until such time as all conditions of this Consent Order have been satisfied.

16. Within sixty (60) days after entry of this Consent Order, Defendants shall pay to Plaintiff State of Ohio a civil penalty of one hundred fifty-four thousand dollars ($154,000). Such payment shall be made by delivering, to Martha Sexton, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215-3400, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

17. Within sixty (60) days after entry of this Consent Order, Defendants are ordered and enjoined to pay enforcement costs of the Ohio Attorney General in the amount of ten thousand dollars ($10,000). This payment shall be made by delivering to Martha Sexton, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400 a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

18. In lieu of the requirements stated above in Paragraphs 17 and 18, above,

Defendants shall relinquish to Farmers & Merchants State Bank all Defendants' rights to the Property, including but not limited to the right of redemption, to the extent that Farmers & Merchants State Bank is willing to accept these rights. Further, Defendants agree that after the property is relinquished to Farmers & Merchants State Bank, neither Enviro Artscaping nor Defendant Gerald L. Richter, nor any company created by either or both Defendants, nor any company created by any family member of Defendant Gerald L. Richter, nor any company owned in whole or in part by either or both Defendants, nor any company owned in whole or in part by any family member of Defendant Gerald L. Richter, nor any company with which either Defendant is affiliated; nor any company in which Defendant Gerald L. Richter or any of his family members acts as a member, officer, agent, employee, contractor or consultant, may own or lease the Property or any portion thereof or operate any business on the Property or any portion thereof.

19. This Consent Order, and all attachments hereto, comprises all of the terms agreed to by the parties.

VI. NOTICES

20. All documents required to be submitted under this Consent Order shall be submitted to the following, or their successors:

As to Plaintiff State of Ohio:

Ohio Environmental Protection Agency
Northwest District Office
Solid Waste Supervisor
347 North Dunbridge Road
Bowling Green, OH 43402

Ohio Environmental Protection Agency
Northwest District Office
Division of Surface Water, Section Manager
347 North Dunbridge Road

Bowling Green, OH 43402

Ohio Environmental Protection Agency
Manager, Compliance Monitoring and Enforcement Unit
Division of Waste and Materials Management
50 W. Town St., Suite 700
P.O. Box 1049
Columbus, OH 43216-1049

Ohio Environmental Protection Agency
Manager, Compliance Monitoring and Enforcement Unit
Division of Surface Water
50 W. Town St., Suite 700
P.O. Box 1049
Columbus, OH 43216-1049

As to Defendants:

Gerald L. Richter
28115 Leach Road, Suite B
Defiance, OH 43512

Jack A. Van Kley
Van Kley & Walker, LLC
132 Northwoods Blvd., Suite C-1
Columbus, OH 43235

VII. COSTS

21. Defendants are hereby ordered to pay the court costs of this action.

VIII. RETENTION OF JURISDICTION

22. This Court shall retain jurisdiction of this action for the purposes of making any order or decree which it deems appropriate to carry out this Consent Order.

IX. SIGNATORIES

23. Each of the undersigned representatives for the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

X. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

24. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve notice of judgment upon all parties and the Order's date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED.

/s/Joseph N. Schmenk

Judge
Defiance County Court of Common Pleas

Date

APPROVED BY:

Jack A. Van Kley (0016961)
Van Kley & Walker, LLC
132 Northwoods Blvd., Suite C-1
Columbus, OH 43235
Telephone: (614) 431-8900
Facsimile: (614) 431-8905
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Counsel for Defendants
Enviro Artscaping, Inc., et al.

Gerald L. Richter
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Defiance, OH 43512
On behalf of himself
and Enviro Artscaping, Inc.

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30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Summer.Plantz@OhioAttorneyGeneral.gov

EXHIBIT A

Access Easement Agreement

ACCESS EASEMENT AGREEMENT

This **ACCESS EASEMENT** is made this 18th day of April, 2012, by **ENVIRO ARTSCAPING, INC., ("EAS")** and **FARMERS AND MERCHANTS STATE BANK ("Bank")** (collectively "Grantors"), in favor of the **DEFIANCE COUNTY ENGINEER** ("Grantee"), under the following circumstances:

A. Grantor EAS is the owner of the real property described in Attachment A, attached to this Access Easement (the "Property"). Gerald Richter is the President of EAS, and has the authority to execute this Easement on behalf of EAS.

B. Grantor Bank is the holder of a Mortgage and Judgment of Foreclosure on the Property.

C. A portion of the Property will be subject to an Environmental Covenant, on record with the Defiance County Recorder.

D. Grantor EAS desires to convey to Grantee access to the Property for purposes of performing a Mitigation Project, as described below, and maintaining the Property following completion of the Mitigation Project and Grantee is willing to accept this Access Easement. Grantor Bank consents to the granting of this Access Easement by EAS.

This Access Easement is granted subject to the following terms and conditions.

1. **Purpose.** The purpose of this Access Easement is to provide the Grantee a perpetual (nonexclusive) easement for purposes of ingress and egress, and for all customary private road purposes, on, over and across the real property described in **Attachment A** (the "Easement Area"), to (a) perform certain stream mitigation activities, as described in **Attachment B** (the "Mitigation Project"), and (b) maintain such features following completion of the Mitigation Project.

2. **Use Limitations.** Grantors and Grantee agree to limit the use of the Property to activities that are consistent with the purpose of this Access Easement. Any activity on or use of the Property inconsistent with the purpose of this Access Easement is prohibited. If Grantors are in material compliance with this Access Easement and the Environmental Covenant, Grantors will not have any liability for any claims, damages, losses or expenses, arising as a result of Grantee's exercise of the rights granted by this Easement, but excepting any claims, damages, losses or expenses caused by the negligence or wrongful actions of Grantors or Grantors' agents, employees or contractors, or others for whom Grantor's are responsible. If Grantor Bank is in material compliance with the terms of this Access Easement and the Environmental Covenant, Grantor Bank will not have any responsibility or liability for activities undertaken by Grantee pursuant to this Access Easement, including without limitation, the completion and maintenance of the Mitigation Project in the Easement Area.

3. **Title.** Grantor EAS covenants with Grantee that Grantor is the owner of the Easement Area described above and has full power to convey the rights conveyed by this Access Easement. So long as it maintains an interest in the Easement Area, Grantor EAS warrants and will defend its ability to grant this Access Easement against the claims of all persons, subject, however, to (a) all legal highways, (b) easements, covenants and restrictions of record, (c) real estate taxes and assessments not yet due and payable and (d) zoning, building and other applicable laws, codes and regulations.

4. Farmers and Merchants State Bank represents that it holds a Mortgage and Judgment of Foreclosure on the Property and consents to this Access Easement to the

extent required or permitted by law. Foreclosure of Grantor Bank's mortgage interest in the Property will not terminate this Access Easement.

Prior instrument reference: Defiance County Deed Volume 266, Page 597 and Defiance Official Records Volume 106, Page 840.

Martha Richter, wife of Gerald Richter, releases all rights of dower therein.

Remainder of Page Intentionally Left Blank

GRANTOR:

ENVIRO ARTSCAPING, INC.

By: _____
Name: Gerald Richter
Title: President

Signed and acknowledged in the presence of:

Signature: Brian Tietje
Printed Name: BRIAN TIETJE
Signature: Marsha Henderson
Printed Name: Marsha Henderson

Sworn to me and subscribed in my presence on this 2nd day of April, 2012

Stacy Salinas
NOTARY PUBLIC
My Commission expires: _____

Stacy Salinas
Notary Public State of Ohio
My Comm Exp Mar 26, 2013

Signed as to release of dower only:

Martha Richter
MARTHA RICHTER

Signed and acknowledged in the presence of:

Signature: Brian Tietje
Printed Name: BRIAN TIETJE
Signature: Marsha Henderson
Printed Name: Marsha Henderson

Sworn to me and subscribed in my presence on this 2nd day of April, 2012

Stacy Salinas
NOTARY PUBLIC
My Commission expires: Stacy Salinas Notary Public State of Ohio My Comm Exp Mar 26, 2013

GRANTOR/MORTGAGEE:

FARMERS AND MERCHANTS STATE BANK

By: Rex D. Rice
Name: REX D. RICE
Title: EXECUTIVE VICE PRESIDENT

Signed and acknowledged in the presence of:

Signature: Allan J. Kinsman
Printed Name: Allan J. Kinsman

Signature: Nancy J Figy
Printed Name: Nancy J Figy

Sworn to me and subscribed in my presence on this 12th day of April, 2012

Nancy J Figy
NOTARY PUBLIC
My Commission expires: _____

Nancy J. Figy
Notary Public, State of Ohio
My Commission Expires July 14, 2015

GRANTEE

DEFIANCE COUNTY

By: Warren Schlatter

Name: Warren Schlatter

Title: County Engineer

Signed and acknowledged in the presence of:

Signature: Rhonda Casler

Printed Name: Rhonda Casler

Signature: Arica Smith

Printed Name: Arica Smith

Affirmed to me and subscribed in my presence on this 18th day of April, 2012

Arica Smith, Nee (Alvarez)
NOTARY PUBLIC
My Commission expires: November 13, 2013

This Instrument Prepared by:

Summer J. Koladin Plantz
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Summer.Plantz@OhioAttorneyGeneral.gov

ATTACHMENT A

Legal Description

Legal Description

The Easement Area consists parcels identified by the Defiance County Auditor as Parcels Nos. K140025000201, K140025000203 and K140025000502, more particularly described as follows:

Parcel No. K14002500201:

Situated in the Township of Tiffin, County of Defiance and State of Ohio:

A part of the West Half (1/2) of the Northeast Quarter (1/4) of the Southwest Quarter (1/4); a part of the Northwest Quarter (1/4) of the Southwest Quarter (1/4); and part of the Southwest Quarter (1/4) of the Northwest Quarter (1/4); all in Section Twenty-five (25), Town Five (5) North, Range Four (4) East, and more particularly described as follows:

Commencing at a monument box assembly at the Southwest corner of the Southwest Quarter of Section 25, Tiffin Township; thence North 0°-08'-19" West on the West line of the Southwest Quarter of Section 25 a distance of 2,268.57 (two thousand two hundred sixty-eight and fifty-seven hundredths) feet to the point of intersection of the West line of the Southwest Quarter of Section 25 and an existing ditch running in a Northwesterly-Southeasterly direction, said point of intersection being the true point of beginning of the parcel herein described; thence continuing North 0°-08'19" West on the West line of the Southwest Quarter of Section 25 a distance of 373.94 (three hundred seventy-three and ninety-four hundredths) feet to a point, said point being the Northwest corner of the Southwest Quarter and the Southwest corner of the Northwest Quarter of Section 25; thence continuing North 0°-08'-19" West and on the West line of the Northwest Quarter of Section 25 a distance of 19.30 (nineteen and thirty hundredths) feet to a point, said point being 6.44 (six and forty-four hundredths) feet East of, as measured at right angles to, a monument box assembly on the centerline of State Route 66, and said point also being known as the point of intersection of the West line of the Northwest Quarter of Section 25 and an existing fence line of occupation to the East, if said existing fence line of occupation were to be extended Westerly; thence South 89°-01'-44" East on and along said existing fence line of occupation a distance of 1,969.88 (one thousand nine hundred sixty-nine and eighty-eight hundredths) feet to a point, said point being the point of intersection of said existing East-West fence line of occupation and the East line of the West Half of the Northeast Quarter of the Southwest Quarter of Section 25, if said East line were to be extended Northerly; thence South 0°-04'-24" West on the

East line of the West Half of the Northeast Quarter of the Southwest Quarter of Section 25, if said East line were to be extended Northerly, a distance of 8.63 (eight and sixty-three hundredths) feet to a point, said point being the Northeast corner of the West Half of the Northeast Quarter of the Southwest Quarter of Section 25; thence continuing South 0°-04'-24" West on the East line of the West half of the Northeast Quarter of the Southwest Quarter of Section 25 a distance of 152.02 (one hundred fifty-two and two hundredths) feet to the point of intersection of the East line of the West Half of the Northeast Quarter of the Southwest Quarter of Section 25 and the centerline of existing ditch running in a Easterly-Westerly direction; thence 84°-00'-48" West on the centerline of said existing ditch a distance of 270.84 (two hundred seventy and eighty-four hundredths) feet to a point; thence North 88°-13'-14" West and continuing on the centerline of said existing ditch a distance of 170.26 (one hundred seventy and twenty-six hundredths) feet to a point; thence South 86°-23'-24" West and continuing on and along the centerline of said existing ditch a distance of 143.12 (one hundred forty-three and twelve hundredths) feet to a point; thence South 88°-13'-44" West and continuing on and along the centerline of said existing ditch a distance of 390.54 (three hundred ninety and fifty-four hundredths) feet to a point; thence South 55°-01'-00" West and continuing on and along the centerline of said existing ditch a distance of 377.32 (three hundred seventy-seven and thirty-two hundredths) feet to a point; thence South 87°-03'-35" West and continuing on and along the centerline of said existing ditch a distance of 337.61 (three hundred thirty-seven and sixty-one hundredths) feet to a point; thence North 77°-20'-22" West and continuing on and along the centerline of said existing ditch a distance of 358.10 (three hundred fifty-eight and ten hundredths) feet to the true point of beginning of the parcel herein described containing 13.080 acres of land, more or less, in the Northwest Quarter of the Southwest Quarter and the West Half of the Northeast Quarter of the Southwest Quarter and 0.631 acres of land, more or less, in the Northwest Quarter, totalling 13.711 acres of land, more or less, subject to all easements and zoning restrictions of record and legal highways.

Parcel No. K14002500502, more particularly described as follows:

Situated in the County of Defiance, Township of Tiffin and State of Ohio, and bounded and described as follows:

A parcel of land being Part of the East Half of the East Half of the Southwest Quarter of Section 25, Township 5 North, Range 4 East, Tiffin Township, Defiance County, Ohio, and being more particularly described as follows:

Commencing at a monument box at the Northwest corner of the Southwest Quarter of Section 25, Tiffin Township; thence South 89°-07'-44" East on the North line of the Southwest Quarter of Section 25 a distance of 1,964.98 (one thousand nine hundred sixty-four and ninety-eight hundredths) feet to an iron pin at the Northwest corner of the East Half of the East Half of the Southwest Quarter of Section 25, said iron pin being the TRUE POINT OF BEGINNING of the parcel herein described, thence continuing South 89°-07-44" East on the North line of the Southwest Quarter of Section 25 a distance of 654.99 (six hundred fifty-four and ninety-nine hundredths) feet to an iron pin at the Northeast corner of the Southwest Quarter of Section 25; thence South 0°-08'-37" West on the East line of the Southwest Quarter of Section 25 a distance of 145.17 (one hundred forty-five and seventeen hundredths) feet to an iron pin; thence continuing South 0°-08'-37" West on the East line of the Southwest Quarter of Section 25 a distance of 13.00 (thirteen and zero hundredths) feet to the center line of an existing ditch; thence North 85°-29'-29" West on the center line of an existing ditch a distance of 275.78 (two hundred seventy-five and seventy-eight hundredths) feet to a point; thence North 86°-50-11" West on the center line of an existing ditch a distance of 84.55 (eight-four and fifty-five hundredths) feet to a point; thence South 87°-26'-41" West on the center line of an existing ditch a distance of 139.98 (one hundred thirty-nine and ninety-eight hundredths) feet to a point; thence south 85°-23'-48" West on the center line of an existing ditch a distance of 156.15 (one hundred fifty-six and fifteen hundredths) feet to a point on the West line of the East Half of the East Half of the Southwest Quarter of Section 25; thence north and binding on the West line of the East Half of the East Half of the Southwest Quarter of Section 25 to the point of beginning and containing 2.214 acres of land.

Parcel No K140025000203, more particularly described as:

A part of the Southwest Quarter (¼), Section Twenty-five (25), Town Five (5) North, Range Four (4) East, and more particularly described as follows:
Commencing at the Southwest corner of the Southwest Quarter (¼) of Section 25, monumented by a monument box; thence on an assumed bearing of North 0 degrees 08 minutes 19 seconds West on the West line of the Southwest Quarter (¼), 1981.21 feet to the point of beginning; thence continuing North 0 degrees 08 minutes 19 seconds West, on said West line 287.36 feet to the centerline of an existing ditch; thence South 77 degrees 20 minutes 22 seconds East 358.10 feet; thence North 87 degrees 03 minutes 35 seconds East 337.61 feet; thence North 55 degrees 01 minutes 00 seconds East 377.72 feet; thence North 88 degrees 13 minutes 44 seconds East 390.54 feet; thence North 86 degrees 23 minutes 24 seconds East 143.12 feet; thence South 88 degrees 13 minutes 14 seconds East 170.26 feet; thence North 84 degrees 00 minutes 48 seconds East 270.84 feet to the East line of the West Half (½), Northwest Quarter (¼), of the Southwest Quarter (¼), thence South 0 degrees 04 minutes 24 seconds West on said East line, 1031.54 feet to the centerline of an existing ditch; thence following the approximate centerline of said existing ditch the following courses and distances; North 36 degrees 06 seconds West 94.08 feet; thence North 52 degrees 50 minutes West 234.25 feet; thence South 82 degrees 34 minutes West 111.67 feet; thence North 78 degrees 54 minutes West 88.24 feet; thence North 63 degrees 30 minutes West 253.67 feet; thence North 77 degrees 03 minutes West 175.62 feet; thence North 67 degrees 23 minutes West 185.87 feet; thence North 75 degrees 14 minutes West 232.08 feet; thence North 54 degrees 54 minutes West 57.78 feet; thence leaving said centerline of existing ditch, North 89 degrees 17 minutes 23 seconds West 685.62 feet to the point of beginning. Containing in said parcel herein described 23.311 acres more or less, subject to all easements, restrictions and zoning regulations.

Mitigation Project

The Defiance County Engineer has proposed to use the Property for offsite mitigation, as described in the Final Compensatory Mitigation Plan, Section 404 Application for Department of the Army Permit and Section 401 Application for Ohio EPA Water Quality Certification, DEF-CR27-0.27, Roadway Widening and Drainage Improvement Project, Defiance County, Ohio, prepared by the Defiance County Engineer. Information on the proposed offsite mitigation work is provided in Section 6 of the Final Compensatory Mitigation Plan. The relevant portions of the Final Compensatory Mitigation Plan are attached. A complete copy of the Final Compensatory Mitigation Plan is available at the Ohio Environmental Protection Agency, Northwest District Office, 347 North Dunbridge Road, Bowling Green, Ohio 43402 or the Defiance County Engineer, 500 West 2nd Street, Defiance, Ohio 43512.

Final
Compensatory Mitigation Plan

Section 404 Application for

Department of the Army Permit
and
Section 401 Application for
Ohio EPA Water Quality Certification

DEF-CR27-0.27

Roadway Widening and
Drainage Improvement Project
Defiance County, Ohio

Prepared By:
Defiance County Engineer
500 West 2nd Street
Defiance, Ohio 43512
(419) 782-4751

January 24, 2012

Final Compensatory Mitigation Plan
for the
CR 27-0.27 Section 404 Department of the Army Permit and
Ohio EPA Section 401 Water Quality Certification
Defiance County, Ohio

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1.0 INTRODUCTION

1.1 Project Background

On December 24, 2009 Strategic Environmental and Ecological Services, Inc. (STRATEGIC) submitted, on behalf of the Defiance County Engineer, a completed Joint Section 404/Section 401 Application and associated drawings/attachments to request authorization under the U.S. Army Corps of Engineers (USACE) Regulatory Program and the Ohio Environmental Protection Agency's (Ohio EPA) 401 Water Quality Certification Program, for the County Road (CR) 27-0.27 Roadway Widening and Drainage Improvement Project, located in Richland and Highland Townships, Defiance County, Ohio. The Buffalo District Office of the USACE issued a Public Notice for the proposed project on February 23, 2010. The Ohio EPA Public Notice was published in The Crescent News on April 8, 2010.

The proposed roadway project consists of widening CR 27 (Defiance-Ayersville Pleasant Bend Road) from 20-feet to 24-feet from approximately 30-feet east of Edgewood Drive on the northwest, to approximately 550-feet west of North Street on the southeast, a distance of approximately 13,225 linear-feet. The project also includes intersection realignments at the Fullmer, Shindler, and Dohoney intersections with CR 27, and relocating 9,435 linear-feet of roadside ditch/"captured stream" away from the roadway. Of the 9,435 linear-feet of stream relocation, 1,285 linear-feet are currently contained within existing culverts, and 8,150 linear-feet are currently open-channel. See the attached Project Location Map in **Attachment 1** for the project location.

Narrow lane widths, intersection sight distance deficiencies, and off-road hazards have been shown to be the major contributing factors to the above-average accident rate within the project area. Off-road hazards consist primarily of deep roadside drainage ditches, which are a drop-off hazard for the traveling public. Specifically, two deep roadside drainage ditches are located within the project area. These roadside ditches have been classified, and verified by the USACE (February 16, 2007 Jurisdictional Determination), as "captured streams" that are tributaries to Preston Run. The two "captured streams", which are designated S-3 and S-4 throughout this document, are depicted on the attached Preferred Design Alternative Figures (**Attachment 1**). Representative photographs of the two "captured streams" have been included as **Attachment 2**. The proposed project consists of relocating these two "captured streams" from the roadway, which will provide sufficient area for the additional lane width, and will eliminate the existing roadside hazard they present.

1.2 Proposed Impacts

Approximately 13,125 linear-feet of CR 27 will be widened from 20- to 24-feet along the project corridor. The pavement will be widened 2-feet on the north and 2-feet on the south for the entire length of the project. Additionally, a 100 linear-foot section of pavement width transition will be constructed at the extreme southeastern terminus of the project. The proposed project also includes intersection realignments at the intersections of Fullmer, Shindler, and Dohoney Roads with CR 27 to provide an intersection angle near 90-degrees.

The existing roadway will be widened from two 10-foot lanes to two 12-foot lanes with a 10-foot wide shoulder on each side. The shoulders will be constructed with 4-feet of aggregate and turf grass for the remaining 6-feet. Because of the roadway widening, several access driveways will also need to be reconstructed. Finally, approximately nine power poles that conflict with the driveway widening and side road relocations will need to be relocated.

To accommodate the additional lane width, S-3 and S-4 must be relocated away from the roadway. Of the 9,435 linear-feet of stream relocation, 1,285 linear-feet are currently contained within existing culverts, and 8,150 linear-feet are currently open-channel. Since the 8,150 linear-feet of open-channel are being relocated away from the roadway, several existing culverts will need to be replaced as part of the proposed project. The replacement culverts will be constructed along the relocated channel alignment, and where needed, undersized culverts will be replaced with larger, properly sized culverts. The total new length of culverts, after construction, will be 3,672 linear-feet. The total new length of open channel, following the relocation, will be 5,763 linear-feet. See the table below for details.

Stream Name	Length Within Project	Current Culverts	Proposed Culverts	Current Open-Channel	Proposed Open Channel
S-3	1,875’	83’	425’	1,792’	1,450’
S-4	7,560’	1,202’	3,247’	6,358’	4,313’
Totals	**9,435’**	**1,285’**	**3,672’**	**8,150’**	**5,763’**

The total area of open-channel along S-3 that will be impacted by the proposed project is approximately 0.21-acre (8,975 square-feet). The total area of open-channel along S-4 that will be impacted by the proposed project is approximately 0.72-acre (31,540 square-feet). Since the existing stream channels will be filled and graded following the construction of the replacement channels, approximately 7,800 cubic yards (CY) of clean fill material will be placed within S-3 and approximately 20,700 CY of clean fill material will be placed within S-4 (28,500 CY total).

As previously stated, 1,285 linear-feet of S-3 and S-4 are currently culverted along the proposed project. All of these existing culverts will be replaced during the stream relocation. The replacement culverts will be constructed along the relocated channel alignment, and where needed, undersized culverts will be replaced with larger, properly-sized culverts. Details of the culvert replacements are presented below.

S-3, from west to east along the project

1) The existing 38-foot long, 84-inches diameter Corrugated Metal Pipe (CMP) culvert that carries S-3 under CR 27 will be replaced with a 120-foot long, 84-inches diameter Reinforced Concrete Pipe (RCP) culvert. Additionally, 18 linear-feet (23 CY) of rock will be placed at the new outlet and 29 linear-feet (22 CY) of rock will be placed at the new inlet.

2) The existing 45-foot long, 9x5-foot 3-sided box culvert that carries S-3 under Fullmer Road will be replaced with an 88-foot long, 48-inches diameter Smooth Wall Plastic Pipe (SWPP) culvert and 305-foot long, 48-inches diameter SWPP culvert laid parallel to the 88-foot SWPP culvert. Additionally, 14 linear-feet (15 CY) of rock will be placed at the new outlet.

S-4, from west to east along the project

3) The existing 56-foot long, 60-inches diameter RCP culvert that carries S-4 under CR 27 will be replaced with an 84-foot long, 68x106-inches diameter Reinforced Concrete Elliptical Pipe (RCEP) culvert.

4) Along the north side of CR 27, there are 12 driveway culverts that will be replaced. These culverts, which total 1,146 linear-feet in length, include variously-sized CMP's, RCP's, concrete boxes and Polyvinyl Chloride (PVC) pipes. All of these culverts will be replaced with SWPP culverts that vary in size from 36-inches to 60-inches in diameter. The total length of the 12 replacement culverts will be 3,163 linear-feet.

1.3 Proposed Mitigation Objectives

To offset the losses to the aquatic environment, compensatory mitigation has been incorporated into the proposed project. The compensatory mitigation will include both onsite and offsite activities, as discussed below.

1.3.1 Onsite Mitigation

The onsite mitigation consists of design elements for the relocated open channels that will substantially benefit the aquatic environment. The overall objectives of the onsite compensatory mitigation **are to replace existing stream function and protect downstream water quality**.

Currently, S-3 and S-4 are "captured" stream reaches located within, and are functioning as, roadside drainage ditches. These roadside ditches were originally constructed for the purpose of carrying surface water from the roadway and water from tile outlets. Their depth is a result of their function as the outlet for field tile, which are generally located approximately 3-feet below the ground surface. These ditches, because of their flat grade (0.1%), experience significant sedimentation, which interferes with their function as an outlet for field tile. Both S-3 and S-4 have been dredged repeatedly, with the dredged soil spread on the field adjacent to the ditch. S-4 is actually a maintenance ditch, maintained by the Defiance County Soil and Water Conservation District, with maintenance cost assessment to the landowners.

The existing streams primary function is sediment removal/storage. Secondary functions include nutrient removal/storage and storm water conveyance. Since the streams receive the majority of their hydrology from the roadway and adjacent agricultural fields, the existing nutrient and sediment load is high. The streams are removing/storing these sediments and nutrients prior to their discharge downstream into Preston Run. Additionally, during storm events, the streams, with their current deep trapezoidal channel designs, convey storm water downstream into Preston Run.

The relocated open channels have been designed with "oversized" channel bottoms, varying in width from 7- to 14-feet. The total bottom area of S-3, after relocation, will be 13,500 square-feet (8,975 square-feet existing), and the total bottom area of S-4, after relocation, will be 47,200 square-feet (31,540 square-feet existing). This equates to a total increase of available stream bottom area of 20,185 square-feet, or an approximate 50% increase in available area. This "oversized" channel bottom will provide greater sediment and nutrient removal/storage capabilities than existing. Additionally, the "oversized" design, coupled with the grass filter strip discussed below, will provide a flood prone area and storm water conveyance capabilities that are also greater than existing. A typical cross-section plan sheet of the reconstructed channels has been included in **Attachment 1**. Since the proposed onsite mitigation project does not include construction of a naturally-designed channel, and since the cross-section of the relocated channel will be similar along the entire reach, the full plan sheet set depicting the entire length of relocated channel has not been provided in this document. The full plan sheet set can be found in the aforementioned Waterway Permit Applications.

In addition to the "oversized" channel bottom, the front slope of the relocated channel will be 4:1 until 17-feet from the edge of the 10-foot shoulder. In addition to the 10-foot shoulder and 4:1 front slope, an approximate 50-foot grass filter strip (native species) will be provided on the opposite side (field side) of the relocated channel (see **Attachment 3** for the proposed seeding plan). The 10-foot road shoulder, 4:1 front slope and 50-foot grass filter strip will provide substantial filtering of sediments and nutrients from both roadside storm water runoff and runoff from the adjacent agricultural fields. This filter area will effectively reduce the sediment and nutrients entering the channel, by instead trapping and absorbing them. Additionally, with the "oversized" channel, there will be more available storage area for sediments and nutrients that do make it to the channel, reducing the frequency of dredging, which will result in net improvements to the downstream water quality of Preston Run.

The relocated channels, 10-foot road shoulder and 4:1 front slope will be located within newly acquired roadway right-of-way, and will be under the direct control of the Defiance County Engineer. These areas will be protected in perpetuity through an executed Environmental Covenant between the Ohio EPA and the Defiance County Engineer. However, as previously stated, S-4 is a maintenance ditch and after the relocation, will be maintained, as needed (with restrictions), to facilitate drainage (**See Section 3.0**). These maintenance conditions will be included in the executed Environmental Covenant.

In regards to the 50-foot grass filter strip, the adjacent landowners will be offered a signing bonus to enroll in the United States Department of Agriculture's (USDA's) Lake Erie Conservation Reserve Enhancement Program (CREP) as a Grassed Filter Strip (CP21). The CREP requires a 15-year contract, pays annual payments to the landowner, and requires the landowner to repay if the land is not maintained properly. While Defiance County does not have eminent domain power to force landowners to enroll in this program, it is anticipated that the signing bonus will be "too good to refuse", and once the landowners observe the positive impact the filter strip will have on the relocated channel, and the reduction in their channel maintenance costs, they will be likely to re-enroll their land in the program indefinitely. At this point, the program has been explained to the landowners, with plans to enroll them in the program shortly

after permit authorization. When available, the Defiance County Engineer will forward copies of the landowner enrollment to the USACE and Ohio EPA.

1.3.2 Offsite Mitigation

In addition to the construction of overwide channels onsite, overwide channels will be constructed offsite to mitigate the loss of channel due to increased culvert lengths on the project. The site for the offsite mitigation is located approximately nine miles from the project. It is located in within the Tiffin Watershed (04100006), an adjacent eight digit HUC, and was identified as part of a solicitation for collaborative projects (**See Section 2.0**).

The offsite mitigation site contains two channels with a total length of 3750'. The site is crossed by natural gas pipelines which limit the ability to widen the channels through that easement. The two channels will be referred to as the north channel and the south channel throughout the remainder of this compensatory mitigation plan.

North Channel

The north channel, Behrens Ditch, drains 575 acres where it enters the site. The north channel has an existing length of ~1900 linear-feet, a bottom width of 6 feet, and 2:1 side slopes. The planned work includes widening the channel bottom to a width of 23 feet for its entire length. except a distance of 300 linear-feet across the existing natural gas pipeline easement area. The riparian zone on the north side of the widened channel will be planted as a 25-foot wide grass maintenance access area. Beyond the maintenance access area, the riparian zone will be planted as a forested buffer to the north property line (see **Attachment 6** for the proposed seeding plans). The forested riparian buffer to the north will vary in width from 60 to 150 feet and contain ~4.2 acres. There will also be a forested riparian buffer added along the south bank, where possible, for a length of ~850 linear-feet.

South Channel

The south channel, Behrens Ditch Lateral, drains 587 acres where it enters the site. The south channel currently has a bottom width of 5 feet, 2:1 side slopes, and an existing length of ~1700 linear-feet The planned work includes widening the channel bottom to a width of 45 feet for its entire length except a distance of 220 linear-feet across the existing natural gas pipeline easement area. The riparian zone on the north side of the widened channel will be planted as a 25-foot wide grass maintenance access area. Beyond the maintenance access area, the riparian zone will be planted as a forested buffer to a width of 150 feet. The forested riparian buffer overlaps with the forested riparian buffer along the south side of the north channel and they together contain ~6.4 acres.

See **Attachment 6** for a site location map, site plan, cross sections, and other offsite mitigation documents.

2.0 SITE SELECTION

2.1 Onsite Mitigation

In February of 2008, STRATEGIC compiled a Stream Mitigation Opportunities and Inventory Report (SMOIR) for the Defiance County Engineer, in anticipation of the proposed stream impacts resulting from the transportation improvement project. The objective of the SMOIR was to identify both on-site [within the Lower Maumee Watershed (04100009) and within a 1-mile radius of the proposed stream impacts] and off-site (just within the Lower Maumee watershed) stream mitigation opportunities, including stream reaches that could be preserved, reaches that could be enhanced, and other projects involving streams, rivers, or riparian corridors sponsored by local/state government agencies, park districts, or conservation groups, in which the Defiance County Engineer could collaborate with.

Potential on-site stream mitigation opportunities were identified from land parcels that occurred both within the Lower Maumee Watershed and within a 1-mile radius of the proposed stream impacts. These areas were identified by reviewing secondary source information (mapping, aerial photographs, auditor records, etc.).

Existing streams, present land use, and topography were investigated, utilizing a Geographic Information System (GIS), for each parcel within a 1-mile radius of the proposed stream impacts. Parcels that contained potential stream mitigation opportunities (either restoration/enhancement or preservation) and were located within a 1-mile radius of the proposed stream impacts, were referred to throughout the report as Willing Seller (WS) parcels.

All WS parcels were assigned a current land use of wooded (including wooded and shrub/scrub), agricultural (including agricultural and open urban/fallow areas), or other land use (including urban, open water, non-forested wetlands, and barren). The land use for each WS parcel was determined by reviewing the secondary sources. These WS parcels were ranked according to their stream mitigation potential, and then separated by type of potential mitigation; stream preservation or stream restoration. The WS parcels that contained mapped wooded land use were viewed as having a high mitigation potential for stream preservation. Those WS parcels that contained streams that appear to have been channelized and/or the riparian zone has been altered, and were mapped agricultural or other land use, were viewed as having high mitigation potential for stream restoration.

As for off-site stream mitigation opportunities, a search was made for any local/state government agencies, park districts, or conservation groups that had any projects involving streams, rivers, or riparian corridors, within the Lower Maumee Watershed, in which the Defiance County Engineer could collaborate with. Additionally, to identify as many opportunities as possible, adjacent watersheds, including the Auglaize, Blanchard, Cedar-Portage, Ottawa-Stoney, Raisin, Tiffin, and Upper Maumee were investigated.

Potential off-site mitigation opportunities were identified by sending solicitation letters, via mail, to various local/state government agencies, park districts, and conservation groups in order to

locate potential programs with which the Defiance County Engineer could collaborate with. The Defiance County Engineer sent letters on December 19, 2007 to 29 individual groups.

Results of the SMOIR concluded that there was a total of 106 WS Parcels located within the 1-mile on-site boundary; totaling 61,957 linear-feet of stream mitigation opportunities. Of the 106 WS Parcels, 52 were candidates for stream preservation (19,219 linear-feet), and 54 were candidates for stream restoration (42,738 linear-feet). The off-site investigation concluded that there were three potential projects in which the Defiance County Engineer could collaborate on that involved streams, rivers, or riparian corridors within the affected eight-digit HUC and/or adjacent watersheds.

One of the potential off-site projects was identified by the northwest district office of the Ohio EPA. As the site was/is a pending enforcement, the information could not be shared due to privacy concerns. Dana Martin-Hayden suggested a pre-application meeting to discuss the transportation project, and the potential use of this or other off-site projects as mitigation.

Shortly thereafter, the Defiance County Engineer held an on-site pre-application meeting in February 2009 with the USACE (Paul Wetzel) and the Ohio EPA (Rahel Baab, Dana Martin-Hayden, and Ben Smith). During that meeting, both agencies concurred that the existing roadside drainage ditches were jurisdictional. Both agencies also suggested that on-site mitigation could potentially be feasible, if the proper channel design was utilized, including a buffer strip along the agricultural field. Designed this way, the relocated open channel could provide substantial benefit to the aquatic ecosystem and could potentially be considered mitigation on its own merit. The agencies suggested contacting the Ohio Department of Natural Resources (ODNR) for assistance with the channel design.

Consequently, the Defiance County Engineer contacted ODNR who suggested the "oversized" channel design. The Defiance County Engineer worked with Kirk Hines from ODNR and the local Soil and Water Conservation District on the channel design. In a collaborative effort, the proposed channel was designed, and in an e-mail correspondence dated June 4, 2009, ODNR stated "the latest proposal from the county will improve the stability and services of the existing ditch to some degree and the proposal exceeds what would be required for a petition/maintenance project according to the Rural Drainage Advisory Report (which was approved by both ODNR and Ohio EPA Directors), and provides for a length of significant buffer strip, the division considers the proposed mitigation adequate."

Therefore, after this comprehensive mitigation planning exercise, it was determined that the compensatory mitigation for the proposed stream impacts would be located, and would be accomplished by, the design and construction of the relocated channels using an "oversized" channel design and grass filter strip, which will replace the existing stream functions and protect downstream water quality.

Since submission of the Joint Section 404/Section 401 Application to the agencies, the USACE has requested that additional mitigation, beyond the proposed onsite mitigation, be added to the overall compensatory mitigation plan for the project. Therefore, the Defiance County Engineer

revisited the potential off-site project identified by the northwest district office of the Ohio EPA, discussed below.

2.2 Offsite Mitigation

After the submission of the Joint Section 404/Section 401 Application to the agencies, the Ohio EPA issued a Section 401 Water Quality Certification for the project, while the USACE had concerns that the onsite mitigation was inadequate due to the additional ~2500 linear-feet of culverted stream length. The Ohio EPA identified offsite project (mentioned above) was re-investigated and discussed among the Ohio EPA and USACE as a potential offsite mitigation site, with the preferred mitigation being the construction of overwide channels on the site. The site offers ~3000 linear-feet of channel that can be widened using "oversized" channel design. Together, with the planting of forested riparian buffers, the offsite mitigation will compensate for the additional ~2500 linear-feet of culverted stream length.

3.0 SITE PROTECTION

3.1 Onsite Mitigation

The relocated channels, 10-foot road shoulder and 4:1 front slope will be located within newly acquired roadway right-of-way, and will be under the direct control of the Defiance County Engineer. These areas will be protected in perpetuity through an executed Environmental Covenant between the Ohio EPA and the Defiance County Engineer. However, as previously stated, S-4 is a maintenance ditch and after the relocation, will be maintained, as needed (with restrictions), to facilitate drainage. These maintenance conditions, described below, will be included in the executed Environmental Covenant.

The Defiance County Engineer has discussed the proposed project with the Defiance County Soil and Water Conservation District. An agreement has been reached where the maintenance will be confined to the 3-feet of the widened ditch bottom adjacent to the back slope and any tile outlets. The agreement also is that the reconstructed channels will only be dipped or dredged when 9-inches or more of sedimentation has occurred, and only to the originally constructed bottom contour of the channel. The remainder of the relocated channel cross-section will be protected via the Environmental Covenant and will not be dredged.

In regards to the 50-foot grass filter strip, the adjacent landowners will be offered a signing bonus to enroll in the USDA's Lake Erie Conservation Reserve Enhancement Program (CREP) as a Grassed Filter Strip (CP21). The CREP requires a 15-year contract, pays annual payments to the landowner, and requires the landowner to repay if the land is not maintained properly. While Defiance County does not have eminent domain power to force landowners to enroll in this program, it is anticipated that the signing bonus will be "too good to refuse", and once the landowners observe the positive impact the filter strip will have on the relocated channel, and the reduction in their channel maintenance costs, they will be likely to re-enroll their land in the program indefinitely. At this point, the program has been explained to the landowners, with plans to enroll them in the program shortly after permit authorization. When available, the Defiance County Engineer will forward copies of the landowner enrollment to the USACE and Ohio EPA.

Within 30 days of substantial completion of the discharges of fill material into waters of the United States, the Defiance County Engineer will submit to the Ohio EPA an acceptable, notarized, recorded, and filed Environmental Covenant. The Environmental Covenant shall include, as attachments, description of the protected area, survey map, and an aerial photograph showing the boundaries of the protected area and all mitigation areas inside the protected area. The protected area includes the relocated 5,763 linear-feet of open stream channel, the 10-foot wide vegetated road shoulder and the 4:1 front slope described in this compensatory mitigation plan. Additionally, signs will be placed within visual distance along the onsite mitigation area that indicate that the area is a protected stream mitigation project and that prohibit mowing, dumping, or other activity that would result in degradation of the stream without prior authorization from the agencies.

3.2 Offsite Mitigation

The "oversized" channels and the planted forested riparian buffer will both be protected through an executed Environmental Covenant between the Ohio EPA and the Defiance County Engineer. Like the onsite channels, Behrens Ditch and Behrens Ditch lateral are on ditch maintenance; therefore, similar maintenance conditions will be included in the Environmental Covenant. The expectation with the overwide channels is that their design allows for a far greater volume of sediment storage, which should reduce the frequency of dredging. Any dredging will be coordinated with the agencies in advance. Finally, the offsite Environmental Covenant will be submitted to the Ohio EPA within 30 days of substantial completion of the discharges of fill material into waters of the United States.

4.0 BASELINE INFORMATION

4.1 Wetlands

No wetlands will be affected by the proposed project.

4.2 Streams

4.2.1 Onsite

The two unnamed tributaries to Preston Run (S-3 and S-4) are part of the Maumee River below Tiffin River to above S. Turkeyfoot Creek Sub-Watershed, located within the Lower Maumee Watershed, Ohio HUC 04100009. Adjacent watersheds include the Ottawa-Stoney (04100001), the Raisin (04100002), the Upper Maumee (04100005), the Tiffin (04100006), the Auglaize (04100007), the Blanchard (04100008) and the Cedar Portage (04100010). See the Watershed Map included in **Attachment 1**.

The Maumee River begins in Fort Wayne, Indiana where the St. Mary's and St. Joseph Rivers join to begin their combined flow northeast. The main stem of the Maumee River winds for 25 river miles through Indiana until it crosses the state border into Ohio. The Maumee River continues northeast for another 105 river miles to ultimately flow into the western basin of Lake Erie at Maumee Bay. The Maumee River has the largest drainage area of any Great Lakes river with 8,316 square miles.

Approximately 65 river miles of the Maumee River and 1,872 river miles of named and un-named tributaries are located within the Lower Maumee Watershed. The total aerial extent of the Lower Maumee Watershed's drainage area is approximately 1,082 square miles. Within the watershed, land use is characterized as predominantly rural. Similarly, within the project area, land use is rural, dominated by large row-crop agricultural farms and sparse residential development.

Within the Lower Maumee Watershed, the largest water quality concerns are related to the high percentage of agricultural land within the watershed, including agricultural runoff, channelization and loss of riparian corridor habitat. Other concerns include contamination from dumps and landfill run-off, contaminated industrial sites, combined sewer overflows and disposal of dredged or fill material.

The Ohio EPA does not have an aquatic biological use designation for the two un-named tributaries to Preston Run (S-3 and S-4). During completion of the Level 1 Ecological Survey for the proposed project, these two (2) streams were characterized and evaluated using the methods outlined in the Field Evaluation Manual for Ohio's Primary Headwater Habitat Streams (Ohio EPA, 2002). Results of those evaluations characterized both streams, S-3 and S-4, as Provisional Modified Class 2 PHWH Streams (HHEI Scores of 49 and 59, respectively). See the HHEI Data Forms, completed in 2006, in **Attachment 4**. Ecological coordination, including the USACE Jurisdictional Determination, is included in **Attachment 5**.

Currently, S-3 and S-4 are "captured" stream reaches located within, and serving as, roadside drainage ditches. As such, these streams receive the majority of their hydrology from the adjacent roadway and agricultural fields. Additionally, the substrates within the linear channels are dominated by silt and leaf pack/woody debris. The gradient of both streams is very flat, and there is currently no riparian zone surrounding either channel. The streams are functioning as roadside drainage ditches and offer very little to the biological communities and water quality resources in the area.

Based on the channelized nature of these two streams, the highly embedded substrate, and the absence of high quality pool and riffle complexes, the proposed project will not impact pool and riffle complexes as defined in 40 CRF 230.45 (Special Aquatic Sites).

No quantitative sampling for macroinvertebrate communities or fish was performed for this project; however, given the character of S-3 and S-4, it is doubtful a diverse or high quality biological community would be present. Similar resources have been documented by the Ohio EPA, and communities dominated by species that are highly tolerant to pollution and silt-laden environments are typically encountered.

4.2.2 Offsite

The offsite mitigation site, which is located approximately nine miles from the transportation project, contains two channels with a total length of 3750'. It is located within the Tiffin Watershed (04100006), an adjacent eight digit HUC, and was identified as part of a solicitation for collaborative projects (**See Section 2.0**).

The site containing the offsite mitigation was previously operated as a compost site. The site operations were stopped as a result of unpermitted polluted storm water discharges. The site currently contains piles of compost, piles of fly ash, piles of concrete and asphalt, and storm water accumulations around those piles. Behrens Ditch and Behrens Ditch lateral collect agricultural drainage upstream of the mitigation site. Both streams discharge to Webb Run approximately 3 miles downstream of the mitigation site. Webb Run is a tributary to the Tiffin River, which is a tributary to the Maumee River. The Ohio EPA does not have an aquatic biological use designation for Behrens Ditch and Behrens Ditch lateral.

Like the onsite channels, Behrens Ditch and Behrens Ditch lateral are on ditch maintenance. As such, these streams receive the majority of their hydrology from agricultural fields upstream of the mitigation site, and are periodically dredged to facilitate drainage. Additionally, the substrates within the linear channels are dominated by silt and leaf pack/woody debris, and the gradient of both streams is very flat. The streams are functioning as drainage ditches and offer very little to the biological communities and water quality resources in the area, and should be considered Modified Class II PHWH Streams for regulatory purposes.

5.0 DETERMINATION OF CREDITS

5.1 Onsite Mitigation

Approximately 13,125 linear-feet of CR 27 will be widened from 20- to 24-feet along the project corridor. The pavement will be widened 2-feet on the north and 2-feet on the south for the entire length of the project. Additionally, the Preferred Design Alternative also includes intersection realignments at the intersections of Fullmer, Shindler, and Dohoney Roads with CR 27 to provide an intersection angle near 90-degrees.

To accommodate the additional lane width, S-3 and S-4 must be relocated away from the roadway. The relocated open channels have been designed with "oversized" channel bottoms, varying in width from 7- to 14-feet. The front slope of the relocated channel will be 4:1 until 17-feet from the edge of the shoulder. After this point, the remaining front slope and the entire back slope will be 2:1. In addition to the 10-foot shoulder and 4:1 front slope, an approximate 50-foot grass filter strip will be provided on the "field" side of the relocated channel.

Of the 9,435 linear-feet of stream relocation, 1,285 linear-feet are currently contained within existing culverts, and 8,150 linear-feet are currently open-channel. Since the 8,150 linear-feet of open-channel are being relocated away from the roadway, several existing culverts will need to be replaced as part of the Preferred Design Alternative. The replacement culverts will be constructed along the relocated channel alignment, and where needed, undersized culverts will be replaced with larger, properly-sized culverts. The total new length of culverts, after construction, will be 3,672 linear-feet. The total new length of open channel, following the relocation, will be 5,763 linear-feet.

The net result of implementing the proposed project will be the loss of 2,387 linear-feet of existing open channel, which will be culverted. The length of new culvert is approximately three times as much as current, because the current culverts are poorly undersized and in deteriorated condition. Because of the undersized and deteriorated culverts, localized flooding occurs during heavy precipitation events. The proposed project will replace these culverts with properly-sized, longer culverts that will eliminate the localized flooding hazard. In all cases, efforts to reduce the length of new culverts to the minimum necessary to adequately complete the project and eliminate the flooding hazard have been made.

The majority of area in which existing open channel will be culverted is only along S-4 in the front yards of several residential properties. The stream length that will be culverted is essentially a roadside ditch. Specifically, S-4 is a ditch within the petition ditch program that is routinely maintained by the local Soil and Water Conservation District. There is no riparian buffer. There are no riffle/pool complexes. The substrate is 100% silt. There is no buffer from the residential lawn (north side) or the roadway (south side). The proposed culverts will "black out" this reach of channel; however, the impacts to such a deteriorated aquatic environment will be negligible. Furthermore, as discussed in **Section 1.3**, the proposed relocated open channel/mitigation will provide substantial improvements to the overall aquatic environment; the replacement channels will replace existing stream function and protect downstream water

quality, which will offset the minimal impact the additional culvert length will result in. Additionally, offsite mitigation has been developed for the proposed project will offset the length of additional culvert.

5.2 Offsite Mitigation

After the submission of the Joint Section 404/Section 401 Application to the agencies, the Ohio EPA issued a Section 401 Water Quality Certification for the project, while the USACE had concerns that the onsite mitigation was inadequate due to the additional ~2500 linear-feet of culverted stream length. The proposed offsite mitigation project was re-investigated and discussed among the Ohio EPA and USACE as a potential offsite mitigation site, with the preferred mitigation being the construction of overwide channels on the site. The site offers ~3000 linear-feet of channel that can be widened using "oversized" channel design. Together, with the planting of forested riparian buffers, the offsite mitigation will compensate for the additional ~2500 linear-feet of culverted stream length.

6.0 MITIGATION WORK PLAN

6.1 Onsite Mitigation

The Preferred Design Alternative will result in impacts to two un-named tributaries to Preston Run. These streams, designated S-3 and S-4, are "captured streams" that are located within deep roadside drainage ditches adjacent to the existing roadway. Impacts include the placement of clean fill material into the existing channels once new, relocated channels have been constructed away from the roadway.

The general sequencing of construction will follow typical industry standards for general roadway construction/widening and resurfacing projects. The construction plans for the proposed project will call for the use of Best Management Practices (BMP's) to discourage sediment from the active construction area from reaching S-3, S-4, or Preston Run. Additionally, construction will take place during low flow conditions to further discourage sediment from the active construction area from reaching S-3, S-4, or Preston Run.

The replacement channel cross-section will be constructed per the project plan specifications, including bottom-of-bank width, top-of-bank height, bank slopes, and centerline elevations. The new channel will be constructed at the same time as the roadway work, and will be done in short stretches as low flow conditions allow.

The banks, channel, and slope areas zone will be seeded with an upland native seed mix. The native species that will be utilized, and the application rate, is presented in **Attachment 3**. These species will also be planted with an annual rye for quick, but temporary cover. The seeding will be installed within 14 days of final topsoil placement. It is not anticipated that these areas will require soil amendment prior to seeding.

The seeding of the 50-foot buffer strips will be the responsibility of the landowners, as part of their contract with the USDA and Defiance County. Their maintenance of a good stand of the specified vegetative cover is a condition of their annual payments with USDA.

The seeding list was compiled in coordination with the local NRCS office and contains a blend of native species that should have some that germinate well for quicker ground cover, as well as the Little Blue Stem and Indian Grass, which do not germinate as well, but are likely to be the dominant species eventually. All of the proposed species should tolerate the occasional mowing and broadleaf weed control that are a part of the ditch maintenance efforts. Finally, the seeding rates were increased from the typical standard rates, because of the need to establish a good stand of vegetation on the ditch bottom, banks, and slope areas. Depending on the construction schedule, the planting of these native grasses may be split with some planted/replanted in a dormant seeding if the soil grading work is not completed early enough to allow proper germination in the first season.

Soil and erosion control will be accomplished in accordance with ODOT's Construction and Materials Specifications, Location and Design Manual, and Supplemental Specifications. The Preferred Design Alternative includes the following quantities for sediment and erosion control:

Temporary inlet filter fabric fence	500 linear-feet
Temporary ditch check filter fabric fence	600 linear-feet
Rock channel protection	50 cubic yards
Temporary perimeter filter fabric fence	19,800 linear-feet
Temporary sediment basins and dams	7,500 cubic yards

6.2 Offsite Mitigation

The current site containing the offsite mitigation was previously operated as a compost site. The site operations were stopped as a result of unpermitted polluted storm water discharges. The site currently contains several environmental issues which will be addressed concurrent with the construction of the overwide stream channels. Those issues include piles of compost, piles of fly ash, piles of concrete and asphalt, and storm water accumulations around those piles.

The planned construction of the overwide stream channels will be as shown on the cross sections included in **Attachment 6**. The soil from the excavation will be spread adjacent to the stream in the areas to be graded, seeded and planted to forested riparian buffer. The polluted storm water around the various piles on the site will be directed to a large sand filter and then used as dust control and site water during construction. The contaminant piles will be consolidated and encapsulated with soil compacted wet of optimum to hydraulically isolate those materials to end their contribution to the contamination of storm water on the site. See the NPDES permit in **Attachment 6**. A PTI for the treatment of storm water is planned and will be forwarded to the agencies when complete as well.

This work will result in impacts to Behrens Ditch and Behrens Ditch lateral as they are constructed to an overwide width. Those impacts will include the excavation of additional width to one side of the channel. The soil will be placed adjacent to the stream channel and graded so that sediment from the active construction area will collect on the uplands and the storm water will be treated as planned in the NPDES permit. The widened channel cross sections will be constructed per the cross sections shown in **Attachment 6**, including bottom-of-bank width, top-of-bank height, bank slopes and elevations. The work will be done in short stretches as low flow conditions allow.

The banks, additional channel bottom and slope areas zone will be seeded with a upland seed mix along with an annual rye for quick temporary cover. See **Attachment 6** for the proposed seeding plan. The seeding will be installed within 14 days of final topsoil placement. The mulch onsite may be used as soil amendment where that is necessary.

The forested riparian buffer will be planted to a variety of tree and brush species (see **Attachment 6** for the proposed seeding plans). The preferred method would be to have the landowner enroll in the USDA's Lake Erie Conservation Reserve Enhancement Program (CREP) as a Hardwood Tree Planting\Forested Riparian Buffer (CP22). The advantage of the owner's enrollment would be a financial involvement\incentive in success of the vegetative cover in addition to the protections of the Environmental Covenant. If the landowner is

unable\unwilling to enroll the land in this program, the Defiance County Engineers office will plant the area to the temporary vegetative cover as per CP22 as well as the tree planting.

7.0 MAINTENANCE PLAN

7.1 Onsite Mitigation

There are no expected recurring operational and/or maintenance activities associated with the proposed onsite mitigation plan, except the continued maintenance of portions of the channel as discussed in **Section 3.0**. The relocated channels, 10-foot road shoulder and 4:1 front slope will be located within newly acquired roadway right-of-way, and will be under the direct control of the Defiance County Engineer. These areas will be protected in perpetuity through an executed Environmental Covenant between the Ohio EPA and the Defiance County Engineer. These areas will be protected in perpetuity, and is not anticipated that anything other than the aforementioned ditch maintenance and occasional mowing and broadleaf weed control (that are a part of the ditch maintenance efforts) will be necessary to ensure the continued viability of the water resource.

In regards to the 50-foot grass filter strips (native species), the provisions of the USDA's Lake Erie Conservation Reserve Enhancement Program (CREP), as a Grassed Filter Strip (CP-21), will be enforced. Some of the conservation provisions shall include:

- The grass filter strips will not be used as a travel way, cropland heading, or a lane for livestock or farm equipment.
- Noxious weeds and other undesirable plants, insects, and pests will be controlled.
- The grass filter strips will not be harvested for hay or grazed by domestic livestock.
- Mowing may be conducted, as necessary, to stimulate plant growth, maintain an upright growth habit, and to control undesirable plant species. Cool season grasses will be mowed to a height of 4-inches or greater; and, warm season grasses to a height of 10-inches or greater.
- Mowing will only be conducted August 1 - August 20 to reduce impacts upon ground nesting wildlife species.
- Sediment, within the grass filter strips, shall be removed before it accumulates to a height higher than 6-inches. The grass filter strips will be leveled and re-seeded, as appropriate.

7.2 Offsite Mitigation

There are no expected recurring operational and/or maintenance activities associated with the proposed offsite mitigation plan, except the continued maintenance of portions of the channel as discussed in **Section 3.0**. These areas will be protected in perpetuity by the Environmental Covenant and will be inspected annually as part of normal ditch maintenance, and is not anticipated that anything other than the aforementioned ditch maintenance and occasional mowing and broadleaf weed control (that are a part of the ditch maintenance efforts) will be necessary to ensure the continued viability of the water resource.

In regards to the hardwood tree planting, the provisions of the USDA's Lake Erie Conservation Reserve Enhancement Program (CREP), as a Forested Riparian Buffer Strip (CP-22), will be enforced. Some of the conservation provisions shall include:

- A 15-year CRP Contract Payment Period (assuming the Owner is willing);
- A 30-year contract duration with voluntary SWCD extension (assuming the Owner is willing);
- Vegetation shall consist of a minimum of 75% of the planted density of hardwood trees and shrubs, with shrubs composing no more than 25% of the total density; and
- The care and planting of the hardwood tree plantings shall conform to NRCS Field Office Technical Guide Specification #612, tree and shrub planting.

8.0 PERFORMANCE STANDARDS

8.1 Onsite Mitigation

The relocated open channels have been designed to include elements that will substantially benefit the aquatic environment. The overall objectives of the compensatory mitigation are to replace existing stream function and protect downstream water quality. Therefore, the performance standards for the proposed project have been established to help ensure these objectives are satisfied. Furthermore, the proposed performance standards presented below have been taken from the Section 401 Water Quality Certification for the proposed project, issued by the Ohio EPA. The performance standards for the onsite mitigation are as follows:

Within five years after completion of construction, the relocated stream channels shall:

1) Develop a minimum of 5,763 linear-feet of Modified Class II Primary Headwater Habitat stream;
2) Demonstrate through monitoring that the reconstructed perennial stream channel supports Modified Class II Primary Headwater aquatic life use;
3) The mitigation channel S-3 shall attain a minimum HHEI score of 49 and mitigation channel S-4 shall attain a minimum HHEI score of 59;
4) Maintain at least 70% aerial coverage of native herbaceous vegetation on the banks and slope area of the relocated stream channels;
5) Develop relocated stream channels with no more than 5% aerial coverage of invasive species; and
6) The stream mitigation channel and banks including up and downstream shall be stable and show no signs of excessive bank erosion, sedimentation, headcutting, aggradation, entrenchment, or degradation.

8.2 Offsite Mitigation

The overwide channels have been designed to include elements that will substantially benefit the aquatic environment. The overall objectives of the compensatory mitigation are to enhance existing stream function and protect downstream water quality. Therefore, the performance standards for the proposed project have been established to help ensure these objectives are satisfied. Furthermore, the offsite mitigation performance standards have been established using the onsite standards as a template. The performance standards for the offsite mitigation are as follows:

Within five years after completion of construction, the stream channels shall:

1) Develop a minimum of 3000 linear-feet of Modified Class II Primary Headwater Habitat stream;
2) Demonstrate through monitoring that the stream channel supports Modified Class II Primary Headwater aquatic life use;

3) The mitigation channel Behrens Ditch and the mitigation channel Behrens Ditch Lateral shall attain minimum HHEI scores to be classified as Modified Class II Primary Headwater Habitat streams;
4) Maintain at least 70% aerial coverage of herbaceous vegetation on the banks, slope area, and grass maintenance access area of the stream channels;
5) Develop vegetation on the banks, slope area, and grass maintenance access area with no more than 5% aerial coverage of invasive species;
6) The forested riparian buffer shall at all times maintain >75% planted density of woody tree and shrub species; and
7) The stream mitigation channel and banks including up and downstream shall be stable and show no signs of excessive bank erosion, sedimentation, headcutting, aggradation, entrenchment, or degradation.

9.0 MONITORING REQUIREMENTS

Within 30 days of completion of mitigation construction, the Defiance County Engineer will prepare a post-construction as-built report for submittal to the agencies that contains current drawings sized 11" by 17" (to scale) of each of the mitigation areas. Additionally, an annual mitigation construction update report will be submitted to the agencies by December 31 of each year until mitigation construction is complete and a mitigation monitoring report is ready for submittal. Each mitigation construction update report shall contain the following:

1) The status of all of the mitigation required for the project;
2) Mitigation construction start date, completion date, or expected start/completion date;
3) A discussion of the extent to which the mitigation has been completed according to the timelines specified in the permits; and
4) Current contact information for all responsible parties.

In addition to the mitigation construction update report, the proposed compensatory mitigation will be monitored annually and an annual report will be submitted to the agencies. The requirements for the mitigation monitoring include:

1) The monitoring period shall commence immediately following completion of mitigation construction and shall continue through a five year monitoring period, except as provided in the contingency plan;
2) Annual mitigation monitoring reports shall be submitted to the agencies by December 31 of the first full year following the end of the first full growing season and completion of mitigation construction. All subsequent reports shall be submitted by December 31 of each of the monitoring years;
3) Each monitoring reports shall contain updated, current contact information;
4) Each annual monitoring report will clearly identify the specific monitoring year the report is intended to represent;
5) Each annual monitoring report shall provide a summary of current mitigation status, which compares the previous years' monitoring information with the current report, including graphs and tables showing trends;
6) The first monitoring report shall contain a full copy of the USACE 404 Permit for the project;
7) Each monitoring report shall contain a list of species planted in all mitigation areas;
8) The first year report shall include plan views and cross sections of the as-built mitigation areas including the location and type of planting;
9) At a minimum, the first, third, and fifth year reports shall contain current drawings sized 11' by 17' (to scale) of each of the mitigation streams;
10) At a minimum, the first, third, and fifth year reports shall include longitudinal (profile along the thalweg) and cross-sectional plan view measurements of the mitigation streams;
11) Cross section measurements shall be collected over a minimum distance of 30 bankfull widths, with at least one through a pool area and one through a riffle area, if present;

12) Cross section measurements shall include bankfull width, bankfull maximum depth, flood prone area width, entrenchment ratio, bankfull cross-sectional area, and bank height;
13) Cross section measurements shall encompass two consistent permanent cross sections for each analysis;
14) Cross section measurements shall include lowest bank height elevations collected where those differ significantly from bankfull stage;
15) Longitudinal profile shall provide elevation data for the thalweg, water surface, and bankfull stage over the entire measured reach;
16) Each annual report shall include photographs as dictated by the Ohio EPA Section 401 Water Quality Certification for the project;
17) Each monitoring report will include a discussion regarding stream stability;
18) Water level data and estimated flow shall be collected in May and late August of each monitoring year;
19) The location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph and named;
20) The dominant plant species shall be visually determined in each vegetation layer, and the scientific names of these species shall be included in the report;
21) For forested areas, standard forest community measures shall be recorded. Frequency, density, and dominance, as well as importance values, shall be graphed against time to demonstrate if riparian forested areas are on track to becoming forested; and
22) HHEI assessment shall be performed during years one, three, and five.

10.0 LONG-TERM MANAGEMENT PLAN

10.1 Onsite Mitigation

The relocated channels, 10-foot road shoulder and 4:1 front slope will be located within newly acquired roadway right-of-way, and will be under the direct control of the Defiance County Engineer. These areas will be protected in perpetuity through an executed Environmental Covenant between the Ohio EPA and the Defiance County Engineer. These areas will be protected in perpetuity, and is not anticipated that anything other than the aforementioned ditch maintenance and occasional mowing and broadleaf weed control (that are a part of the ditch maintenance efforts) will be necessary to ensure the continued viability of the water resource.

The Defiance County Engineer has discussed the proposed project with the Defiance County Soil and Water Conservation District. An agreement has been reached where the maintenance will be confined to the 3-feet of the widened ditch bottom adjacent to the back slope and any tile outlets. The agreement also is that the reconstructed channels will only be dipped or dredged when 9-inches or more of sedimentation has occurred, and only to the originally constructed bottom contour of the channel. The remainder of the relocated channel cross-section will be protected and will not be dredged.

In regards to the 50-foot grass filter strip, the adjacent landowners will be offered a signing bonus to enroll in the USDA's Lake Erie Conservation Reserve Enhancement Program (CREP) as a Grassed Filter Strip (CP-21). The CREP requires a 15-year contract, pays annual payments to the landowner, and requires the landowner to repay if the land is not maintained properly. While Defiance County does not have eminent domain power to force landowners to enroll in this program, it is anticipated that the signing bonus will be "too good to refuse", and once the landowners observe the positive impact the filter strip will have on the relocated channel, and the reduction in their channel maintenance costs, they will be likely to re-enroll their land in the program indefinitely. At this point, the program has been explained to the landowners, with plans to enroll them in the program shortly after permit authorization. When available, the Defiance County Engineer will forward copies of the landowner enrollment to the USACE and Ohio EPA.

Additionally, the provisions of the USDA's Lake Erie Conservation Reserve Enhancement Program, as a Grassed Filter Strip (CP-21), will be enforced. Some of the conservation provisions are listed in **Section 7.0**.

10.2 Offsite Mitigation

The widened channels and forested riparian buffer will be located within an Environmental Covenant area and these areas will be protected in perpetuity; however, Behrens Ditch and Behrens Ditch lateral are maintenance ditches and will be maintained, as needed (with restrictions), by the Defiance County Soil and Water Conservation District, to facilitate drainage.

The Defiance County Engineer has discussed the proposed project with the Defiance County Soil and Water Conservation District. An agreement has been reached where the maintenance will be coordinated with USACE to monitor the effectiveness of overwide channel construction in reducing the frequency of sediment removal. The agreement also is that the reconstructed channels will only be dipped or dredged when 9-inches or more of sedimentation has occurred, and only to the originally constructed bottom contour of the channel. The remainder of the widened channel cross-section will be protected and will not be dredged.

In regards to the forested riparian buffer, either the adjacent landowners will enroll in the USDA's Lake Erie Conservation Reserve Enhancement Program (CREP) as a Hardwood Tree Planting\Forested Riparian Buffer (CP-22) or the county will plant the area in accordance with this practice. The CREP requires a 30-year contract, pays annual payments to the landowner, and requires the landowner to repay if the land is not maintained properly.

Regardless of landowner enrollment or county planting, the provisions of the USDA's Lake Erie Conservation Reserve Enhancement Program, as a Hardwood Tree Planting\Forested Riparian Buffer (CP-22), will be enforced. Some of the conservation provisions are listed in **Section 7.0**.

11.0 ADAPTIVE MANAGEMENT PLAN

11.1 Onsite Mitigation

As discussed in **Section 8.0**, the relocated open channels have been designed to include elements that will substantially benefit the aquatic environment. The overall objectives of the compensatory mitigation are to replace existing stream functions (sediment removal/storage, nutrient removal/storage, and storm water conveyance) and protect downstream water quality. Therefore, the performance standards for the proposed project have been established to help ensure these objectives are satisfied.

In order to achieve the highest possible amount of sediment and nutrient removal/storage, the relocated channels and riparian areas have been designed, and will be planted with, native herbaceous species. The channels, banks, slope areas and 50-foot grass filter strip will be seeded with an upland native seed mix, as discussed in **Section 6.0**.

In order for the relocated channels to function at or better than the existing channels, the channels (except for the area that may be periodically maintained, as discussed in **Section 3.0**), banks, slope areas and 50-foot grass filter strip will need to maintain at least 70% aerial coverage of native herbaceous vegetation. If, during the course of the monitoring period, areas within the channel, along the banks, or within the 50-foot grass filter strip exhibit <70% aerial coverage with native herbaceous vegetation, contingency measures will be implemented.

Contingency measures for the proposed mitigation project shall include the re-seeding of the channel, bank areas, and 50-foot grass filter strip with a similar upland native seed mix. These species will also be planted with an annual rye for quick, but temporary cover in those areas with <70% aerial cover. Depending on the time of year, the planting of these native grasses may be split with some planted/replanted in a dormant seeding if work is not completed early enough to allow proper germination during the growing season in which re-seeding is conducted.

11.2 Offsite Mitigation

As discussed in **Section 8.0**, the widened channels have been designed to include elements that will substantially benefit the aquatic environment. The overall objectives of the compensatory mitigation are to enhance existing stream functions (sediment removal/storage, nutrient removal/storage, and storm water conveyance) and protect downstream water quality. Therefore, the performance standards for the proposed project have been established to help ensure these objectives are satisfied.

In order to achieve the highest possible amount of sediment and nutrient removal/storage, the channels have been widened and riparian areas have been reforested per CP 22 as discussed in **Section 6.0**.

In order for the widened channels and forested riparian buffers to function at or better than the existing channels, the channels (except for the area that may be periodically maintained, as

discussed in **Section 3.0**), banks, slope areas and forested riparian buffer will need to maintain at least 70% aerial coverage of vegetation. If, during the course of the monitoring period, areas within the channel, along the banks, or within the forested riparian buffer exhibit <70% aerial coverage with herbaceous vegetation, contingency measures will be implemented.

Contingency measures for the proposed mitigation project shall include the re-seeding of the channel, bank areas, and forested riparian buffer with a similar herbaceous and tree mix. These species will also be planted with an annual rye for quick, but temporary cover in those areas with <70% aerial cover.

12.0 FINANCIAL ASSURANCES

12.1 Onsite Mitigation

The majority of the proposed mitigation is included as part of the physical portion of the transportation project, including the "oversized" channel bottom, vegetated roadside shoulder and ditch banks. This construction, including the slope seeding, is a part of the construction project, which will be funded at 80% Federal and 20% local. The construction is planned to begin in April 2012 and the ditch relocation should be completed in June or July, with the installation of the filter strips following completion of the transportation project.

If any reseeding is needed, it will be done as part of Defiance County's routine roadside maintenance program. As a public agency, this is a part of their maintenance responsibility on all roadsides and can easily be accomplished within our ~$1,000,000.00 annual maintenance budget.

The seeding of the filter strips is a responsibility of the landowners, as part of their contract with the USDA and Defiance County. Their maintenance of a good stand of the specified vegetative cover is a condition of their annual payments with USDA. Both USDA and Defiance County will require the signing of a contract for the enrollment in the program and the repayment (with interest) if the land is removed from the program within the contract period. If this occurs for any reason, the monies would be available to enroll other land along the reconstructed channel or any of its tributaries in a similar program to improve water quality.

12.2 Offsite Mitigation

The seeding and tree planting will be done by the Defiance County Engineers Office during the mitigation work described in **Section 6.0**.

If any reseeding is needed, it will be done as part of Defiance County's routine roadside maintenance program. As a public agency, this is a part of their maintenance responsibility on all roadsides and can easily be accomplished within our ~$1,000,000.00 annual maintenance budget.

If the forested riparian buffer is enrolled in the CREP program, the maintenance of a good stand of the specified vegetative cover is a condition of their annual payments with USDA. Both USDA and Defiance County will require the signing of a contract for the enrollment in the program and the repayment (with interest) if the land is removed from the program within the contract period. Also the enforcement mechanisms of the Environmental Covenant would be available to all of the relevant parties.

List of Attachments

Attachment 1	Project Mapping
Attachment 2	Representative Photographs
Attachment 3	Proposed Seeding Plan
Attachment 4	Data Forms
Attachment 5	Coordination
Attachment 6	Offsite Mitigation Documents

Attachment 1
Project Mapping

- USGS 7.5-Minute Topographic Quadrangle Map
- Preferred Design Alternative Figures
- Typical Cross-Section
- NWI Map
- Soil Map
- Watershed Map
- Land Cover Map

Attachment 2
Representative Photographs

Attachment 3
Proposed Seeding Plan

Attachment 4
Data Forms

- HHEI-Stream 3 and Stream 4 (2006)

Attachment 5
Coordination

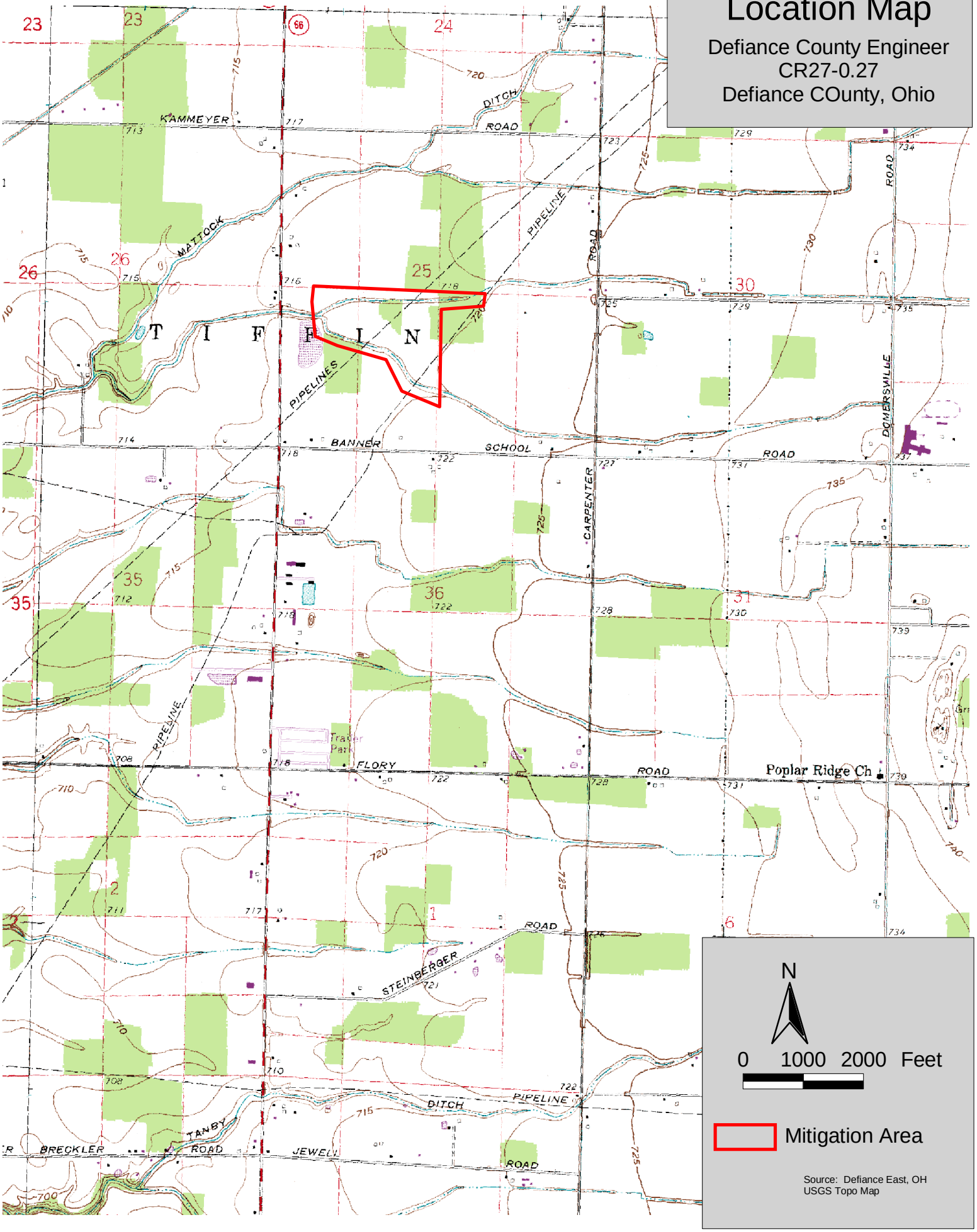
- January 10, 2007 ODOT Level 1 Ecological Survey Agency Coordination
- February 16, 2007 USACE JD
- February 23, 2007 USFWS Return Coordination
- February 16, 2007 Ohio EPA Return Coordination
- February 9, 2007 ODNR Return Coordination
- February 23, 2007 ODOT History/Architecture Eligibility Coordination
- March 14, 2007 ODOT Archaeological Resources Coordination
- January 29, 2008 ODOT Cultural Resources Phase II Review and Clearance

Attachment 6
Offsite Mitigation Documents

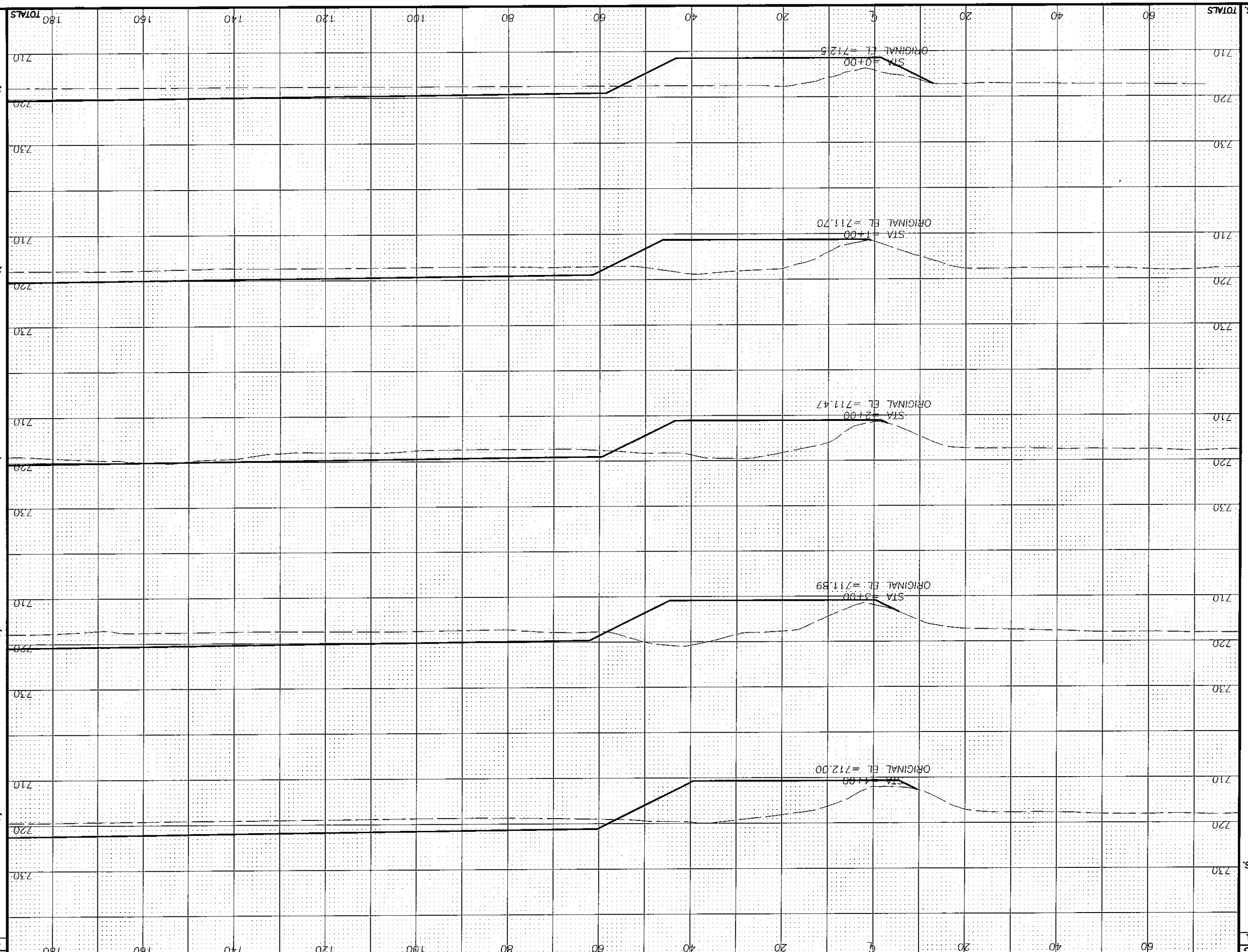
- Environmental Covenant
- Location Map
- Cross Sections
- Site Plan
- Offsite Seeding Plan

Offsite Mitigation Location Map

Defiance County Engineer
CR27-0.27
Defiance COunty, Ohio



Source: Defiance East, OH
USGS Topo Map



END AREA		VOLUME		
CUT	FILL	CUT	FILL	
354	354	1304	1304	
350	350	1243	1243	
321	321	1107	1107	
277	277	1039	1039	
284	284	4693	4693	

SEEDING

DIST.	SQ. YDS.

WIDTH YDS.

CALCULATED

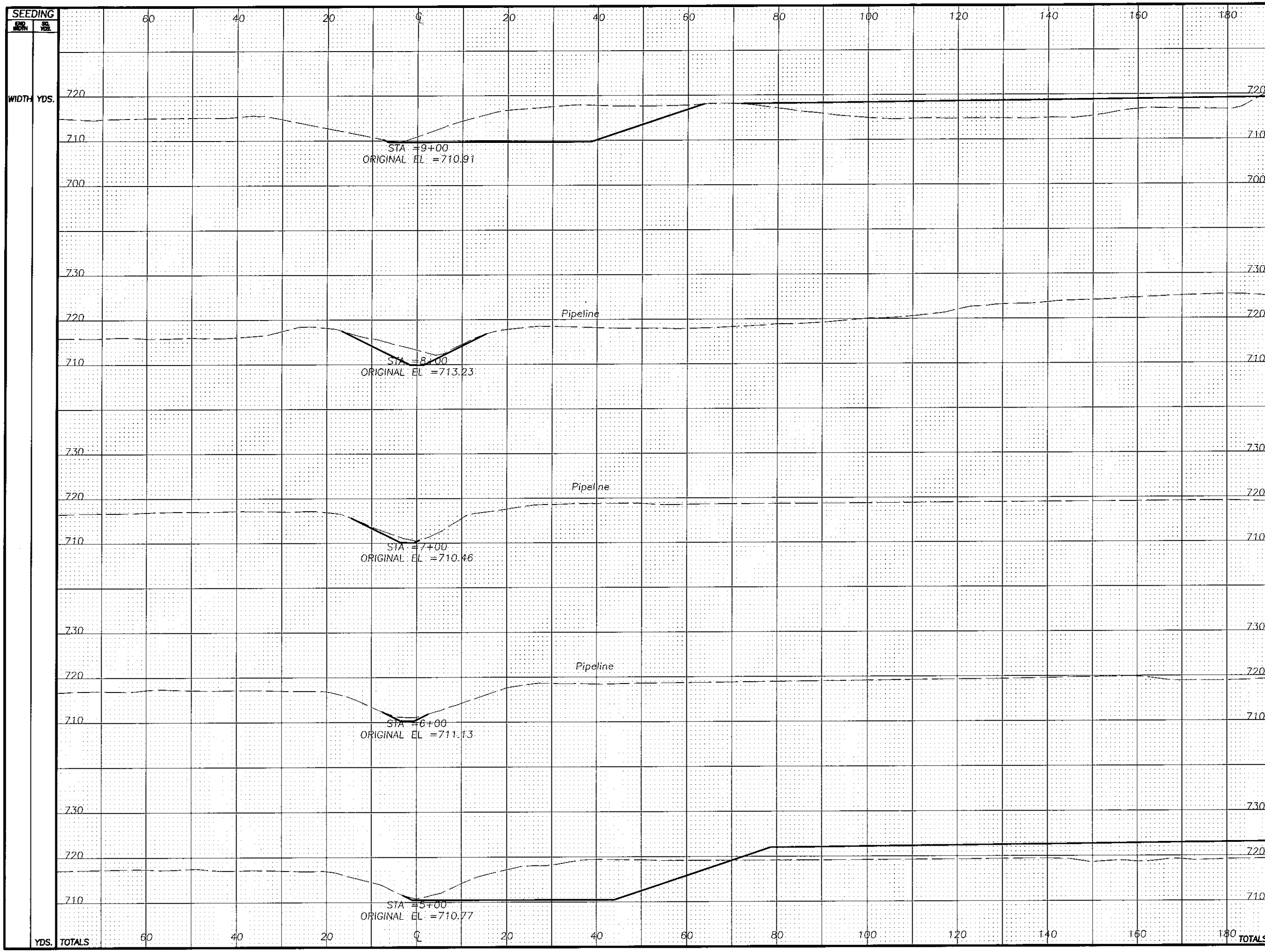
CHECKED

Mit-DEF-CR 27

South Channel CROSS SECTIONS

STA. 0+00 TO STA. 4+00

2/9



South Channel CROSS SECTIONS
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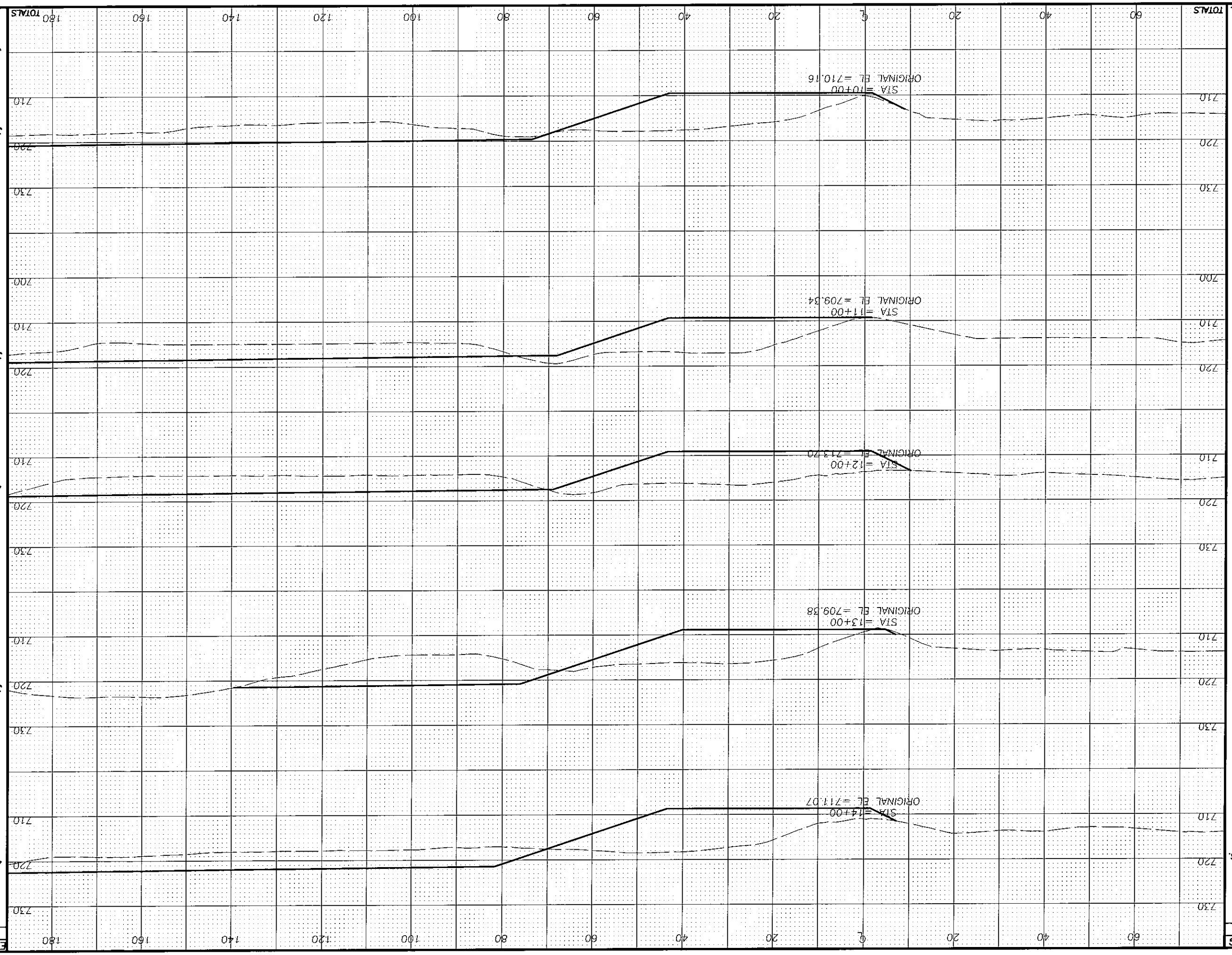
3
9



END AREA		VOLUME	
CUT	FILL	CUT	FILL
426	426	1385	1385
322	322	1357	1357
411	411	1402	1402
346	346	1300	1300
356	356	1272	1272
331	331	6716	6716

CALCULATED ---

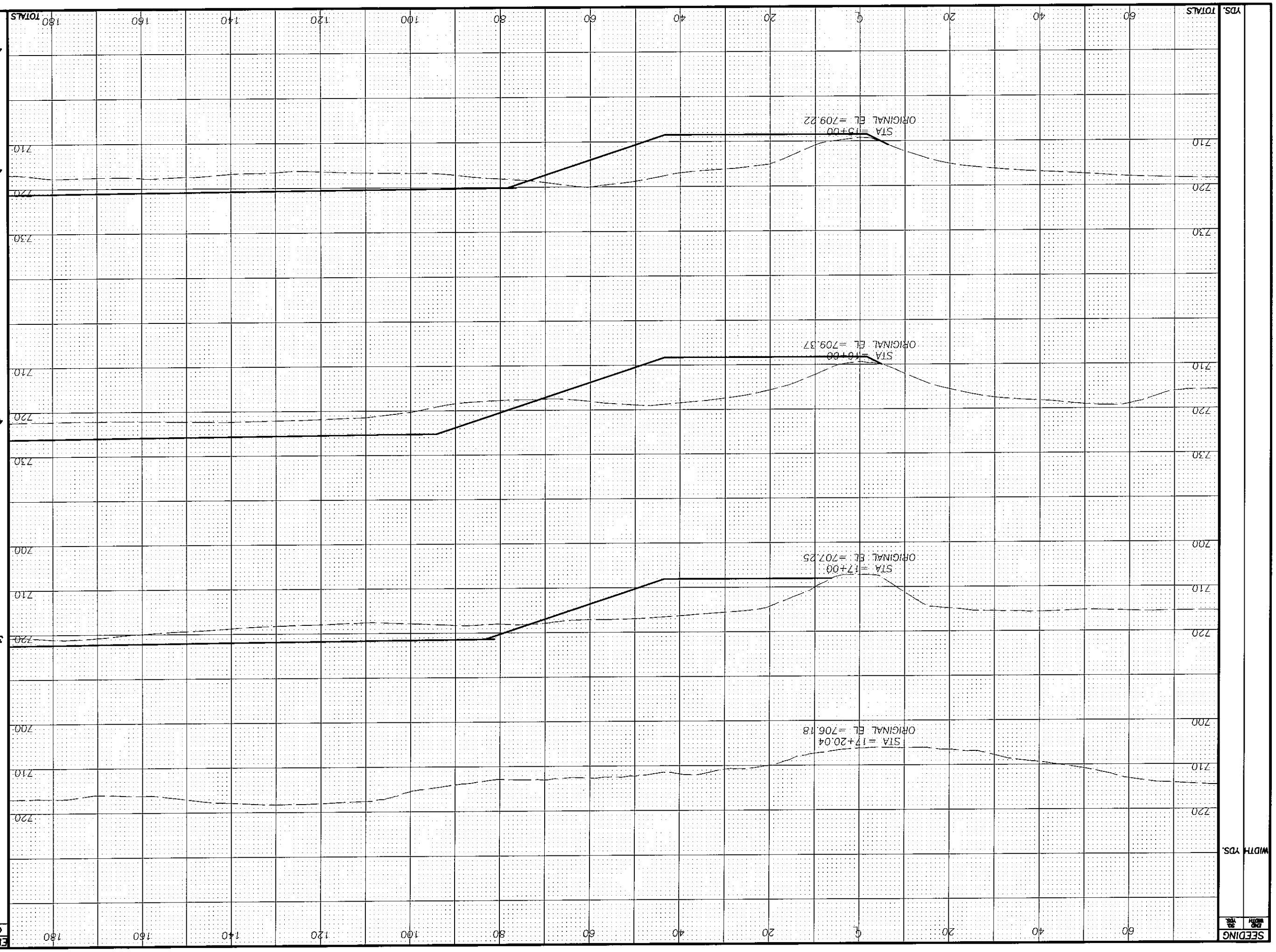
CHECKED ---

Mit-DEF-CR 27

4/9

South Channel CROSS SECTIONS

STA. 10+00 TO STA. 14+00



South Channel CROSS SECTIONS

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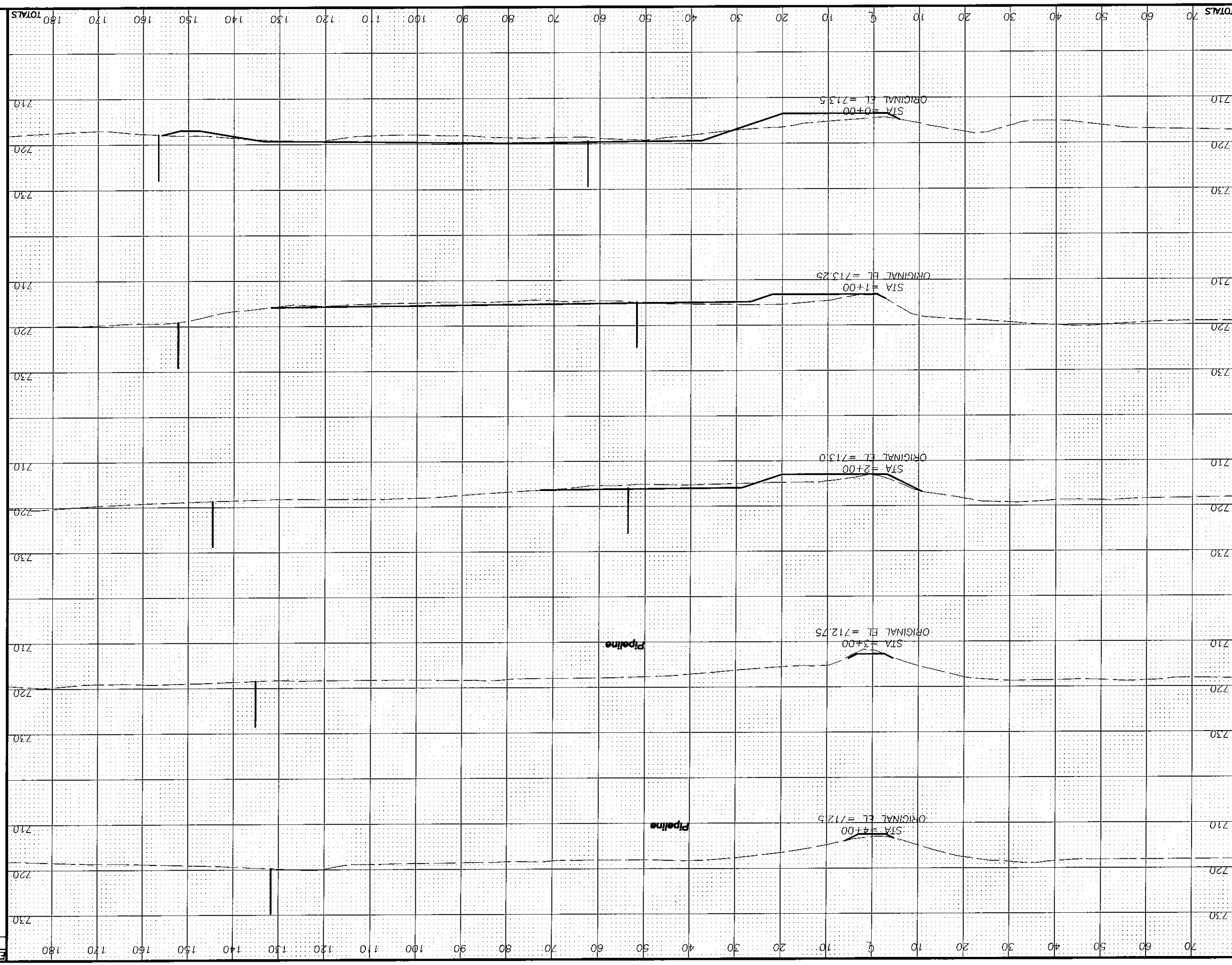
Mit-DEF-CR 27

5/9

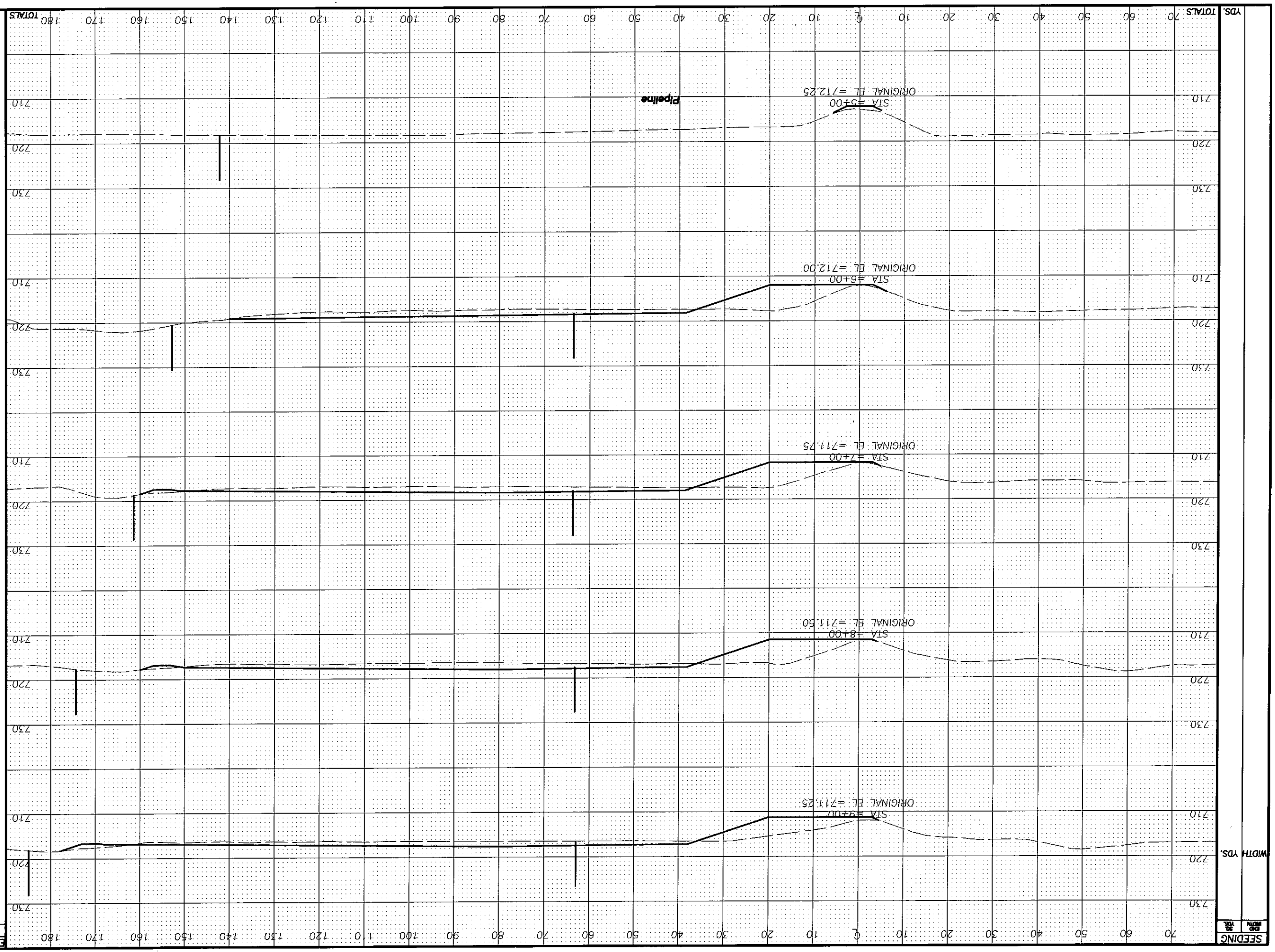


North Channel CROSS SECTIONS
STA. 0+00 TO STA. 4+00

CALCULATED
CHECKED

Mit-DEF-CR 27

6/6

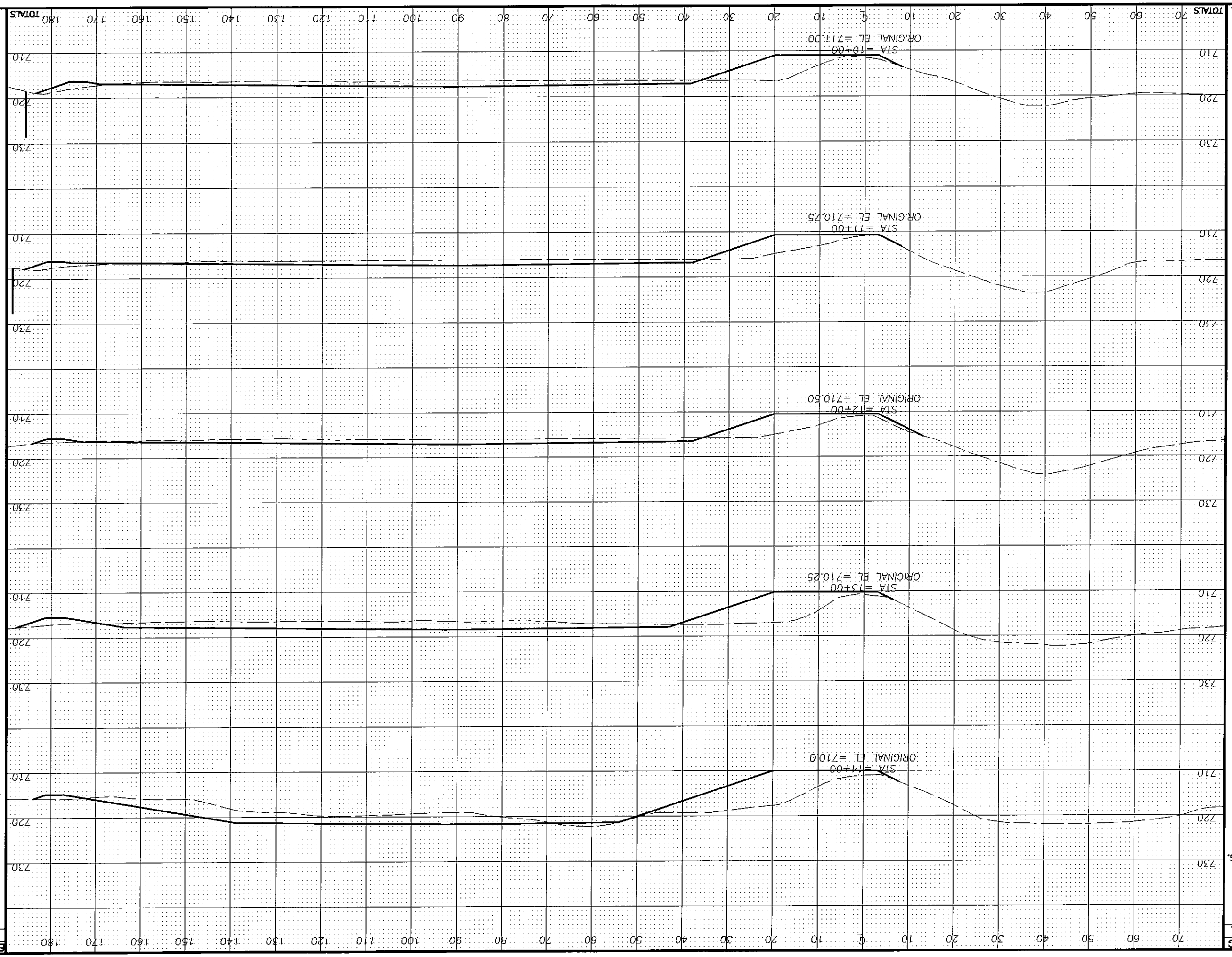


CROSS SECTIONS

STA. 5+00 TO STA. 9+00

Mit-DEF-CR 27

7/9



Mit-DEF-CR 27

8/9

North Channel CROSS SECTIONS

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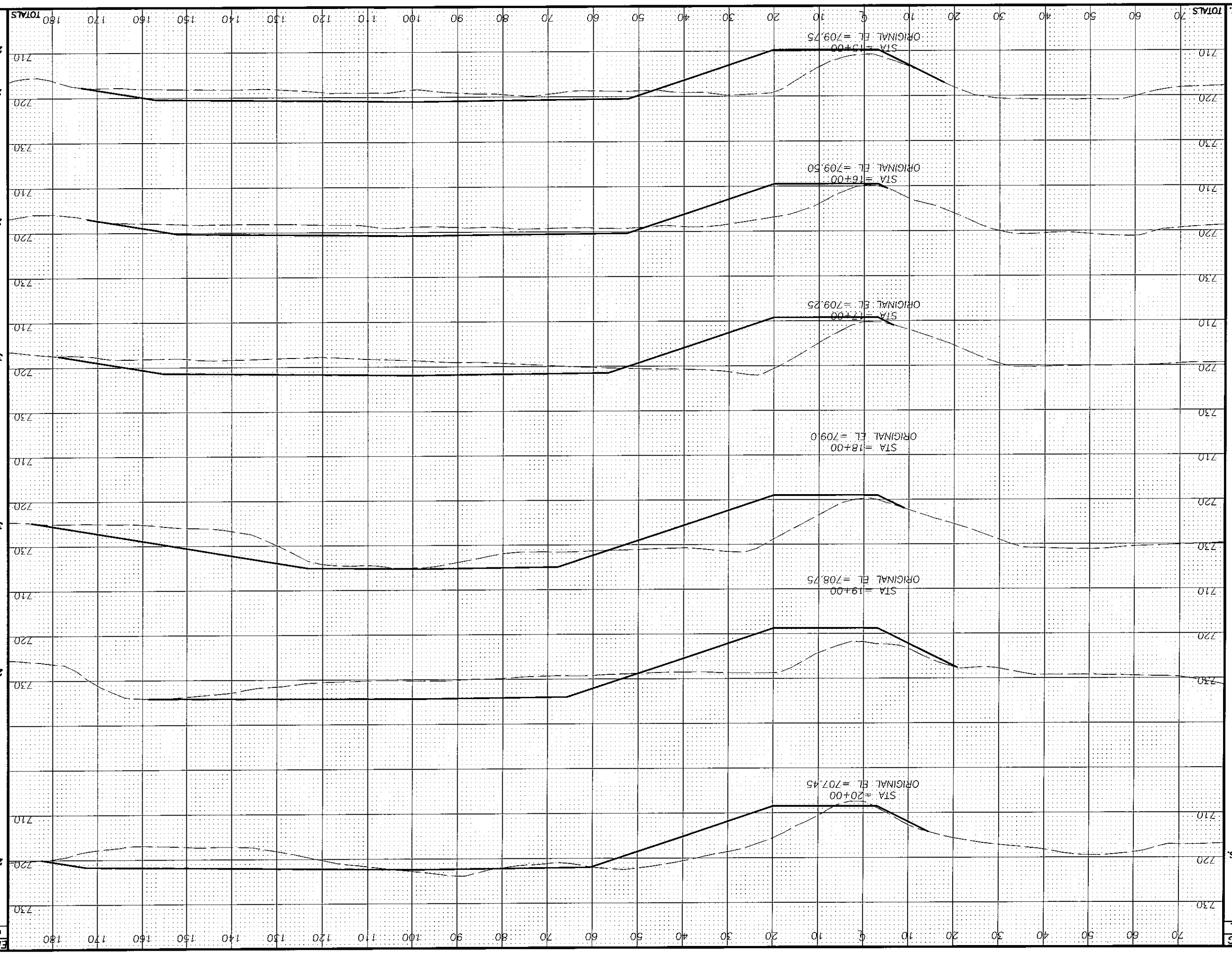

	CUT	FILL	CUT	FILL
END AREA	248	313	299	231
VOLUME	1013	1187	1133	828
	1013	1187	1133	828
	248	313	299	231
	328	201	800	216
	980	980	800	828
	328	201	800	216
	980	980	800	828
	1013	1187	1133	828
	1013	1187	1133	828
	2941	2941	2531	1872

CALCULATED ——

CHECKED ——

CROSS SECTIONS

STA. 15+00 TO STA. 20+00

Mit-DEF-CR 27

9/9

OFFSITE MITIGATION PLAN
Widened Channel Area shown in blue
25' Soil and Water maintenance access shown in green
Existing forested wetland shown in orange
Proposed forested riparian buffer shown in red
Panhandle Pipeline Easement

Defiance Soil & Water Conservation District

From the farm to the classroom the neighborhood

Serving Defiance County Since 1949

Warren Schlatter, P.E., P.S.
Defiance County Engineer
510 Court Street, Suite 201
Defiance, OH 43512

January 23, 2012

Warren,

Included are my recommendations for the riparian tree planting area per USDA's Natural Resource Conservation Service's specifications. The two predominant soil types on the site are Latty Clay and Paulding Clay, both heavy clay soils that are very poorly drained. The tree/shrub recommendations include species that can tolerate wet soils and periods of standing water. All recommended tree species shall be bare-root stock capable of being planting using a pull-behind tree planter.

The hardwood tree species are to be planted on 10-foot spacing within rows and 10-foot spacing between rows at a rate of 435 per acre. In addition to the hardwood tree species listed, I have included a listing of shrub species that can be utilized as well. Shrub planting is entirely optional and per riparian tree planting specifications, shrubs shall make up no more than 25% of the riparian planting area. If planted, the shrubs should be planted on 5-foot spacing within rows and 10-foot spacing between rows at a rate of 870 per acre.

Trees	**Shrubs**
American Sycamore	American Cranberrybush
Black Gum	American Elderberry
Black Willow	Button Bush
Bur Oak	Red-osier Dogwood
Eastern Cottonwood	Silky Dogwood
Pin Oak	
Red Maple	
River Birch	
Silver Maple	
Swamp White Oak	
Sweetgum	

Please contact me with any questions or concerns you may have.

Best regards,

Jason A. Roehrig
District Technician
Defiance SWCD

06879 Evansport Road *Suite C* Defiance, OH 43512 *Phone:* 419-782-8751 *Fax:* 419-782-1791 Email: swcd@defiance-county.com

Defiance Soil & Water Conservation District

From the farm to the classroom the neighborhood

Serving Defiance County Since 1949

January 12, 2012

Warren Schlatter, P.E., P.S.
Defiance County Engineer
510 Court Street, Suite 201
Defiance, OH 43512

Warren,

Please find my seeding recommendations below, per the Natural Resource Conservation Service's standards, regarding the proposed seeding of the two-stage ditch banks and the hardwood tree mitigation site.

The ditch bank seeding mix is designed to provide critical area erosion protection while including species favorable for wildlife. Although these species are introduced, they are well adapted to prevent bank erosion under high flow events.

The hardwood tree mitigation site seeding mix is designed to provide wildlife habitat/forage utilizing native grasses, forbs, and legumes. Concurrently, the rapid establishment of the native Canada Wildrye will effectively control soil erosion on the site. The grass, forb, and legume seed selection also took into account the potential for competition with the tree seedlings, with selection for lower growing species. With the exception of the Canada Wildrye, where seed heads can reach a height of four feet, the remaining species will remain in the range of fifteen to thirty-six inches. This should facilitate the establishment of the tree planting while the Canada Wildrye and Virginia Wildrye will also grow well under shaded conditions.

Ditch Bank Seeding Mix:

Kentucky bluegrass	65.00 pounds/acre
Orchardgrass	65.00 pounds/acre
Annual ryegrass	23.00 pounds/acre
Perennial ryegrass	43.00 pounds/acre
Red clover	20.00 pounds/acre

Hardwood Tree Mitigation Site Seeding Mix:

Canada Wildrye	1.70 pounds/acre
Virginia Wildrye	1.70 pounds/acre
Sideoats Grama	1.50 pounds/acre
Partridge Pea	0.75 pounds/acre
Black-eyed Susan	0.50 pounds/acre

Please contact me with any questions or concerns you may have.

Best regards,

Jason A. Roehrig
District Technician
Defiance SWCD

06879 Evansport Road *Suite C* Defiance, OH 43512 *Phone:* 419-782-8751 *Fax:* 419-782-1791 Email: swcd@defiance-county.com

LAKE ERIE CREP – Revised April 2009
Hardwood Tree Planting
Practice Code CP3A

Payment Rate	**225% Base CRP Soil Rental Rate**
ODNR-SWCD Incentive Payment	**ODNR/LECREP participant voluntary agreement to extend environmental benefits an additional 15 years - $500/acre**
ODNR-SWCD Bonus Payment	**Tree Planting Bonus - $100/acre**
Payment Duration	**15-Year CRP Contract Payment Period**
Contract Duration	**30 Years with Voluntary SWCD Extension**
Type of Cover	**Native Hardwood Trees**
Allowable Width	**150 feet (300 feet in alluvial soils)**

ODNR, SWCDs & USDA
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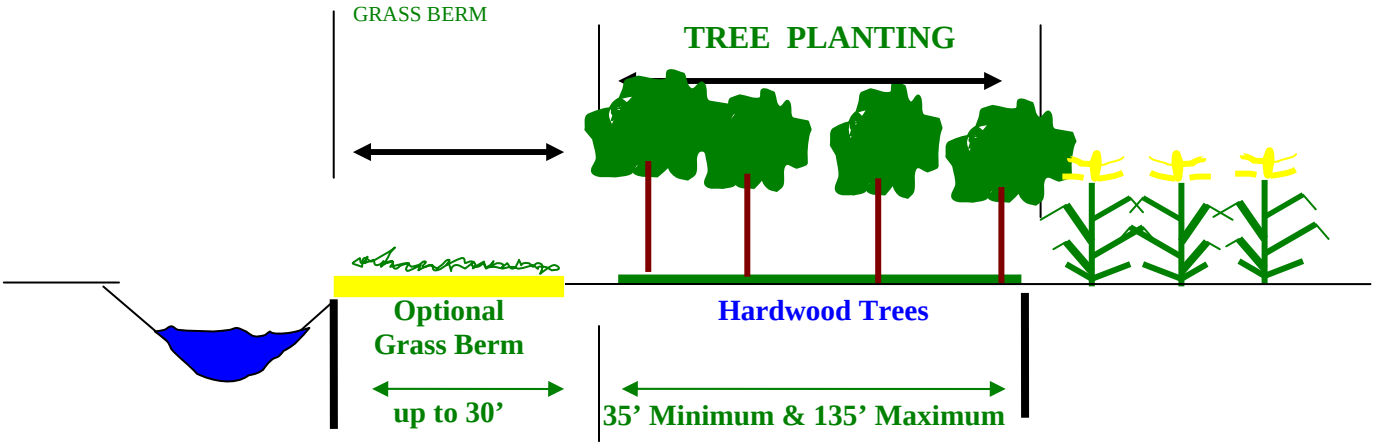
USDA IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER

LAKE ERIE CREP – Revised April 2009

Hardwood Tree Planting – CP3A

Schematic of Practice Requirements



Maximum Total Width = 150'
(300' in alluvial soil)

CP3A payment width will be based on eligible cropland enrolled within this area and any associated grass berm.

Practice Requirements

Location Enrolled area must be adjacent to a stream, river or eligible drainage ditch. Eligible drainage ditch is defined as having a minimum bottom width of 3 feet and minimum side slope ratio of 2 to 1. Enrolled area must be eligible cropland.

Width Total enrolled width shall be a minimum width of 35 feet of tree planting and a maximum of 150 feet (300 feet in alluvial soil).

Vegetation Vegetation on the CP3A tree planting shall consist of a minimum of 35 feet of trees. A grass berm (not to exceed 30 feet from the stream bank) is allowed next to maintained drainage channels and may be included in contract payment acres. The grass berm must be enrolled in CRP or protected via contract, agreement, or under a maintenance program. Vegetation in the CP3A hardwood tree planting shall consist of a minimum of 75 percent native hardwood trees and may include up to 25 percent native shrubs or softwood trees. Species shall be according to forester's planting plan. Tree species and spacing shall be according to Table 1, Appendix B, Tree/Shrub Recommendations, of the NRCS Field Office Technical Guide and shall mirror riparian forest planting design. Maximum row width shall be 10 feet.

New grass berm seedings shall be a four species mix of grasses, legumes, or forbs best suited to wildlife per Appendix A, Table 3, of the NRCS Field Office Technical Guide.

Practice Spec Practice and vegetation shall conform to NRCS Field Office Technical Guide Specification #612, Tree and Shrub Planting.

USDA is an Equal Opportunity Provider and Employer

EXHIBIT B

Environmental Covenant

To be recorded with Deed Records - R.C. 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into pursuant to Ohio Revised Code ("R.C.") 5301.80 to 5301.92 by **Enviro Artscaping, Inc.**, (an Ohio corporation), having an address of 28115 Leach Road, Apt. B, Defiance County, Ohio 43512, (the "Owner") and **Farmers and Merchants State Bank** (the "Mortgagee"), having an address of 307 – 311 N. Defiance Street, P.O. Box 216 Archbold, Ohio, 43502. and Defiance County, a political subdivision (the "Holder"), having an address of 510 Court Street, Suite 201, Defiance, Ohio 43512, and the Ohio Environmental Protection Agency ("Ohio EPA"), as a non-holder agency, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations set forth herein.

WHEREAS, Enviro Artscaping, Inc. is the owner in fee of certain real property, which contains the Covenant Area and is situated in Defiance County, Ohio, in the Maumee watershed;

WHEREAS, the Mortgagee is the holder of a mortgage and a Judgment of Foreclosure on certain real property, which contains the Covenant Area;

WHEREAS, Defiance County intends to construct a road project on CR 27, southeast of the City of Defiance and northwest of Ayersville, Defiance County, Ohio ("the Project Site"), which project impacts certain surface water features located on the Project Site and the approvals for which project require Defiance County to obtain a water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341, from the Ohio EPA and a permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, ("404 permit") coverage from the Army Corps of Engineers ("the Army Corps");

WHEREAS, in order to mitigate such impacts on the Project Site and as a condition of being issued the 404 permit, the Army Corps and the Ohio EPA are requiring that Defiance County obtain access to mitigation property and protect this property in perpetuity with an environmental covenant;

WHEREAS, to meet the conditions in the 404 permit No. 2009-01864, Defiance County has entered into an Access Easement Agreement with the Owner and Mortgagee which provides, among other things, that Defiance County is authorized to construct, implement and maintain the mitigation requirements contained in Defiance County's 404 permit and the mitigation plan on a specific area ("the Covenant Area") of the Owner's property;

WHEREAS, the Covenant Area possesses substantial value in conserving and

protecting the physical, biological and chemical integrity of Behrens Ditch and Behrens Ditch Lateral (a.k.a. unnamed tributary of Behrens Ditch) and is important in the protection of the existing or designated use of the waters of the state pursuant to § 303 of the Clean Water Act, 33 U.S.C. § 1313, and § 6111.041 of the Ohio Water Pollution Control Act. The specific conservation values (hereinafter "Conservation Values") of the Covenant Area will be documented in a document to be submitted pursuant to Defiance County's 404 permit (the "Mitigation Plan").

WHEREAS, Defiance County proposes to fulfill its obligation to ensure the Covenant Area and the Covenant Area's Conservation Values are protected in perpetuity by this Environmental Covenant.

Now therefore, Owner, Mortgagee, Holder and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. 5301.80 to 5301.92.

2. Covenant Area. The Covenant Area is an approximately 28.7 acre tract of real property located at 5557 State Route 66 and 5719 State Route 66, Defiance, Tiffin Township, Defiance County, Ohio, parcel numbers K140025000201, K140025000203 and K140025000502, in Defiance County, Ohio, and more particularly described in Exhibit A and Exhibit B attached hereto and hereby incorporated by reference herein ("the Covenant Area").

3. Enviro Artscaping, Inc. is the fee simple owner of the Covenant Area. Gerald Richter is the President of Enviro Artscaping, Inc. and has the authority to execute this Environmental Covenant on behalf of Enviro Artscaping, Inc. Farmers and Merchants State Bank is the holder of a mortgage and Judgment of Foreclosure that covers the Covenant Area.

4. Defiance County is the holder of this Environmental Covenant.

5. Activity and Use Limitations. As part of the conditions set forth in the 404 permit issued to Defiance County and given the conservation values of the Covenant Area, the Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

a. Division: Any division or subdivision of the Covenant Area is prohibited;

b. Commercial Activities: Commercial development or industrial activity on the Covenant Area is prohibited;

c. Construction: The placement or construction of any man-made

modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than construction activities that are authorized by the 404 mitigation plan approved by the Army Corps and authorized by permits issued by Ohio EPA for the Covenant Area;

d. Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the 404 mitigation plan approved by the Army Corps and authorized by permits issued by Ohio EPA for the Covenant Area;

e. Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and

f. Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the 404 mitigation plan approved by the Army Corps and authorized by permits issued by Ohio EPA for the Covenant Area.

Environmental issues in the Covenant Area as described in the Mitigation Plan dated January 24, 2012, will be addressed by the Holder as part of the Mitigation Plan.

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 R.C. 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 Covenant Area 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 R.C. 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the 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 provision of this Covenant. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees and the Holder, its agents, contractors, and employees the right of access to

the Covenant Area in connection with the implementation or Enforcement of this Environmental Covenant. Mortgagee hereby consents to the Owner's grant of access to the Ohio EPA and the Holder.

9. Compliance Reporting. Owner, so long as Owner maintains an ownership interest in the Covenant Area, and any Transferee shall submit to Ohio EPA, upon request by the Ohio EPA, written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Covenant Area shall contain a notice of the activity and use limitations set 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 _____, 2012, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE DEFIANCE COUNTY RECORDER ON _____, 20__, IN [DOCUMENT ____, *or* BOOK___, PAGE ____,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:
>
> [In the instrument conveying the property interest, the above text shall be followed by a restatement of the restrictions from Paragraph 5 of this Covenant]

Owner shall notify Army Corps at least sixty (60) days prior to any proposed transfer of its interest in the Covenant Area. Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Covenant Area. Owner's notice shall include the name, address and telephone number of the intended Transferee, and a copy of the original document that imposed restrictions on the Covenant Area. The provisions of Paragraph 10 do not require Owner to provide notice of the activity and use limitations to Mortgagee upon transfer of the Owner's interest in the Covenant Area to Mortgagee.

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

a. that the Owner is the owner of the Covenant Area;

b. that the Owner holds fee simple title to the Covenant Area and is not aware of any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant; and

c. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided to the extent of

its ownership and to carry out all obligations hereunder; and

d. 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 or by which Owner may be bound or affected.

12. Mortgagee consents to this Environmental Covenant to the extent required or permitted by law. Mortgagee further agrees that foreclosure of its mortgage interest in the property will not terminate this Environmental Covenant.

13. Amendment or Termination. This Environmental Covenant may not be amended or terminated without at least sixty (60) days prior notice to the Army Corps of the proposed Amendment or termination. This Environmental Covenant may be amended or terminated only by consent of all of the following: the Owner or a Transferee, the Holder, the Mortgagee, and the Ohio EPA, pursuant to R.C. 5301.89 or 5301.90 and other applicable law. "Amendment" means 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. "Termination" means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Amendment or termination shall not affect Defiance County's obligations pursuant to the 404 permit.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA, the Owner or a Transferee, the Mortgagee, and the Holder. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Holder shall file such instrument for recording with the Defiance County Recorder's Office, and shall provide a true copy of the recorded instrument to Ohio EPA and the Army Corps.

Owner waives its right to consent to amendment or termination of this Environmental Covenant following conveyance or termination of its interest in the real property containing the Covenant Area.

Mortgagee waives its right to consent to amendment or termination of this Environmental Covenant following a release of its interest in the real property containing the Covenant Area.

14. 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.

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

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

17. 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 Covenant Area with the Defiance County Recorder.

18. Distribution of Environmental Covenant. The Holder shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, the Mortgagee, the Owner, any lessee, any other person who signed the Environmental Covenant, each person holding a recorded interest in the Property, the Army Corps, and any other person designated by Ohio EPA.

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

Ohio Environmental Protection Agency
Manager, Compliance Monitoring and Enforcement Unit
Division of Surface Water
50 W. Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

Ohio Environmental Protection Agency
Northwest District Office
Section Manager
Division of Surface Water
347 North Dunbridge Road
Bowling Green, Ohio 43402

Warren Schlatter, P.E., P.S.
Defiance County Engineer
510 Court St., Suite 201
Defiance, Ohio 43512

Rex D. Rice
Executive Vice President and Senior Commercial Loan Director
Farmers and Merchants State Bank
307 – 311 N. Defiance Street
P.O. Box 216
Archbold, Ohio 43502

U.S. Army Corps of Engineers, Buffalo District
Attn.: Regulatory Branch
1776 Niagara Street
Buffalo, NY 14207

For as long as Enviro Artscaping owns the Covenant Area:
Gerald Richter
President
Enviro Artscaping, Inc.
28115 Leach Road, Apt. B
Defiance, Ohio 43512

The requirement to provide notice to Mortgagee shall cease following a release of its interest in the real property containing the Covenant Area.

20. Counterparts. This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant.

The remainder of this page is intentionally left blank.

The undersigned representatives of the Owner, Mortgagee and Holder represent and certify that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

OWNER: Enviro Artscaping, Inc.

Gerald R. Richter

ENVIRO ARTSCAPING, INC.

By: Gerald Richter

Its: President

Date: April 2nd 2012

State of Ohio)
) ss:
County of Defiance)

Before me, a notary public, in and for said county and state, personally appeared Gerald Richter, a duly authorized representative of Enviro Artscaping, Inc., who acknowledged to me that he did execute the foregoing instrument on behalf of Enviro Artscaping, Inc.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 2nd day of April, 2012.

Stacy Salinas
Notary Public

Stacy Salinas
Notary Public State of Ohio
My Comm Exp Mar 26, 2013

MORTGAGEE:

_____,
FARMERS & MERCHANTS STATE BANK

By: Rex D. Rice

Its: EXECUTIVE VICE PRESIDENT

Date: 4-12-12

State of Ohio)
) ss:
County of Fulton)

Before me, a notary public, in and for said county and state, personally appeared Rex D Rice, a duly authorized representative of Farmers & Merchants State Bank, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of Farmers & Merchants State Bank

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 12th day of April, 2012.

Nancy J. Figy
Notary Public

Nancy J. Figy
Notary Public, State of Ohio
My Commission Expires July 14, 2015

HOLDER:

Warren Schlatter,
DEFIANCE COUNTY

By: Warren Schlatter

Its: County Engineer

Date: April 13, 2012

State of Ohio)
) ss:
County of Defiance)

Before me, a notary public, in and for said county and state, personally appeared Warren Schlatter, a duly authorized representative of Defiance County, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of Defiance County.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 13th day of April, 2012.

Erica Smith, Nee (Alvarez)
Notary Public

State of Ohio
My Commission Expires
November 13, 2013

OHIO ENVIRONMENTAL PROTECTION AGENCY

By: _____
Director

Date: 5/7/12

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared SCOTT NANNY, 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 7th day of May, 2012.

NOTARIAL SEAL STATE OF OHIO

Charma Diane Casteel
Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
May 10, 2014

EXHIBIT A

Legal Description

Being all of the part of parcels described in Defiance County Deed Volume 266, Page 597 and Defiance County Official Records Volume 106, Page 840 lying east of a line 666.28' east of and parallel to the west line of Section 25 in Tiffin Township.

Being further described as:

Located in the North half of the Southwest Quarter of Section 25 in Tiffin Township, T5N, R4E, Defiance County, Ohio;

Commencing at an iron pin found in a monument box in State Route 66 and being the west quarter corner of Section 25;

Thence S 88°04'25"E along the east west quarter line of Section 25 a distance of 45.00 feet to an iron pin found;

Thence continuing S 88°04'25"E along the east west quarter line of Section 25 a distance of 621.28 feet to point, said point being the true point of beginning;

Thence continuing S 88°04'25"E along the east west quarter line of Section 25 a distance of 1296.72 feet to point;

Thence continuing S 88°04'25"E along the east west quarter line of Section 25 a distance of 654.33 feet to an iron pin found monumenting the center of Section 25;

Thence S 01°01'19"W along the north south quarter line of Section 25 a distance of 154.40 feet to a point on the centerline of Behrens Ditch;

Thence N 84°28'36"W along the centerline of Behrens Ditch a distance of 362.47 feet to a point;

Thence S 87°06'18"W along the centerline of Behrens Ditch a distance of 293.52 feet to a point on the East line of the West half of the East half of the Southwest Quarter of Section 25;

Thence S 01°00'00"W along the East line of the West half of the East half of the Southwest Quarter of Section 25 a distance of 1036.04 feet to a point on the centerline of a lateral of Behrens Ditch;

Thence N 37°42'21"W along the centerline of a lateral of Behrens Ditch a distance of 108.68 feet to a point;

Thence N 52°25'27"W along the centerline of a lateral of Behrens Ditch a distance of 225.34 feet to a point;

Thence S 80°51'25"W along the centerline of a lateral of Behrens Ditch a distance of 105.42 feet to a point;

Thence N 78°42’08”W along the centerline of a lateral of Behrens Ditch a distance of 88.24 feet to a point;

Thence N 62°05’28”W along the centerline of a lateral of Behrens Ditch a distance of 253.67 feet to a point;

Thence N 75°03’16”W along the centerline of a lateral of Behrens Ditch a distance of 175.62 feet to a point;

Thence N 66°34’36”W along the centerline of a lateral of Behrens Ditch a distance of 185.87 feet to a point;

Thence N 74°17’20”W along the centerline of a lateral of Behrens Ditch a distance of 232.08 feet to a point;

Thence N 55°02’09”W along the centerline of a lateral of Behrens Ditch a distance of 57.78 feet to a point;

Thence N 88°20’17”W a distance of 15.41 feet to an iron pin found;

Thence N 00°56’07”E a distance of 677.64 feet to the place of beginning;

Containing a total of 28.721 acres.

Including all of the 2.214 acre parcel described in Deed Volume 266, Page 597. (Auditors Parcel K140025000502) (Measures 2.154 by this survey)

Including 6.674 acres of the 13.711 acre parcel described in Deed Volume 266, Page 597. (Auditors Parcel K140025000201)

Including 19.893 acres of the 23.311 acre parcel described in Official Records Volume 106, Page 840. (Auditors Parcel K140025000203)

All bearings based on GPS observations using Ohio State Plane North NAD83.

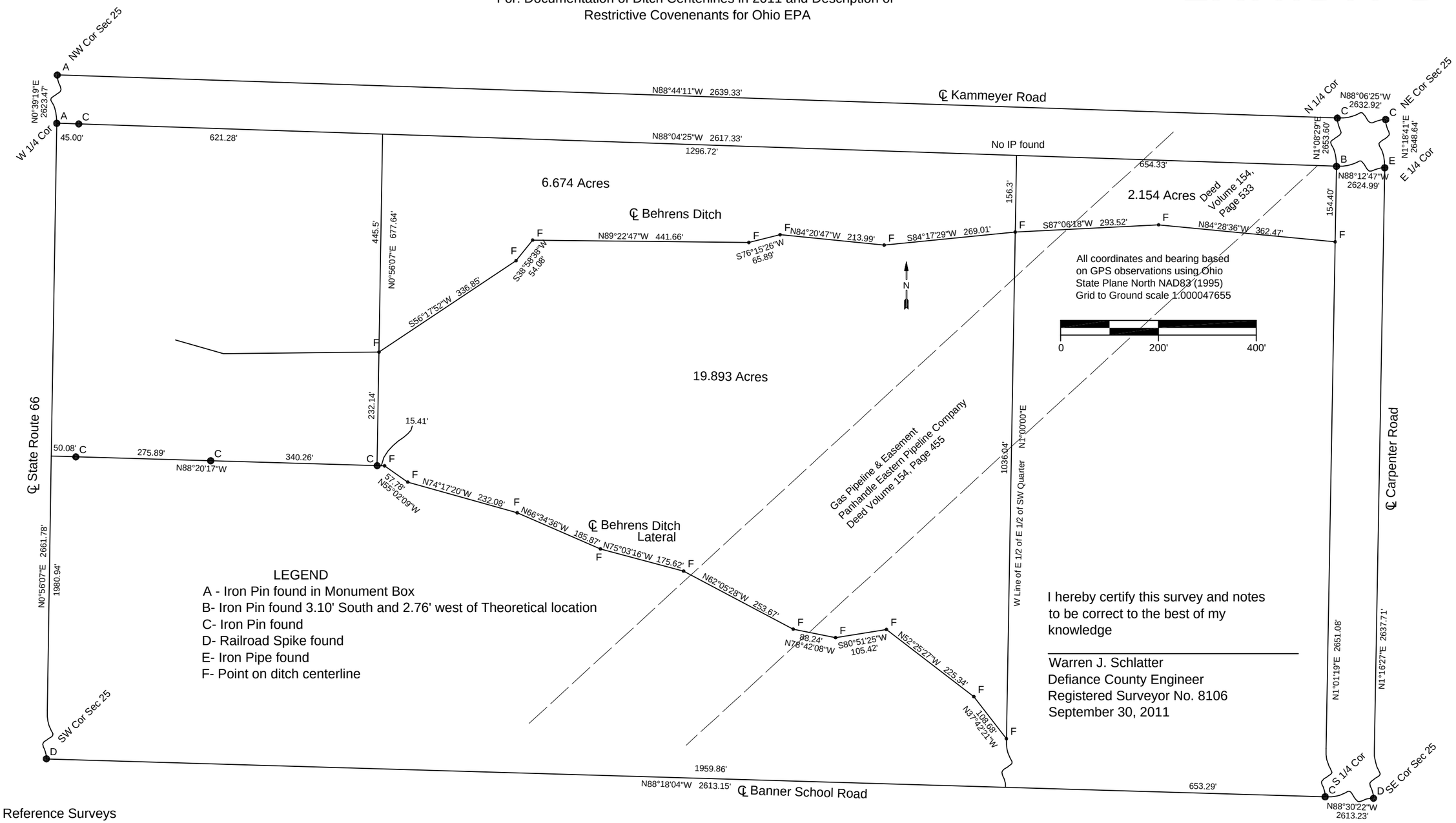
This description was prepared by Warren Schlatter, Registered Ohio Surveyor Number 8106 on September 30, 2011.

PLAT OF SURVEY

Being part of the North half of the Southwest Quarter of Section 25, T5N, R4E, Tiffin Township, Defiance County, State of Ohio

For: Documentation of Ditch Centerlines in 2011 and Description of Restrictive Covenenants for Ohio EPA

EXHIBIT B



Reference Surveys

05-25-04	05-25-19
05-25-06	05-25-20
05-25-08	