



**Environmental Protection Agency**

John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

OHIO E.P.A.

JUN 14 2011

June 14, 2011

Ontario Land Company  
Attn: Mr. John Eavenson  
6150 Park Square Drive, Suite A  
Lorain, OH 44053

ENTERED DIRECTOR'S JOURNAL  
**Certified Mail**  
I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: John L. Lissler Date: 6-14-11

Re: Windsor Point Part II  
Lorain County, City of North Ridgeville  
Grant of Section 401 Water Quality Certification (revised Minimal Degradation Alternative)  
ACOE Permit No. 2004-02117  
Ohio EPA ID No. 083394

Dear Stakeholders:

I hereby authorize the above referenced project under the following authority and subject to the following modifications and/or conditions:

Section 401 Water Quality Certification

Pursuant to Section 401 of the Federal Water Pollution Control Act, Public Law 95-217, I hereby certify that the above-referenced project will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act.

This authorization is specifically limited to a Section 401 Water Quality Certification (here after referred to as "permit") with respect to water pollution and does not relieve the Permittee of further Certifications or Permits as may be necessary under the law. I have determined that a lowering of water quality in the Black River (HUC 04110001) as authorized by this permit is necessary. I have made this determination based upon the consideration of all public comments, and including the technical, social, and economic considerations concerning this application and its impact on waters of the state.

**PART I ON-SITE WATER RESOURCES AND IMPACTS**

**A. Watershed Setting**

**HUC (04110001-050-020):** wetlands and unnamed tributaries to Klein Ditch, a tributary to French Creek, a tributary of the Black River mainstem at river mile 5.1. The entire Black River watershed has been designated as an Area of Concern (AOC) by USEPA. Great Lakes AOCs are severely degraded geographic areas within the Great Lakes Basin. They are defined by the U.S.-Canada Great Lakes Water Quality Agreement (Annex 2 of the 1987 Protocol) as "geographic areas that fail to meet the general or specific objectives of the agreement where such failure has caused or is likely to cause impairment of beneficial use of the area's ability to support aquatic life."

**Designated aquatic life use:** French Creek is designated warmwater habitat (WWH); French Creek from Gulf Road to the mouth is designated as seasonal salmonid habitat.

**Aquatic life use (ALU) Attainment Status:** Of the reach of French Creek sampled, 1.4 miles partially attained, and 3.7 miles did not attain the biological criteria for WWH. The Windsor Point Part II project site is located in the partially attaining portion of the French Creek watershed. According to the Ohio EPA water quality summary for French Creek, "suburban land use within the French Creek sub-basin negatively affects habitat quality, primarily in that siltation from runoff results in embedded riffles."

**B. Site Setting**

The project site is located on approximately 125 acres along Avalon Drive west of Stoney Ridge Road in North Ridgeville (see Attachment 1). The pre-construction site consisted of undisturbed second growth deciduous forest (Attachment 2). The current site is bordered to the south and east by residential and active agricultural fields; and to the north and west by residential sub-divisions.

**C. Project Description**

Windsor Point Part II is a continuation of a multi-phase residential development of 227 homes that has been under construction since 2003. The overall plan for the sub-division includes construction in seven phases. Phase 1 and portions of phases 2 through seven have already been constructed.

**D. Authorized Project Impacts**

Implementation of the revised minimum degradation alternative will impact approximately 1,674 linear feet (LF) of the streams (62%) and 0.96 acre (7%) of the wetlands on the project site. Specifically, 1,225 LF of stream was filled prior to permit issuance and the remaining 449 LF of stream was isolated from previous stream segments/flow. As a result, the abandoned 449 LF no longer functions as a natural stream (see Attachment 3 and Table 1). Unauthorized impacts to 0.31 acre of wetland occurred prior to the issuance of this permit. Total proposed wetland impacts are summarized in Table 2.

**Table 1. After-the-Fact Stream Impacts**

Stream ID	Type E, I, or P	HHEI Score*	PHWH Stream Class	Total Length on Site (lf)	Total Length Impacted (lf)	Impact Type	% Avoided
6	I	50	2	1693	403/449 (852)	Fill/abandoned channel**	50%
7	I	50	2	987	822	Fill	17%
<b>TOTALS</b>				2,680	1,674		38%

\* Based on after-the-fact HHEI completed by Ohio EPA 3/9/10

\*\*Northern 449 LF segment of SR #6 was abandoned when flows from the southern segment were diverted through a culvert to a new stormwater basin (#1) circa 2005 (see Attachment 3).

**Table 2. Total Proposed Wetland Impacts**

Wetland ID	Forested or Non-Forested	Category/ORAM	Acreage on Site*	Acreage Impacted	% Avoided
C/D	Forested	2/41	0.89	0.32	64
E/F	Forested	2/41*	1.60	0.18	91
G	Non-forested	2/36*	0.05	0.05	0
I	Forested	2/33.5	0.52	0.00	100
L	Forested	1/27*	0.16	0.00	100
M**	Forested	2/45*	0.31	0.31	0
O/OO/W	Forested	2/39*	0.93	0.00	100
P/R	Forested	2/50*	3.86	0.003	100
S	Forested	2/45*	1.32	0.0001	99
T	Forested	2/50*	3.00	0.07	98
U	Non-forested	1/23*	0.11	0.0	100
U	Forested	2/30.5	0.11	0.0	
<b>TOTALS</b>			12.86	0.93	93

\* As provided by applicant

\*\*Wetland M has already been filled without prior authorization (see Attachment 4)

Previous impacts to 0.45 acre of forested category 2 isolated wetlands were authorized in permits #042139 and #083363;

3. Lakes

Impacts to lakes are not authorized under this permit.

**PART II TERMS & CONDITIONS**

- A. Terms and conditions outlined in this section apply to project and mitigation construction as described in this permit.
- B. This permit shall be valid for a period of 5 years from the date of issuance.
- C. The Permittee shall notify Ohio EPA, in writing, and in accordance with *Part IV (NOTIFICATIONS TO OHIO EPA)* of this permit, upon the start and completion of site development.
- D. By December 31 of each year following the date of this permit and through the duration of project and mitigation construction, a "project update report" shall be submitted to Ohio EPA. This report shall document the status of the filling activities at the development site including dates filling was started and completed, or are expected to be started and completed. If filling activities have not been completed, a drawing shall be provided, which shows the locations and acreage/feet of wetlands/streams that have not yet been filled. If filling activities have been completed, then as-built drawings shall be submitted, which show where fill was placed.
- E. A copy of this permit shall remain on-site for the duration of the project and mitigation construction activities.
- F. Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project must be reported within 24 hours of occurrence to Ohio EPA, Division of Surface Water, Section 401/IWP Manager, (614-644-2001), for further evaluation.
- G. Pesticide application(s) for the control of plants and animals shall be applied in accordance with rule 3745-1-01 of the Ohio Administrative Code, and may require a site specific application permit from Ohio EPA. Such a permit may be obtained by calling 614-644-2001 and speaking with the Toxicology Specialist.
- H. Blasting shall not be done within or near waters of the state (including wetlands) without prior consultation with the Ohio Department of Natural Resources, Division of Wildlife, to determine what protective measures should be taken to minimize damage to wildlife.

- I. Any authorized representative of the director shall be allowed to inspect the authorized activity at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
- J. In the event that there is a conflict between the permit application, including the mitigation plan, and the conditions within this permit, the condition shall prevail unless Ohio EPA agrees, in writing, that the permit application or other provision prevails.
- K. The Permittee shall provide electronic maps of the development area and the mitigation area to Ohio EPA's Environmental Mitigation & Special Permitting section within 30 days of the date of this permit. When sending the electronic files, include the Ohio EPA ID Number and the Army Corps of Engineers Number (if applicable). If possible these electronic maps shall be GIS shape files or Geodatabase files. If this is not possible, the electronic maps shall be in another electronic format readable in GIS (GIF, TIF, etc). The electronic files shall be sent to the following e-mail address:  
[Jeffrey.Boyles@epa.state.oh.us](mailto:Jeffrey.Boyles@epa.state.oh.us)

If the files are too large to send by e-mail, a disk containing the electronic files shall be mailed to the following address:

Ohio Environmental Protection Agency  
Division of Surface Water  
Environmental Mitigation & Special Permitting  
Attn: Jeff Boyles  
50 West Town Street, Suite 700  
PO Box 1049  
Columbus, OH 43216-1049

- L. This proposal may require other permits from Ohio EPA. For information concerning application procedures, contact the Ohio EPA District Office as follows:

Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
330-963-1200

**Additional information regarding environmental permitting assistance at Ohio EPA can be found at [http://www.epa.ohio.gov/dir/permit\\_assistance.aspx](http://www.epa.ohio.gov/dir/permit_assistance.aspx)**

M. Best Management Practices (BMPs)

1. All water resources and their buffers, which are to be avoided, shall be clearly indicated on site drawings, demarcated in the field and protected with suitable materials (e.g., silt fencing) prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process.
2. All BMPs for storm water management shall be designed and implemented in accordance with the most current edition of the Ohio Department of Natural Resources Rainwater and Land Development Manual, unless otherwise required by the National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges associated with construction activities (construction general permit), if required.

A copy of the Rainwater and Land Development Manual is available at:  
<http://www.dnr.state.oh.us/tabid/9186/default.aspx#Manual>

A copy of the NPDES construction general permit is available at:  
[http://www.epa.ohio.gov/dsw/storm/construction\\_index.aspx#Construction%20General%20Permit](http://www.epa.ohio.gov/dsw/storm/construction_index.aspx#Construction%20General%20Permit)

3. Straw bales shall not be used as a form of erosion/sediment control.
4. Temporary fill shall consist of suitable non-erodible material and shall be stabilized to prevent erosion.
5. Materials used for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt is specifically excluded from use as fill or bank protection.
6. Concrete rubble used for fill or bank stabilization shall be a minimum size/weight of concrete in the range of 100-500 lbs per piece or 12 inches to 18 inches in diameter; free of exposed re-bar; and, free of all debris, soil and fines.
7. Cadmium chromium arsenate (CCA) and creosote treated lumber shall not be used in structures that come into contact with waters of the state.
8. Trees removed from temporary impact areas to facilitate construction shall be replaced with appropriate tree species native to Ohio.

N. Wildlife Protection

1. According to the US Fish & Wildlife Service (3/20/08) the project site supports 54.72 acres of low to moderate quality potential habitat for Indiana bats. In order to protect the Indiana bat during this development, trees shall not be cut

or cleared between April and September 30, unless specifically approved by the U.S. Fish and Wildlife Service.

### **PART III MITIGATION**

#### **A. Description and Timing of Required Mitigation**

For the impacts detailed in Part I, Item D of this WQC, the Permittee shall implement compensatory mitigation in accordance with the conditions in this permit.

#### **Charlemont Reservation Wetland Mitigation Site**

The Charlemont Reservation mitigation site is an approximately 40 acre parcel (25 acres allocated for wetland restoration; 15 acres allocated for upland buffer) south of Wellington within the 757 acre Charlemont Reservation. The entire 757 acres is currently undeveloped and is owned by the Lorain County Metroparks. The mitigation land parcel is located in southwestern Lorain County near the Ashland County line, southeast of the junction of Quarry and New London Eastern Roads in Huntington Township (see Attachment 5). The mitigation parcel was previously used primarily for agriculture and is located on relatively flat glacial ground moraine with topographic elevations rising from the Charlemont and Buck Creek stream beds on the east and west side of the site to adjacent agricultural fields and forested landscapes at higher elevations.

To date, the 25 acres designated for wetland restoration at Charlemont Reservation has been allocated to mitigate for the following Ontario Land Company projects:

- US Army Corps of Engineers 404 permit #2003-1655 (3); 2.55 acres; 22.45 acres remaining;
- US Army Corps of Engineers 404 permit #2003-1655; 8.04 acres; 14.41 acres remaining;
- Ohio EPA Isolated Level 1 permit #083363; 0.35 acre forested category 2 wetlands restoration; 14.06 acres remaining;
- Ohio EPA 401 permit #083394, 2.2 acres of mixed emergent marsh and sedge grass meadow wetland restoration; 11.86 acres remaining.

The eastern portion of the mitigation parcel has been allocated for wetland restoration for the Windsor Point Part II project (see Attachment 6).

1. The Permittee shall restore 2.2 acres of mixed emergent marsh and sedge grass meadow wetland at the Charlemont Reservation consolidated mitigation site built to provide mitigation for Ontario Land Company.

2. The Permittee shall arrange an on-site mitigation inspection meeting with Ohio EPA during the growing season that follows the submittal of the third year mitigation monitoring report. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the mitigation and monitoring plan approved by Ohio EPA and the terms and conditions of this permit. The Permittee is responsible for undertaking any reasonable modifications identified by Ohio EPA.
3. As stated in Section 1 of the May 10, 2006 Mitigation Plan for Charlemont Reservation, the entire 40 acre Charlemont Wetland Mitigation site will be maintained and permanently protected as parkland within the Charlemont Reservation owned by the Lorain County MetroParks.
4. Within 30 days of the date of this permit, the Permittee shall submit as-built drawings sized 11" by 17" (to scale) of the Windsor Point Part II wetland mitigation area, including plan views of the as-built mitigation area identifying the locations and types of planting

### **On-site Wetland and Stream Preservation**

The Permittee shall permanently protect the on-site preservation area in accordance with conditions below.

1. Within 7 days of the date of this permit, the Permittee shall submit to Ohio EPA for review, the draft third party easement language proposed for the on-site preservation area. The conservation easement must clearly state that the on-site preservation area is protected to fulfill the requirements of 401 permit # 083363 for the Windsor Point Part II project and shall identify the name and contact information of the third party conservation easement holder. The Permittee must also provide documentation that the easement holder meets the requirements of section 5301.68 of the Ohio Revised Code (ORC).
2. Within 30 days of the date of this permit, the Permittee shall submit to Ohio EPA a metes and bounds (survey) description of the on-site preservation area, a survey map, and an aerial photograph or map showing the boundaries of the on-site preservation area and the boundaries of all mitigation areas inside the on-site preservation area including:
  - 0.16 acre of category 1 forested wetland (wetland L);
  - 0.11 acre of category 1 non-forested wetland (portion of wetland U);
  - 11.63 acres of category 2 forested wetlands;

- 449 LF of abandoned stream channel #6;
  - 841 LF of unimpacted stream #6;
  - 165 LF of unimpacted stream #7; and
  - 28.73 acres of upland buffer.
2. Within 60 days of the date of this permit, signs shall be placed within visual distance along the stream and wetland preservation area boundaries that indicate that the area is protected and that prohibit mowing, dumping, or any other activity that would result in a degradation of the wetlands and streams without prior authorization from Ohio EPA.
  3. Within 30 days of the issuance of the 404 Permit, the Permittee shall submit an acceptable, notarized, recorded, and filed conservation easement.

## **B. Wetland Mitigation Monitoring & Reporting, Charlemont Reservation**

### ***Mitigation Monitoring Reports***

1. The mitigation monitoring period commenced during the 2009 growing season and shall continue annually through a 5 year monitoring period, except as provided for in the contingency plan.
2. The third and fifth year mitigation monitoring reports shall be submitted to Ohio EPA by December 31, 2011 and December 31, 2013 respectively.
3. The third year monitoring report shall contain a full copy of the final U.S. Army Corps of Engineers 404 permit for the project.
4. Each monitoring report shall clearly identify the specific monitoring year the report is intended to represent. The report shall identify the calendar year the monitoring occurred and the monitoring year (e.g., Year 3, Year 5, etc.) of the report being submitted on the cover letter of the report and the cover of the report
5. Mitigation monitoring reports for the Charlemont mitigation site shall be prepared in accordance with "*INTEGRATED WETLAND ASSESSMENT PROGRAM, Part 6: Standardized Monitoring Protocols and Performance Standards for Wetland Creation, Enhancement and Restoration, Version 1.0 Ohio EPA Technical Report WET/2004-6*", available at [http://www.epa.ohio.gov/portals/35/wetlands/PART6\\_Std\\_Mitigation\\_Protocols.pdf](http://www.epa.ohio.gov/portals/35/wetlands/PART6_Std_Mitigation_Protocols.pdf)

6. Each monitoring report shall contain the current contact information for the Permittee, agent, mitigation site holder, including, but not limited to, the company name(s), contact names, mailing addresses, e-mail addresses, phone numbers (cell and work), etc.
7. Each monitoring report shall contain a complete list of all the permits mitigating at the Charlemont Reservation site including Permittee name, project name, Ohio EPA ID number, Corps ID number, and amount and type of mitigation approved by Ohio EPA and/or the Corps for each permit. Also include the acreage of remaining mitigation believed to still be available at the site and the type of mitigation (restoration, creation, enhancement, preservation, stream, wetland, etc.).
8. Each monitoring report shall provide a summary of current mitigation status, which compares the previous monitoring information with the current report, including graphs and tables showing trends, etc.
9. Each monitoring report shall contain a list of species planted in all mitigation areas.
10. The as-built drawings referenced in Part III.A.4 of this permit shall be updated as needed in subsequent reports to reflect current conditions, corrective or other actions that occurred, changes in dominant vegetation, vegetation types, etc.
11. At a minimum, the third and fifth year monitoring reports shall contain current drawings sized 11" by 17" (to scale) of the each of the mitigation wetlands.
12. The third and fifth year wetland mitigation reports shall include a plan view that provides information on the morphometry of all mitigation wetlands and water control devices
13. Each monitoring report shall include photographs to be collected as follows:

An adequate number of fixed observation points shall be selected, with no fewer than three fixed observation points per distinct mitigation area, to provide representative overviews of each distinct mitigation area. The stakes shall be of UV resistant PVC material and have permanent unique numbers affixed to them. Annual photographs documenting site conditions will be taken at these locations and will include the stake and stake number in the field of view.

Photographs shall be taken from these points at the same position and angle during the growing season of each monitoring year with the unique numbers in the field of view. The fixed observation points shall be marked on the base map.

Additional photographs of areas of interest within each distinct mitigation area shall be provided in each monitoring report. Areas of interest include, but are not limited

to, plant communities, open water areas, areas dominated by invasive species, unvegetated areas, erosional areas, unstable areas, developing shrub/forest areas, in-stream structures, other structures, wildlife usage, easement encroachments, sediment deposition, floodplain development, habitat development, wildlife usage, corrective action areas, conservation signage, etc. The Permittee shall mark the locations of these photographs on the base map.

### **Wetland Mitigation Monitoring Criteria**

#### **1. Wetland Delineation**

A delineation of the wetland mitigation area(s) shall be performed during the growing season of the fifth monitoring year. The wetland delineation shall be performed in accordance with the United States Army Corps of Engineers 1987 Wetland Delineation Manual and the applicable Regional Supplement to the Corps of Engineers Wetland Delineation Manual and shall include an assessment of soils, hydrology, and plants according to the manual.

#### **2. Hydrology Monitoring**

Annual water level data shall be collected in May and late August. Ground water levels shall be measured in the absence of inundated conditions. Because hydrology levels and duration is so important to wetland function, it is recommended that automatic level recorders be utilized.

#### **3. Vegetation Monitoring**

- a) The mitigation wetlands shall be assessed to obtain a VIBI score according to methods and protocols approved by Ohio EPA, during the growing seasons of the third and fifth monitoring years.  
([http://www.epa.ohio.gov/dsw/wetlands/WetlandEcologySection\\_reports.aspx](http://www.epa.ohio.gov/dsw/wetlands/WetlandEcologySection_reports.aspx))
- b) The location and name of each plant community type within the wetland mitigation area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.
- c) A representative observation point shall be selected in each plant community type in each distinct wetland mitigation area. This shall be a point that best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.
- d) Annually, the dominant plant species shall be visually determined in each vegetation

layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (woody over story), greatest height (woody over story), greatest percentage of aerial coverage (herbaceous under story), and/or greatest number of stems (woody vines).

**C. Wetlands Restoration Performance Criteria**

1. By the end of the five (5) year monitoring period, the Permittee shall have developed a minimum of 2.2 acres of mixed emergent marsh and sedge grass meadow wetland at the Charlemont Reservation mitigation site.
2. By the end of the five (5) year monitoring period, the Charlemont Reservation mitigation wetland shall have less than five percent areal cover of invasive and/or non-native species.
3. By the end of the five (5) year monitoring period, the Charlemont Reservation mitigation wetland shall contain a minimum of 80% areal cover of facultative, facultative wetland and obligate native wetland perennial species.
4. By the end of the five (5) year monitoring period, the Charlemont Reservation mitigation wetland will meet the most current United States Army Corps of Engineers Wetlands Delineation Manual and/or Supplement.

**D. Contingency Plans**

If the mitigation areas are not performing as proposed by the end of the fifth year of post-construction monitoring, the monitoring period may be extended and/or the Permittee may be required to revise the existing mitigation or seek out new or additional mitigation areas.

Ohio EPA may reduce or increase the number of years for which monitoring is required to be conducted based on the effectiveness of the mitigation.

**IV. NOTIFICATIONS TO OHIO EPA**

All notifications, correspondence, and reports regarding this permit shall reference the following information:

Permittee Name: Ontario Land Company  
Project Name: Windsor Point Part II  
Ohio EPA ID No.: 083394

and shall be sent to:

Ohio Environmental Protection Agency  
Division of Surface Water, 401/IWP Unit  
Lazarus Government Center

50 West Town Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049

You are hereby notified that this action of the director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Ohio Treasurer Josh Mandel," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission  
309 South Fourth Street, Room 222  
Columbus, OH 43215

Sincerely,



Scott J. Nally  
Director

cc: Richard Ruby, Department of the Army, Buffalo District, Corps of Engineers  
Peter Swensen, U.S. EPA, Region 5  
Mary Knapp, U.S. Fish & Wildlife Service  
Brian Mitch, ODNR, Division of Real Estate & Land Management  
Dave Snyder, Ohio Historical Preservation Office  
Lauren McEleney, Ohio EPA, DSW, Section 401/IWP  
Jeff Boyles, Ohio EPA, DSW, Environmental Mitigation and Special Permitting  
Jeff DeShon, Ohio EPA, DSW, EAU  
Rich Blasick, Ohio EPA-DSW-NEDO]  
Vicki Derr, Envirotech Consultants, Inc, 5380 Township Road 143 NE, Somerset, Ohio

43783

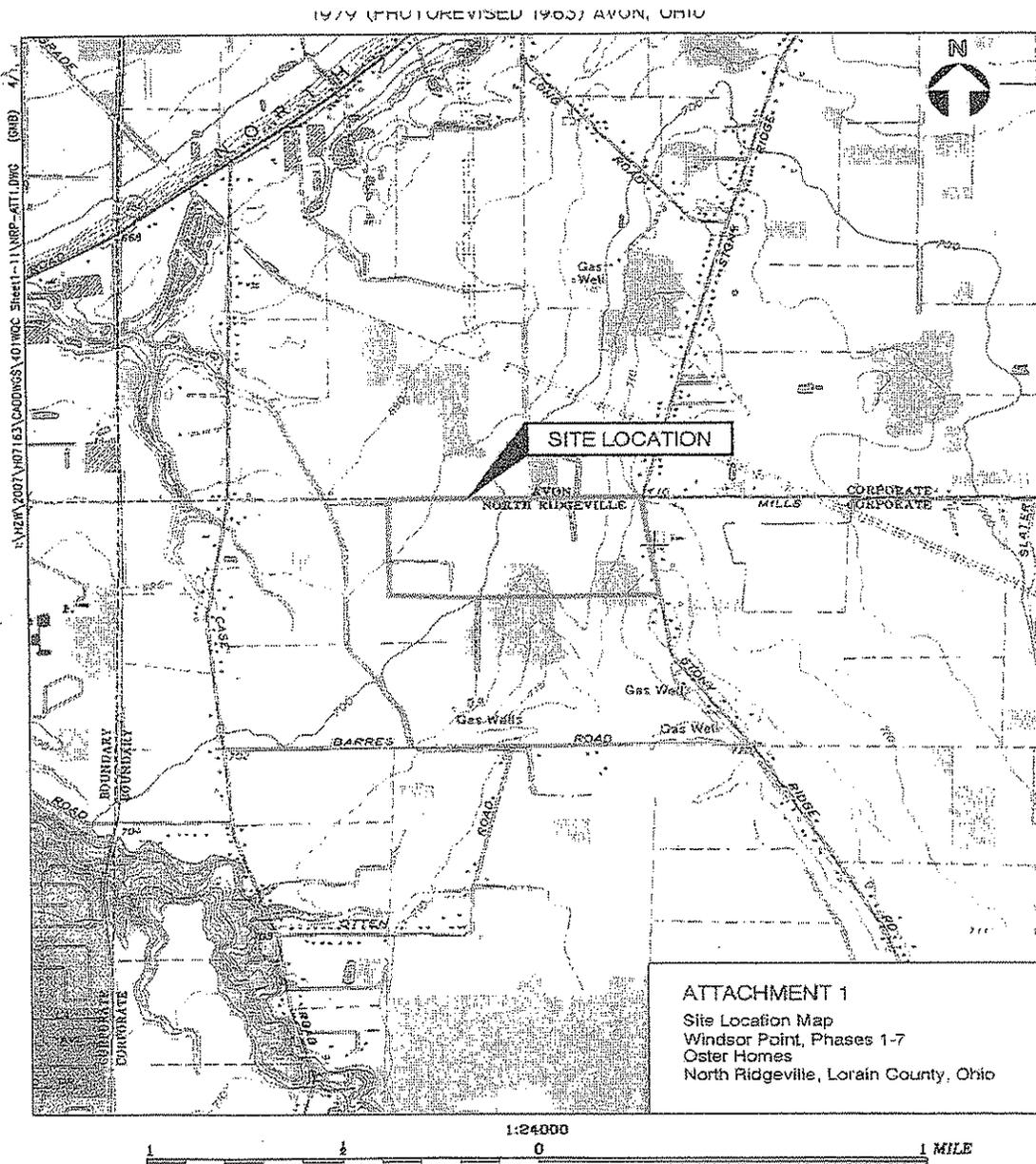
Greg Eastridge, HzW Environmental Consultants, LLC, 6105 Heisley Road, Mentor,  
OH 44060

- Attachments:
- 1-Project Site Location Map
  - 2-Pre-construction Conditions Map
  - 3-Prior Unauthorized Stream Impacts
  - 4-Site Plan, Windsor Point Sub-division
  - 5-Location Map, Charlemont Reservation Consolidated Mitigation Area
  - 6-Location Map, Windsor Point Part II Mitigation Area
  - 7-March 9, 2010 Public Hearing Responsiveness Summary

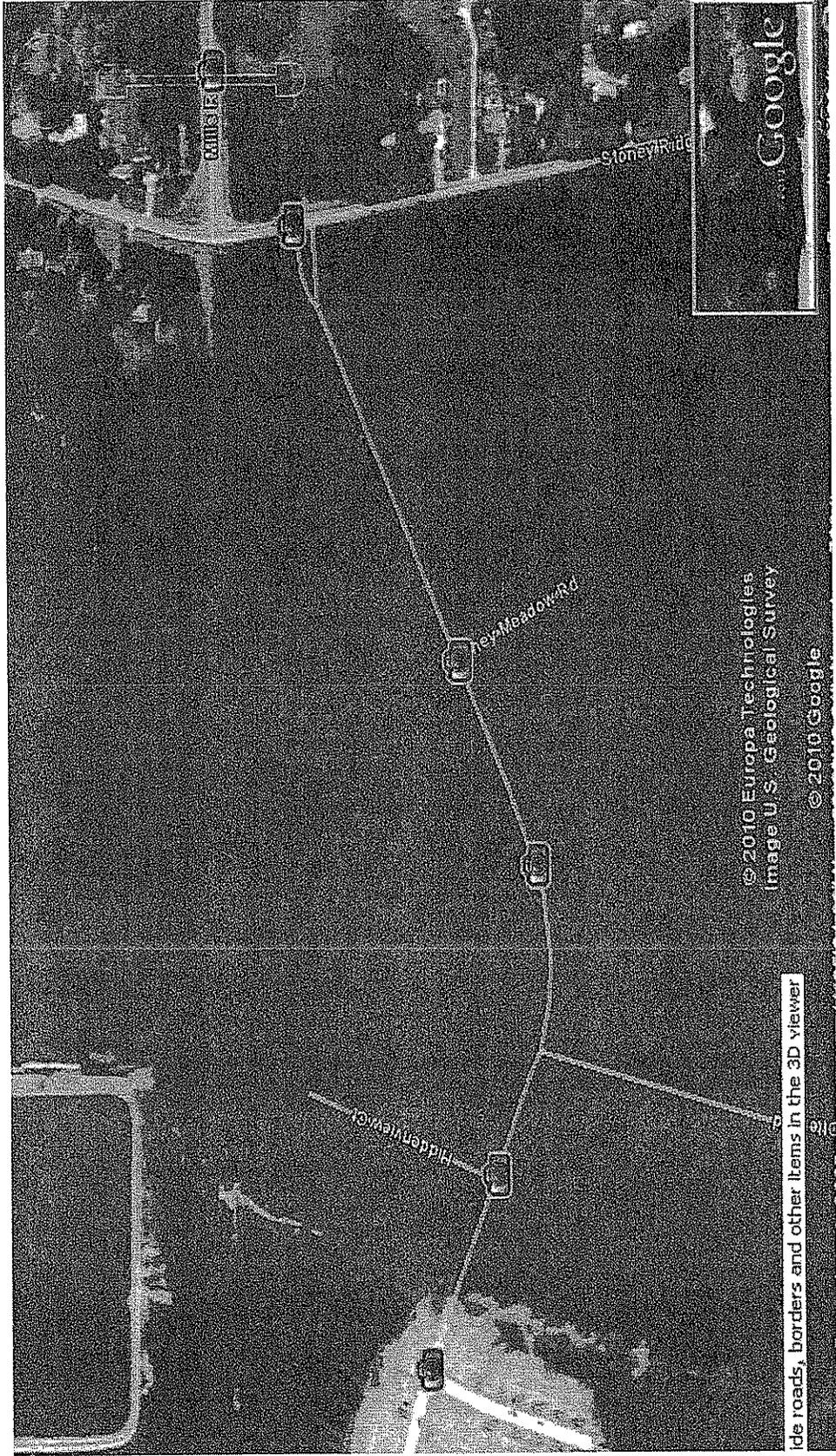
Ohio EPA would appreciate your feedback on the permitting process that you have just completed. Please visit the web address listed below and take a short survey to offer input into the Agency's efforts to provide efficient and effective service.

<http://www.surveymonkey.com/s/wqc-iwpfeedbackform>

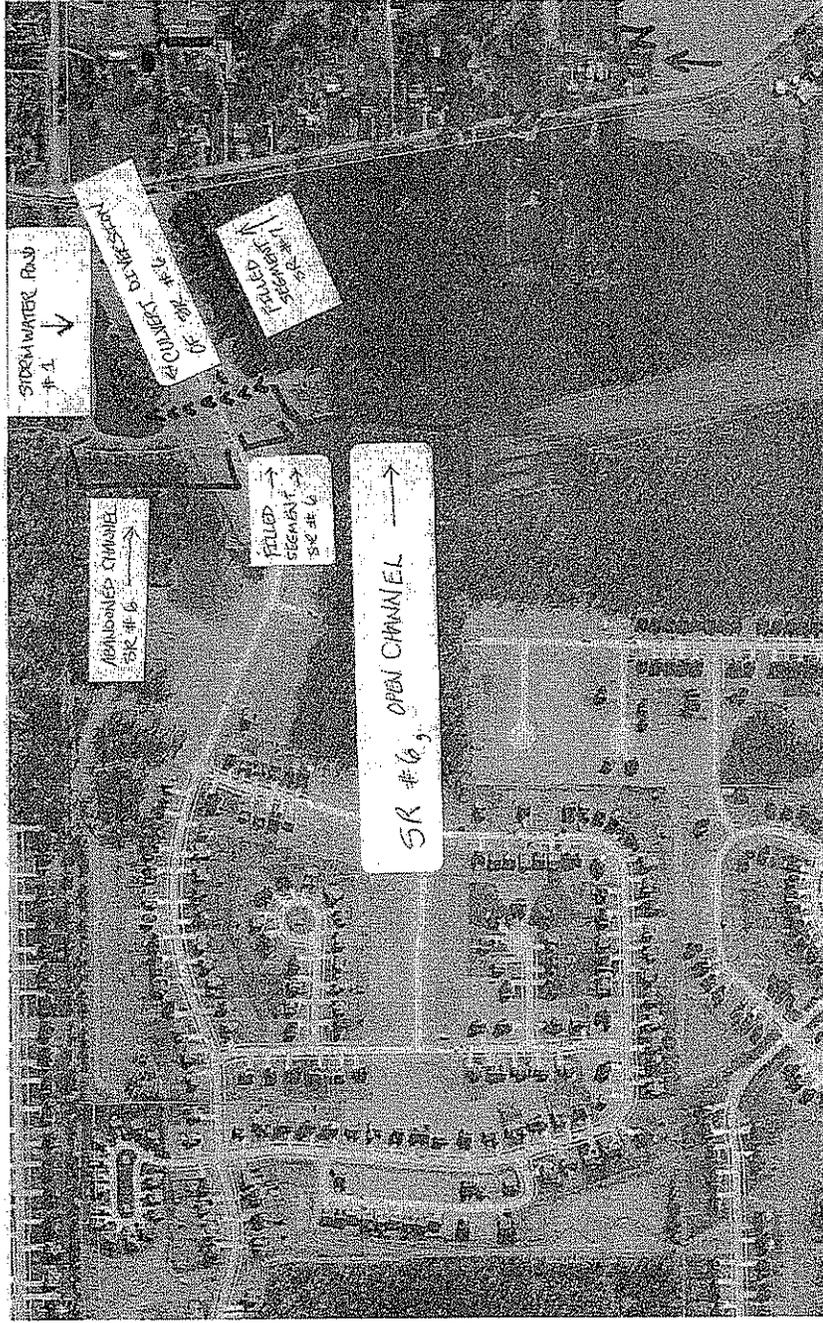
# Attachment 1, Project Location Map



# Attachment 2, Aerial Map Pre-construction Site Conditions

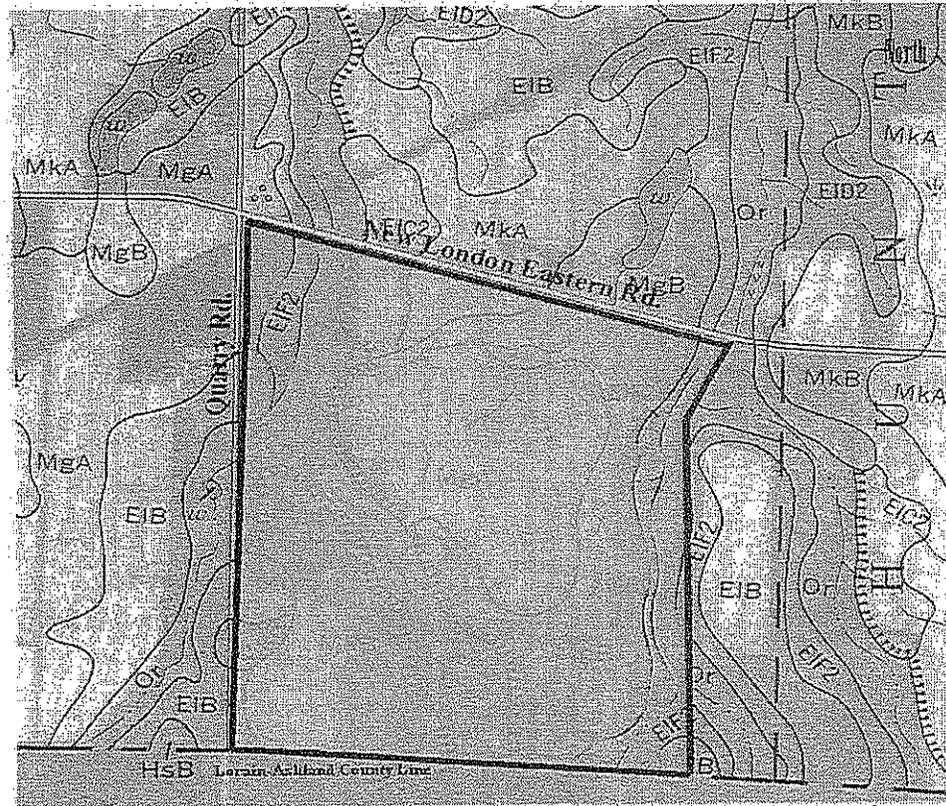


# Attachment 3, Aerial Photo Prior Unauthorized Stream Impacts





# Attachment 5, Location Map Charlemont Reservation Consolidated Mitigation Site



Scale: 489 Ft.

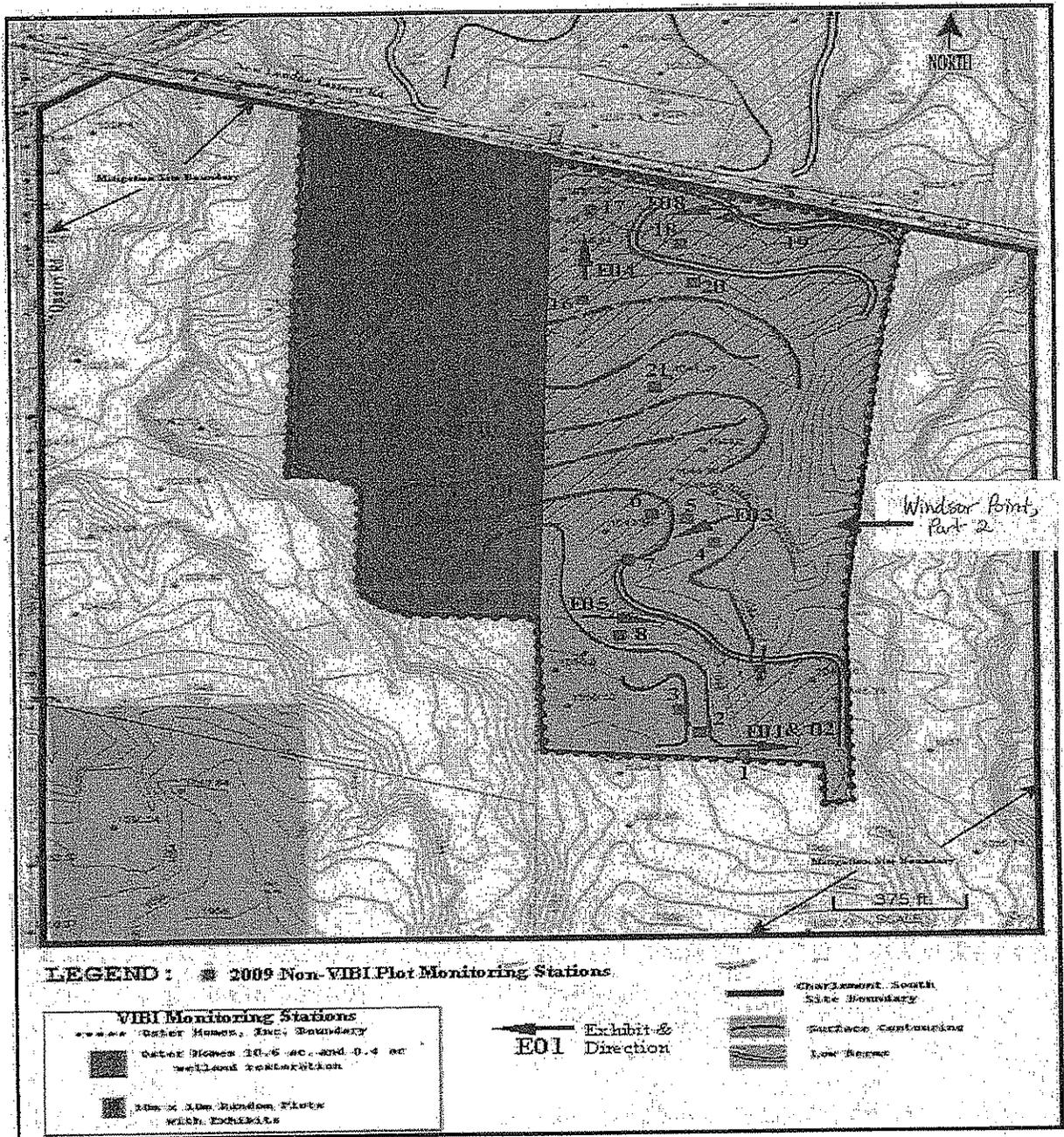
### LEGEND:

-  Soils with hydric components
-  Charlemont Mitigation Site Boundary

Figure 3: Soils Map

# Attachment 6, Location Map

## Windsor Point Part II, Wetland Mitigation Area Charlemont Reservation Consolidated Site



# Attachment 7, Responsiveness Summary March 9, 2010 Public Hearing

# OhioEPA

## Division of Surface Water

### Response to Comments

**Project: Windsor Point Part 2**  
**Ohio EPA ID #: 083394**

#### Agency Contacts for this Project

Division Contact: Lauren E. McEleney  
(614) 644-2865  
[Lauren.McEleney@epa.ohio.gov](mailto:Lauren.McEleney@epa.ohio.gov)

Public Involvement Coordinator: Kristopher Weiss  
(614) 644-2160  
[Kristopher.weiss@epa.ohio.gov](mailto:Kristopher.weiss@epa.ohio.gov)

Ohio EPA conducted a public hearing on March 9, 2010, regarding a section 401 Water Quality Certification (WQC) application submitted by Ontario Land Company seeking authorization to construct portions of Phases 2 through 7 of the Windsor Point sub-division. The project site is located on approximately 125 acres along Avalon Drive, west of Stoney Ridge Road in North Ridgeville, Lorain County, Ohio. Ohio EPA accepted comments on the application through March 16, 2010. This document summarizes the comments and questions received.

Ohio EPA's 401 Program considers only those comments that fall within its legal authority when evaluating public input as it relates to making a permitting decision. For instance, when public comments are submitted for a 401 WQC, Ohio EPA will focus on comments regarding the quality of streams and wetlands, the nature and scope of the proposed impacts, appropriateness of the project alternatives, justifications presented for the proposed lowering of water quality associated with the project, and quantity/quality of proposed compensatory mitigation for proposed stream and wetland impacts. Public concerns that fall outside the scope of the Ohio EPA 401 Program's authority such as project costs, project funding, whether a project meets local zoning regulations, how it may affect property values, impacts to local flooding, or compliance with safety regulations, are not included in Ohio EPA's 401 application analysis. When appropriate, Ohio EPA will direct the commenter to those government agencies with authority over these issues.

Readers of this responsiveness summary are advised that, in some instances, it was necessary to summarize a comment, or several related comments. In other cases, the comments did not warrant a response and are not included. Every effort has been made to represent the key concern raised by the commenter.

## COMMENTS REGARDING POTENTIAL WATER QUALITY IMPACTS

- Comment 1:** Several comments were received expressing concerns about the loss of existing local flood control functions due to proposed filling of wetlands and streams at Windsor Point and proposed compensatory mitigation for those impacts outside the City of North Ridgeville, outside the French Creek watershed, and adding to the impacts already identified in the Black River watershed Total Maximum Daily Load Report.
- Response 1:** Permitted wetland impacts have been limited to 0.93 acres (7%) of the approximately 12.8 acres of forested category 2 wetlands currently existing on the site. The existing streams, 11.93 acres of forested wetland remaining post-construction and 28.73 acres of associated upland buffer will be permanently protected by placing a conservation easement on these areas. Therefore, the current flood control functions of these areas will remain permanently.
- To compensate for the permanent loss of some of the wetlands on the Windsor Point site, 2.2 acres of wetland restoration will occur at the Charlemont Reservation mitigation site south of Wellington. Wetland restoration at this location complies with the wetland antidegradation requirements in Ohio Administrative Code (OAC) 3745-1-54(F) stating that wetland mitigation must occur within the same 8-digit hydrologic unit (in this case the Black and Rocky River watersheds).
- Comment 2:** A number of comments were received from Windsor Point homeowners objecting to the removal of trees adjacent to their lots. Some of those commenting stated that they had paid a premium for their lot based on a promise that adjacent areas would not be developed or could not be developed due to the presence of wetlands. One comment asked about the potential impacts to Indiana bat habitat, since it was referenced in the public notice for the proposed US Army Corps of Engineer's 404 permit for the project.
- Response 2:** In response to comments from Ohio EPA and the public, the applicant has proposed, and Ohio EPA has permitted, construction of a minimal degradation alternative that results in far less impact than the original 401 application proposed. Implementation of the revised minimum degradation alternative will impact 0.93 acre (0.31acre previously impacted and 0.62 acre of proposed future impact) of wetlands and will not result in any additional impacts to

streams on the project site. A total of 227 homes will be constructed.

In contrast, the previous proposal would have impacted 5.5 acres of wetland, the remainder of the streams on-site and would have resulted in construction of 282 homes.

The US Fish & Wildlife Service review of the proposed project recommended that suitable Indiana bat habitat be saved wherever possible. If trees must be cut, suitable bat roost trees should not be cut between April 1 and September 30. The proposed project will permanently protect most of the suitable Indiana bat habitat on the site (see response #1) and any suitable bat roost trees in the proposed wetland impact areas will not be cut between April 1 and September 30, per Part II, condition N of the 401 WQC.

**Comment 3:** Numerous comments were received regarding past and proposed future stormwater controls within the Windsor Point development and the overall City of North Ridgeville. Comments addressed: the need for building detention areas, increasing the size of storm sewers, and deepening of ditches throughout the city, and at the expense of the city, to accommodate stormwater run-off from previous development; the lack of sufficient city funds to address these concerns adequately; passing the stormwater problem downstream to the City of Avon. There were also questions regarding what post-construction stormwater controls will be installed for the Windsor Point sub-division; current stormwater detention ponds on the Windsor Point project site appear to be full, but are also supposed to accommodate run-off from development that has not yet occurred.

**Response 3:** Storm water discharges during and post-development of the Windsor Point sub-division are regulated by Ohio EPA's National Pollutant Discharge Elimination System (NPDES) permit #OHC000003 authorizing storm water discharges associated with construction activity and issued April 21, 2008. Ohio EPA has authorized the Ontario Land Company to use this NPDES permit, also known as the Construction General Permit (CGP), to cover storm water discharges associated with the Windsor Point sub-division. A copy of the Storm Water General Permit is available on Ohio EPA's website at:  
[http://www.epa.state.oh.us/dsw/permits/GP\\_ConstructionSiteStormWater.aspx](http://www.epa.state.oh.us/dsw/permits/GP_ConstructionSiteStormWater.aspx). Questions about the stormwater

permitting process can be directed to Michael Joseph, Ohio EPA Division of Surface Water, (614) 752-0782.

Item I.A.B.1.c of the CGP requires that appropriate controls and measures are identified in a storm water pollution prevention plan (SWP3). Copies of the applicable SWP3 plans are available from the city of North Ridgeville. Questions regarding Ohio EPA's authority to review and enforce compliance with the SWP3 should be directed to Dan Bogoevski, Ohio EPA, Division of Surface Water, Northeast District Office (330) 963-1145.

In addition to Ohio EPA's authorization to use the CGP for the Windsor Point sub-division, the 401 WQC for the project requires the use of appropriate sediment controls, construction practices, and sequencing to protect wetlands and streams during construction (reference Part II, condition M, items 1-8 of the WQC).

**Comment 4:** **A number of comments were received objecting to prior unauthorized fill impacts to wetlands and streams, (between 2003 and 2006) at the site and questioning why the Ohio EPA and US Army Corps of Engineers had not fined Ontario Land Company for these impacts.**

**Response 4:** Ohio EPA received official notification of the unauthorized fill impacts with the complete 401 WQC application dated January 4, 2010 and conducted a site visit to assess the impacts on March 9, 2010. Ohio EPA determined that issuing a 401 WQC to authorize these impacts "after-the-fact" was the most efficient method to return the project to compliance, given available permitting and enforcement resources.

#### **PROJECT PURPOSE AND DESIGN**

**Comment 5:** **The City of North Ridgeville commented that a second sub-division access road to Stoney Ridge Road is needed to provide improved emergency access to the sub-division. Therefore, in September 2006, the city approved a site plan containing the second access road. The alternatives presented in the 401 application do not include the second roadway and are therefore in conflict with what the city approved.**

**Response 5:** Neither the 401 WQC application nor the minimum degradation alternative permitted by Ohio EPA include the above-referenced access road. Instead the locations where the roadway would have been constructed are included in the on-site wetland and upland buffer preservation area that

will be permanently protected with a conservation easement. In summary, Ohio EPA did not authorize the wetland impacts that would have been associated with the roadway construction.

**Comment 6:** Numerous comments were received requesting that the Ohio EPA either deny the project or issue a permit for the non-degradation (no impact) alternative. Commenters did not believe that building approximately 50 more homes than proposed in the non-degradation alternative justified impacting 7 to 9 additional acres of wetlands and the remaining streams on-site.

**Response 6:** See response #2. The original "no impact" alternative would have resulted in construction of 234 homes. The alternative authorized by the WQC will result in construction of only 227 homes.

**Comment 7:** Numerous comments were received in support of the project based on the statistics regarding regional growth and associated needs for housing in the area; current and potential economic benefits to the community; and the jobs provided currently constructing the sub-division. One comment objected to continued residential development in the area, without the necessary schools and other infra-structure needed to serve the growth.

**Response 7:** The Ohio EPA's 401 application review does not duplicate planning and economic analyses conducted by the applicant. Rather, Ohio EPA is required by Ohio Administrative Code (OAC) Section 3745-1-54, otherwise known as the Wetlands Antidegradation Rule, to assess whether the proposed wetland and stream fill impacts associated with a project will meet Ohio's water quality standards. Based on the information provided in the 401 application and subsequent responses to Ohio EPA comments, appropriate and practicable steps have been taken to minimize potential adverse impacts on the wetland and stream ecosystems within the project construction boundaries. Consequently, Ohio EPA's Director made a decision to allow the impacts associated with the Windsor Point Part 2 project.

## **PROJECT COSTS AND FINANCING**

**Comment 8:** Several questions and comments were received regarding Ontario Land Company's bankruptcy status and fears that this would lead to lack of follow through on required mitigation.

Response 8: The 401 WQC is an action of Ohio EPA's Director and is enforceable by law. In particular, Part III, Condition A, "*Onsite Wetland and Stream Preservation*" of the WQC requires that a third party conservation easement be placed on the areas to be preserved on-site. In addition, signs must be installed around the boundaries of the conservation area, specifying that it is permanently protected. Failure to meet these conditions would be the basis for a notice of violation and potential enforcement action.

The required wetland restoration at Charlemont Reservation has already been constructed. Based on 2009 and 2010 annual mitigation monitoring reports, the wetland mitigation site is on a trajectory to meeting performance criteria contained in Part III. C, conditions 1-5 of the 401 WQC.

**End of Response to Comments**

