



**Environmental
Protection Agency**

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

MAR 12 2012

CERTIFIED MAIL

91 7108 2133 3937 1506 6786

Mr. Shane Lowe
Fifth Third Bank
38 Fountain Square, Fifth Floor
MD 109051
Cincinnati, OH 45263

**RE: Issuance of Covenant Not to Sue for the TSARR Pad E Property
NFA Letter # 12NFA444
Project ID # 125-002880-002**

Dear Mr. Lowe:

I am pleased to inform you that on MAR 12 2012, the Director of the Ohio Environmental Protection Agency issued a covenant not to sue (CNS) to Fifth Third Bank for the TSARR Pad E property, located at the southwest corner of Dale Drive and West Dublin – Granville Road, Dublin, Franklin County, Ohio. The CNS was issued as final findings and orders pursuant to Ohio Revised Code (ORC) Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300.

The CNS states that, based on the no further action letter, and subject to all conditions set forth in these findings and orders, Ohio EPA covenants not to sue and releases Fifth Third Bank and MR/TSARR OWNER LLC, and their respective agents, employees, members, shareholders, officers, directors, successors and assigns, and successors and assigns of the property, from all civil liability to the State of Ohio to perform additional investigational and remedial activities. The covenant not to sue and release of liability applies to the property that has undergone a Phase I or Phase II property assessment in compliance with ORC Chapter 3746 and OAC Chapter 3745-300 or has been the subject of remedial activities conducted under ORC Chapter 3746 and OAC Chapter 3745-300 to address a release of hazardous substances or petroleum, and the assessment or the remedial activities demonstrate or result in compliance with applicable standards.

Enclosed is a certified copy of the CNS and its exhibits for the recording of the documents in the same manner as a deed for the property, as instructed by the CNS (see the "Conditions and Limitations" section of the CNS). The enclosed affidavit should be presented to the county recorder's office staff to support the required recording. After recording the CNS, remember to submit to Ohio EPA a complete copy of the CNS that shows the filing date stamp of the county recorder's office.

The complete copy of the stamped document should be sent to the attention of Angela

Edwards, Records Management Officer, DERR, Ohio EPA Central Office, at the following address:

Ohio EPA – Division of Environmental Response and Revitalization
Assessment Cleanup and Reuse Section – Voluntary Action Program
50 W. Town St., Suite 700
P.O. Box 1049
Columbus, OH 43216-1049

This action of the Director is final and may be appealed to the Environmental Review Appeals Commission (Commission) pursuant to ORC 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Ohio Treasurer," which the Commission, in its discretion, may reduce if by affidavit it is demonstrated 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 after the appeal is filed with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Commission at the following address: Environmental Review Appeals Commission, 77 South High Street, 17th Floor, Columbus, Ohio 43215.

Congratulations on the issuance of this CNS. Many persons within the agency, Fifth Third Bank, MR/TSARR OWNER LLC and Westech Environmental Solutions, among others, worked hard to remove the environmental barriers associated with redeveloping this property. If you have any questions or concerns, feel free to contact me at (614) 644-2924 or via e-mail at tiffani.kavalec@epa.state.oh.us.

Sincerely,



Tiffani Kavalec, Manager
Division of Environmental Response and Revitalization
Assessment, Cleanup and Reuse (ACRE) Section

Enclosure:

cc: Mr. Ihor Melnyk, Certified Professional, Westech Environmental Solutions
7601 Cheviot Road, Cincinnati, OH 45247

Mr. Robin Perez, MR/TSARR OWNER LLC
1691 Michigan Avenue, Miami Beach, FL 33139

ec: Ray Moreno, Site Coordinator, DERR-CDO
Deborah Strayton, Manager, DERR-CDO
Leonard Powell, Supervisor, CDO
Martha J. Cooper, Esq., Legal Office
records@epa.state.oh.us

TO BE RECORDED IN DEED RECORDS,
PURSUANT TO ORC 317.08(A)

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss:

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Tonya R. Lassiter, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA; and (ii) the attached document is a true and correct copy of the Covenant Not to Sue / Director's Final Findings and Orders issued by the Director, and entered in the Ohio EPA Director's Journal on March 12, 2012, regarding property known as the TSARR Pad E Property, located at the southwest corner of Dale Drive and West Dublin – Granville Road in Dublin, Franklin County, Ohio and further described in the attached Covenant Not to Sue.

Tonya R. Lassiter
Tonya R. Lassiter
Records Management Officer
Ohio EPA Legal Office

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 12th day of March, 2012.

Janine M. Maney
Notary Public
State of Ohio

Permanent Commission
No expiration, R.C. 147.03

This instrument prepared by:

Martha J. Cooper, Attorney
Ohio EPA Legal Office
P.O. Box 1049
Columbus, Ohio 43216-1049



JANINE M. MANEY
ATTORNEY AT LAW
NOTARY PUBLIC
STATE OF OHIO
My Comm. Has No
Expiration Date
Section 147.03 R. C.

MAR 12 2012

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Fifth Third Bank
38 Fountain Square, Fifth Floor
MD 109051
Cincinnati, OH 45263

Covenant Not to Sue

Director's Final Findings
and Orders

Regarding property known as:

TSARR Pad E
Southwest Corner of Dale Drive and
West Dublin – Granville Road
Dublin, Ohio 43017

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: Jerry Lassiter Date: 3/12/12

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

FINDINGS

1. A No Further Action Letter, No. 12NFA444 (the "NFA Letter"), was submitted on January 27, 2012 to the Director under the Voluntary Action Program on behalf of Fifth Third Bank (the "Volunteer"), by Ihor Melnyk, P.E., a certified professional, No. CP 147, as defined in ORC 3746.01(F) and OAC 3745-300-01(A) (the "Certified Professional").
2. The Certified Professional issued the NFA Letter by his CP affidavit on January 19, 2012. The Certified Professional also submitted to the Director an addendum to the NFA Letter, which was issued under CP affidavit on February 15, 2012. For the purposes of these Findings and Orders, the term "NFA Letter" includes the addendum.
3. The NFA Letter describes the investigational activities undertaken at the approximately 1,500-acre property, known as the TSARR Pad E Property, located at the southwest corner of Dale Drive and West Dublin – Granville Road, Dublin, Franklin County, Ohio (the "Property"). An exact legal description of the Property is attached hereto as Exhibit 1. A property location map is attached

hereto as Exhibit 2. Based on information in the NFA Letter, the Property is owned by MR/TSARR OWNER LLC, 1691 Michigan Avenue, Suite 215, Miami Beach, Florida 33139. The Property is comprised of 1.500 acres of a 14.040-acre parcel identified as Franklin County Parcel 273-008269 and displayed in Exhibit 2.

4. The Certified Professional prepared pursuant to OAC 3745-300-13(J) an executive summary of the NFA Letter, which is attached hereto as Exhibit 3.

Summary of the Voluntary Action for the Property

5. Based upon the information in the NFA Letter, the Volunteer undertook the following investigational activities regarding the Property:
 - a. A Phase I property assessment, in accordance with OAC 3745-300-06, to determine whether there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on, underlying or is emanating from the Property.
 - b. A determination that there is no reason to believe that a release of hazardous substances or petroleum has or may have occurred on, underlying or is emanating from the Property or the release is *de minimis*, pursuant to OAC 3745-300-06.
6. The Certified Professional has verified by affidavit that the voluntary action was conducted and the NFA Letter was issued for the Property in accordance with ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible for the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws and regulations.

Applicable Standards

7. Based on the information contained in the NFA Letter and all conditions set forth in these Findings and Orders, the Property meets applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for various uses including unrestricted land use and unrestricted potable ground water use. The applicable standards for the Property are those in effect when the NFA Letter was issued on January 19, 2012. The standards include one or more of the following:
 - a. Generic numerical standards determined in accordance with OAC 3745-300-08.
 - b. Property-specific risk assessment standards developed in accordance with OAC 3745-300-09.
 - c. Background standards determined in accordance with ORC 3746.06(A)

and OAC 3745-300-07(H).

- d. Standards for residential (potable) use of ground water underlying the Property, applied in accordance with ORC 3746.06(B).
8. Pursuant to ORC 3746.12(A), the Director of Ohio EPA is authorized to issue a covenant not to sue for the Property through these Findings and Orders.

ORDERS

Covenant

1. Based on the NFA Letter, and subject to all conditions set forth in these Findings and Orders, Ohio EPA hereby covenants not to sue and releases Fifth Third Bank and MR/TSARR OWNER LLC, and their respective agents, employees, members, shareholders, officers, directors, successors and assigns, and successors and assigns of the Property, from all civil liability to the State of Ohio (the "State") to perform additional investigational and remedial activities. This covenant not to sue and release of liability ("Covenant") applies to the Property that has undergone a Phase I or Phase II property assessment in compliance with ORC Chapter 3746 and OAC Chapter 3745-300 or has been the subject of remedial activities conducted under ORC Chapter 3746 and OAC Chapter 3745-300 to address a release of hazardous substances or petroleum, and the assessment or the remedial activities demonstrate or result in compliance with applicable standards.

Conditions and Limitations

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

2. Within thirty (30) days after the issuance of these Findings and Orders, Fifth Third Bank shall:
 - a. File with the Franklin County Recorder's Office, for recording in the same manner as a deed to the Property pursuant to ORC 3746.14, a copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Property Location Map), and 3 (Executive Summary).
 - b. Submit to Ohio EPA a copy of the Findings and Orders that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the Findings and Orders in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded - Covenant Not to Sue for NFA Letter No. 12NFA 444.*" The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by U.S. mail or by other reliable means to

both Ohio EPA's Central Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049 Attention: DERR Site Coordinator for TSARR Pad E Property.

Limits of Covenant

3. Pursuant to ORC 3746.12(B)(1), the Covenant shall remain in effect for as long as the Property continues to comply with the applicable standards upon which the Covenant is based, as referenced in these Findings and Orders. Upon a finding pursuant to ORC 3746.12(B)(2) that the Property or portion thereof no longer complies with applicable standards upon which issuance of the Covenant was based and receipt of the Director's notice of that fact and the requirements of ORC 3746.12(B)(3), the person(s) responsible for maintaining compliance with those standards shall receive an "opportunity to cure" the noncompliance. ORC 3746.12(B)(4) provides for revocation of the Covenant upon a Director's finding that the noncompliance has not been cured.
4. The Covenant shall not apply to releases of hazardous substances or petroleum that occur after the issuance of the NFA Letter.
5. The Covenant shall not apply:
 - a. To claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607 and 9613, as amended.
 - b. To claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency.
 - c. As otherwise specifically provided in ORC Chapter 3746, including but not limited to obligations arising under other applicable laws.
6. Nothing in the Covenant limits the authority of the Director to act under ORC 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from the Property, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.

7. Nothing in the Covenant shall be construed to limit or waive the Director's authority to revoke the Covenant in response to any of the circumstances for revocation of a covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300.

Ohio EPA Access to Property

8. Pursuant to ORC 3746.21 and at reasonable times, upon proper identification, and stating the necessity and purpose as directed by applicable law, authorized representatives of the Director shall be granted access to the Property for the inspection or investigation purposes authorized under applicable law.

Transfer

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

IT IS SO ORDERED:



Scott J. Nally, Director
Ohio Environmental Protection Agency

MAR 12 2012
Date

Exhibit 1
Legal Description

1.500 ACRES

Situated in the State of Ohio, County of Franklin, City of Dublin, located in Quarter Township 3, Township 2, Range 19, United States Military Lands, being out of that 14.040 acre tract as conveyed to TSARR LLC by deed of record in Instrument Number 200606290127591 (all references refer to the records of the Recorder's Office, Franklin County, Ohio), and being described as follows:

Beginning, for reference, at the centerline intersection of State Route 161 (Dublin-Granville Road, R/W varies), with Dale Drive, being in the northerly line of that 2.519 acre tract conveyed to City of Dublin by deed of record in Instrument Number 199911150285244;

thence North 86° 41' 19" West, with the centerline of said State Route 161, the northerly line of said 2.519 acre tract, a distance of 303.98 feet to a point;

thence South 03° 18' 41" West, across the right-of-way line of said State Route 161, with a westerly line of said 2.519 acre tract, a distance of 40.00 feet to a point in the southerly right-of-way line of said State Route 161, being a common corner of said 2.519 acre tract, said 14.040 acre tract and the remainder of that original 2.37 acre tract conveyed to Wendy's International, Inc. by deed of record in Deed Book 3443, Page 321, being the TRUE POINT OF BEGINNING;

thence with the southerly right-of-way line of said State Route 161, the line common to said 14.040 and 2.519 acre tracts, the following courses and distances:

South 86° 41' 19" East, a distance of 24.94 feet to a point;

South 76° 23' 01" East, a distance of 111.80 feet to a point;

South 86° 41' 19" East, a distance of 114.04 feet to a point of curvature to the right; and

With said survey to the right, having a central angle of 90° 00' 00", a radius of 25.00 feet, an arc length of 39.27 feet, a chord bearing and distance of South 41° 41' 50" East, 35.36 feet to a point in the westerly right-of-way line of Dale Drive;

thence South 03° 18' 41" West, with the westerly right-of-way line of said Dale Drive, continuing with the line common to said 14.040 and 2.519 acre tracts, a distance of 208.00 feet to a point;

thence North 86° 41' 19" West, across said 14.040 acre tract, a distance of 273.98 feet to a point in the easterly line of said original 2.37 acre tract;

thence North 03° 18' 41" East, with the line common to said 14.040 and 2.37 acre tracts, a distance of 253.00 feet to the TRUE POINT OF BEGINNING, and containing 1.500 acre of land, more or less.

THIS DESCRIPTION IS NOT TO BE USED FOR TRANSFER.

EVANS, MECHWART, HAMBLETON AND TILTON, INC.

Heather L. King - 11/22/11
Heather L. King
Professional Surveyor No. 8307



EMH&T

Evans, Mechwart, Hambleton & Tilton, Inc.
Engineers • Surveyors • Planners • Scientists
5500 New Albany Road, Columbus, OH 43054
Phone: 614.775.4500 Fax: 614.775.4800

PARCEL EXHIBIT

QUARTER TOWNSHIP 3, TOWNSHIP 2, RANGE 19

UNITED STATES MILITARY LANDS

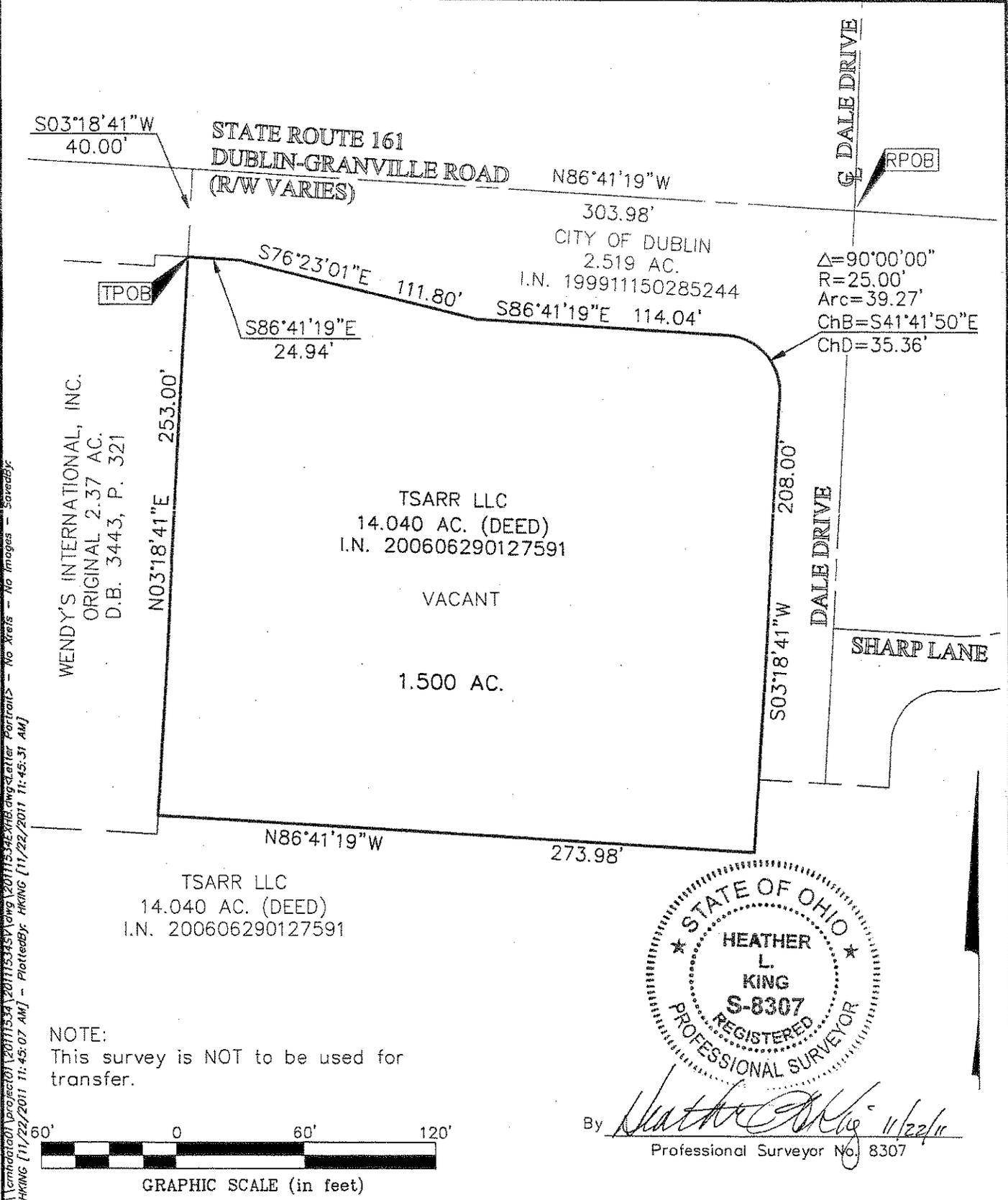
CITY OF DUBLIN, COUNTY OF FRANKLIN, STATE OF OHIO

M C M X X V I

Date: November 22, 2011

Job No. 2011-1534

Scale: 1" = 60'



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WENDY'S INTERNATIONAL, INC.
ORIGINAL 2.37 AC.
D.B. 3443, P. 321

TSARR LLC
14.040 AC. (DEED)
I.N. 200606290127591

VACANT

1.500 AC.

TSARR LLC
14.040 AC. (DEED)
I.N. 200606290127591

NOTE:
This survey is NOT to be used for transfer.

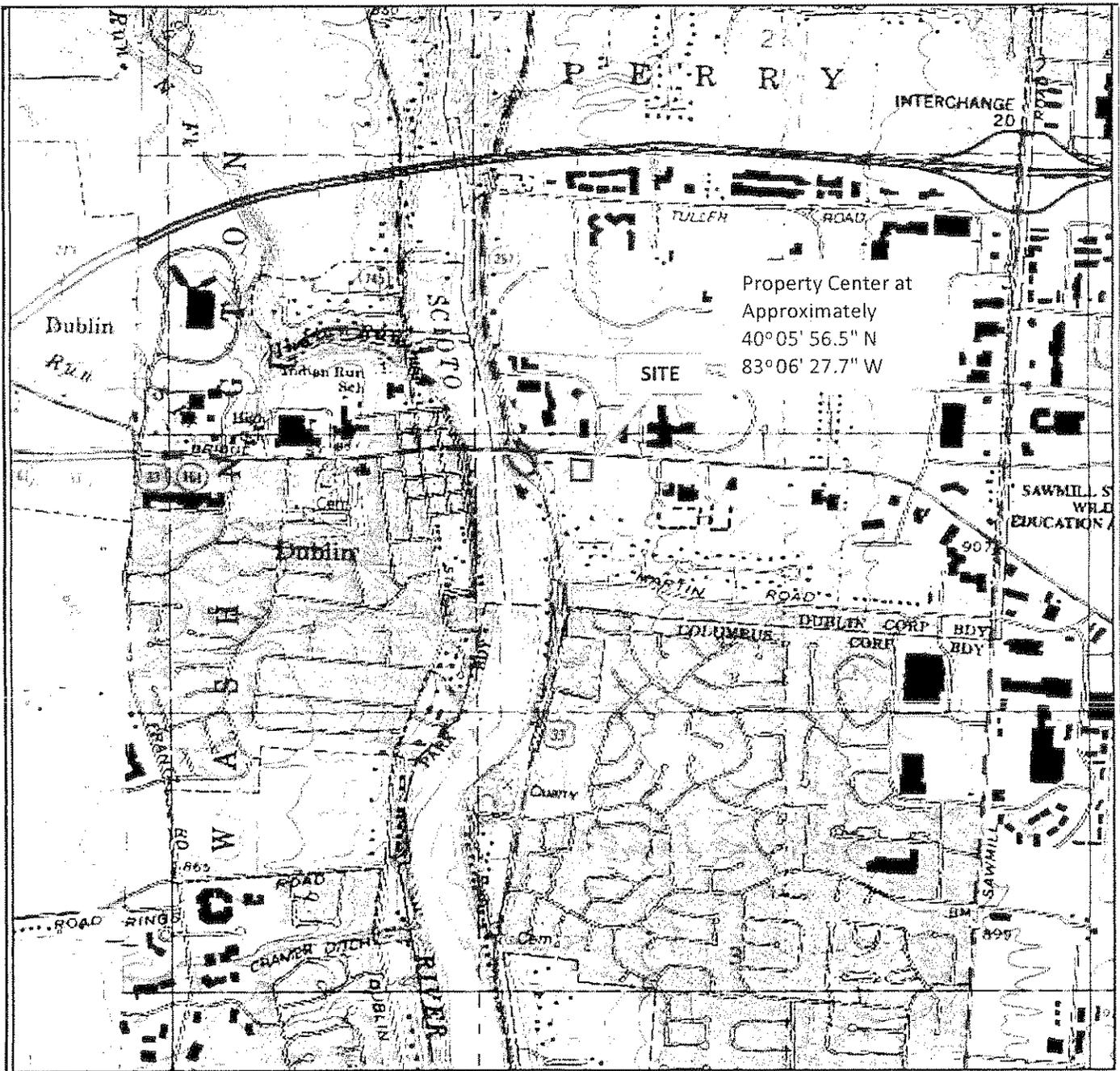


By *Heather L. King* 11/22/11
Professional Surveyor No. 8307



GRAPHIC SCALE (in feet)

Exhibit 2
Property Location Map



Map provided by MyTopo.com



7601 Cheviot Road Cincinnati, Ohio 45247
 Telephone 513.353.0700 Fax 513.353.1701
 E-mail info@gowestech.com

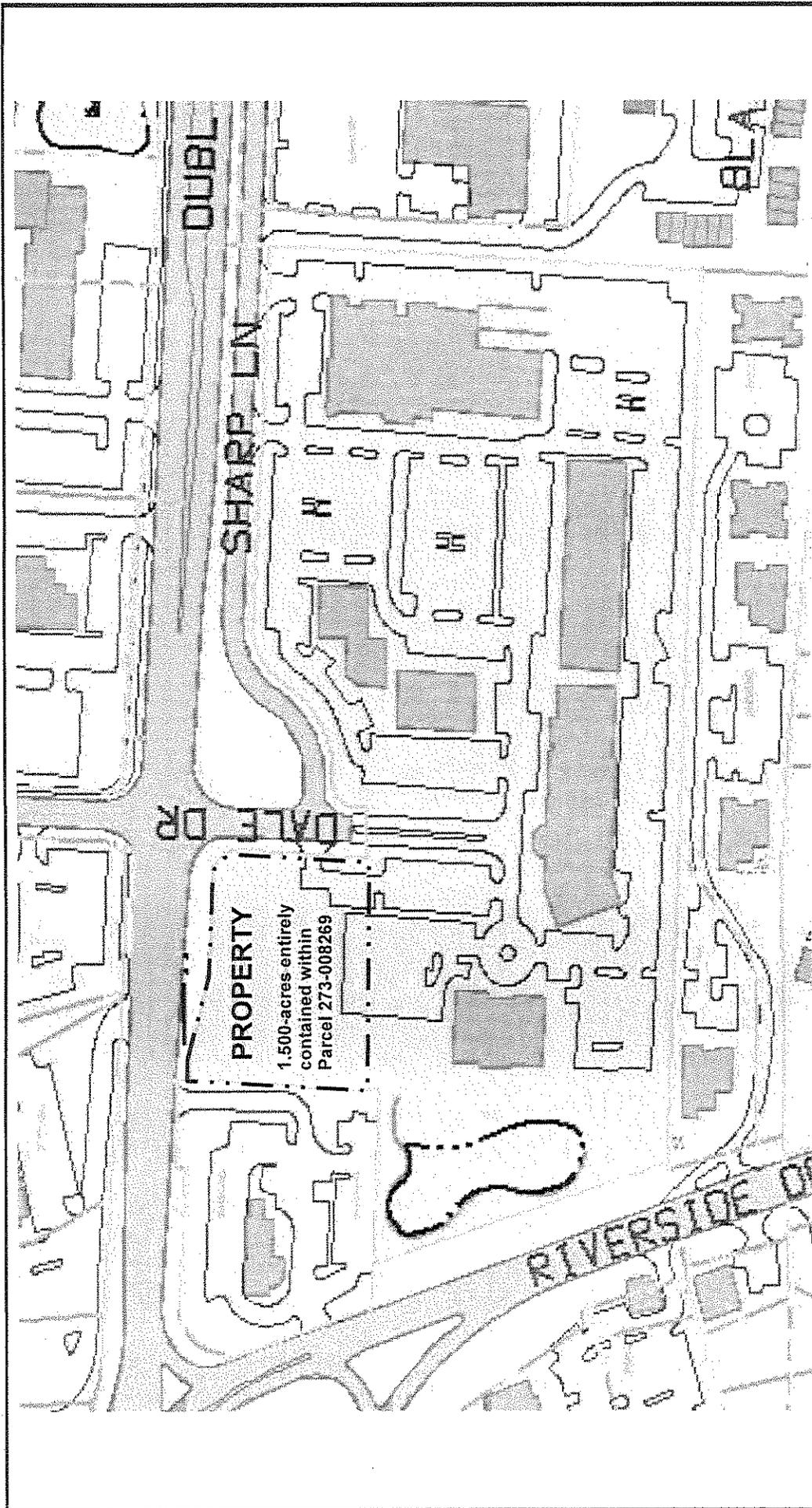
Wendy's Outlot

Project: Phase I Property Assessment

FIGURE 1. TOPOGRAPHIC MAP

Southwest Corner of Dale Drive and West Dublin-Granville Road
 Dublin, Ohio 43017

SOURCE: MyTopo.com	FILE NAME: 11.057.146	DATE: 12/29/2011	REV. 0
	DRAWN BY: Ihor Meinyk	SCALE: As Shown	SHEET 1 of 2



LEGEND

--- Approximate Property Boundary

Franklin County Auditor Parcel ID 273-008269



7601 Cheviot Road Cincinnati, Ohio 45247
Telephone 513.353.0700 Fax 513.353.1701
E-mail info@gowestech.com

SOURCE: Franklin County Auditor Website

TSARR Pad E

PROJECT: NFA Addendum 1

FIGURE 1. Property Location

Southwest Corner: Dale Drive and West Dublin-Granville Road
 Dublin, Ohio 43017

FILE NAME:	DATE:	REV.
11.057.146	2/13/2012	0
DRAWN BY:	SCALE:	SHEET
Paul Chasco	No Scale	1 of 1

Exhibit 3
Executive Summary

SECTION B: EXECUTIVE SUMMARY OF NO FURTHER ACTION LETTER

EXECUTIVE SUMMARY OF NO FURTHER ACTION LETTER

Property: "TSARR Pad E" located at the Southwest Corner of Dale Drive and West Dublin-Granville Road, Dublin, Ohio 43017

Volunteer: Fifth Third Bank, 38 Fountain Square, 5th Floor, MD 109051, Cincinnati, Ohio 45263

Owner: MR/TSARR OWNER LLC, 1691 Michigan Avenue, Suite 215, Miami Beach, Florida 33139

Issued by: Ihor Melnyk, CP-147, 513-353-0700

This executive summary has been completed to meet the requirements of Ohio Administrative Code (OAC) 3745-300-13(I) and OAC 3745-300-13(K) which serves as the recording summary of the NFA letter. Copies of the no further action (NFA) letter may be obtained by contacting the Ohio EPA – Division of Emergency Response and Revitalization, Central Office Records Management Officer. A legal description of the subject property has been included as an attachment to both the NFA letter and covenant not to sue.

Section 1.0 – PROPERTY HISTORY

The Property consists of 1.500 acres that were used from back to at least the early 1900s through the early 2000s for agricultural purposes. The Property is presently an undeveloped out lot of a retail shopping center.

Section 2.0 – TIMELINE

VAP Phase I Property Assessment completed: January 16, 2012.

NFA letter issued: January 16, 2012

Addendum 1 (Response to Initial Notice of Deficiency) issued February 15, 2012.

Section 3.0 – NFA LETTER

Section 3.1 – Phase I Property Assessment

The 1.500-acre Property is located in the City of Dublin, Franklin County, Ohio. It contained entirely within a larger property known as "The Shoppes at River Ridge" encompassing 14.040 acres. A Phase I Property Assessment was performed in compliance with Ohio Administrative Code (OAC) 3745-300-06 to evaluate the potential presence of VAP Identified Areas on the Property. The Phase I included a review of the environmental history of the property through public records searches and interviews with regulatory agencies and other having knowledge of the history of the Property. In addition, the Property was visually inspected on several occasions by a VAP Certified Professional. The Phase I did not reveal any potential Identified Areas, thus no additional assessment was recommended. An eligibility determination indicated that the Property is eligible to participate in the VAP.

Section 3.2 – Proposed Land Use

The current and anticipated future land use for the Property is commercial. The property is proposed to be developed as a restaurant. Based on the findings of the Phase I Property assessment, there are no suspected Identified Areas. There is no evidence of any releases of petroleum or hazardous substances to soil or groundwater that could result in their presence exceeding unrestricted land and groundwater use standards. Based on the findings of the Phase I, the soil at the Property meets the unrestricted land use standards to at all depths and the groundwater meets unrestricted use standards.

Section 3.3 – Phase II Property Assessment

No Phase II assessment activities were performed. The Phase I Property Assessment did not reveal any potential VAP Identified Areas on the Property. Based on the Phase I, there is no basis to suspect any

SECTION B: EXECUTIVE SUMMARY OF NO FURTHER ACTION LETTER

releases of hazardous substances or petroleum occurred at the Property. Therefore, a Phase II property assessment was not required accordance with OAC 3745-300-06(B) and OAC 3745-300-07(A). Based on the findings of the Phase I, the soil at the Property meets the unrestricted land use standards to all depths and the groundwater meets unrestricted use standards.

Soil: Not Applicable

Pathways: Not Applicable

Point of Compliance: Not Applicable

Ground water: Not Applicable

Pathways: Not Applicable

Point of Compliance: Not Applicable

Surface Water and Sediments: Not Applicable

Pathways: Not Applicable

Point of Compliance: Not Applicable

Indoor Air: Not Applicable

Pathways: Not Applicable

Point of Compliance: Not Applicable

Section 3.4 – Ecological receptors: Not Applicable

Section 3.5 – Chemicals of Concern (COCs): Not Applicable

Section 3.6 – Property Specific Risk Assessment (PSRA): Not Applicable

Section 4.0 – CERTIFIED LABORATORIES: Not Applicable

Section 5.0 – REMEDIAL ACTIVITES: Not Applicable

Section 6.0 – OPERATIONS AND MAINTENANCE / ENGINEERING CONTROLS / RISK MITIGATION PLANS: Not Applicable

Section 7.0 – INSTITUTIONAL CONTROLS: Not Applicable

Section 8.0 – DETERMINATION AND COMPLIANCE WITH APPLICABLE STANDARDS

Based on the Phase I Property Assessment, there is no reason to suspect that the soil or groundwater beneath the Property have been impacted with petroleum or hazardous substances. Therefore, based on the Phase I, the Property meets the VAP generic standards for unrestricted land use as defined in OAC 3745-300-08(C)(2)(c)(i), including unrestricted potable use standards for groundwater.

END OF SECTION B