

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO <i>ex rel.</i>	:	
MICHAEL DEWINE,	:	CASE NO. 2013 CV 00674
OHIO ATTORNEY GENERAL	:	
	:	
Plaintiff,	:	JUDGE KONTOS
	:	
v.	:	
	:	
RAAW, LLC, <i>et al.</i>	:	
	:	
Defendants.	:	

**CONSENT ORDER FOR PERMANENT INJUNCTION AS TO
DEFENDANTS RAAW, LLC, ROBERT A. WALLEY, SR. AND ROBERT M. WALLEY**

WHEREAS, Plaintiff, the State of Ohio, by and through its counsel Attorney General Michael DeWine (“Plaintiff” / “State”), filed a Complaint against RAAW, LLC; Robert A. Walley, Sr.; Robert M. Walley; Evergreen Environmental Corp.; Tri County Sports Complex, Inc.; Mohammad Fard; and Steve Sicilian (collectively, “Defendants”) alleging violations of Ohio’s Water Pollution Control laws, Ohio Revised Code (“R.C.”) Chapter 6111; and

WHEREAS, Plaintiff’s Complaint seeks injunctive relief and civil penalties for Defendants’ alleged violations of R.C. Chapter 6111 and the rules and permits promulgated thereunder; and

WHEREAS, Defendants RAAW, LLC, Robert A. Walley, Sr., and Robert M. Walley (collectively, the “RAAW Defendants”) have agreed to enter into this Consent Order for Permanent Injunction (“Consent Order”) to resolve the RAAW Defendants’ liability for injunctive relief;

WHEREAS, Plaintiff’s claims for civil penalties under R.C. 6111.09 remain in dispute between the parties;



NOW THEREFORE, without the trial of any issue of fact or law, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over both the parties and the subject matter of this action pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against the RAAW Defendants under R.C. Chapter 6111. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon the RAAW Defendants and their agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with the RAAW Defendants. The undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of the Consent Order and execute and legally bind that party or parties to it. This Consent Order is in settlement and compromise of disputed claims and nothing in this Consent Order is to be construed as an admission of any facts or liability.

3. The RAAW Defendants shall provide a copy of this Consent Order to any lessee, any purchaser of any property that is the subject of this action, or any successor in interest and each key employee, consultant, or contractor employed to perform work referenced herein.

4. The RAAW Defendants' duties set forth in this Consent Order are joint and several. In the event of the insolvency, bankruptcy, or other failure of any of the RAAW Defendants to pay

any required amount and/or implement any requirement, the other RAAW Defendants shall pay the amount and/or implement the requirement as required by this Consent Order.

III. SATISFACTION OF LAWSUIT

5. Plaintiff alleges in its Complaint that the RAAW Defendants' activities resulted in violations of Ohio Water Pollution Control Laws, R.C. Chapters 6111 and rules promulgated thereunder.

6. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability for injunctive relief by the RAAW Defendants for all claims alleged in the State's Complaint. However, the issue of civil penalties under R.C. 6111.09(A) remains outstanding between the parties and shall be addressed separately.

IV. RESERVATION OF RIGHTS

7. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- (a) Seek any legal or equitable relief from the RAAW Defendants or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint;
- (b) Seek any legal or equitable relief from the RAAW Defendants or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;
- (d) Take any action authorized by law against any appropriate person, including either of the RAAW Defendants, to eliminate or mitigate conditions on the properties that were the subject of the State's Complaint that may present a threat to the public health or welfare, or the environment; and/or

- (e) Bring any legal or equitable action against any appropriate person other than the RAAW Defendants for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

V. INJUNCTION

8. The RAAW Defendants are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter.

9. By no later than thirty (30) days following entry of this Consent Order, the RAAW Defendants shall submit a complete and approvable detailed plan for stream corridor and wetlands enhancement ("Enhancement Plan") to Ohio EPA consistent with the impacted areas of wetlands delineated in green and yellow and the unimpacted areas of wetlands delineated in grey together with a 40-foot buffer surrounding those areas ("Total Project Area") in the Davey Resource Group's [INSERT AGREED MAP], which has been attached at **EXHIBIT A**.

(a) The following items shall be submitted:

- i. A current baseline survey of the existing vegetation and invasive species percentage (invasive species list as found in the Ohio Rapid Assessment Method for Wetlands, Manual for using Version 5.0, Ohio EPA Technical Bulletin Wetland/2001-1-1) for the disturbed and undisturbed wetland areas onsite performed by qualified environmental consultant;
- ii. A plan for enhancing the undisturbed wetland areas within the Total Project Area. Enhancement shall be accomplished either through invasive species removal and/or supplemental woody vegetation plantings as needed;

- iii. A plan for restoring/enhancing vegetation, hydrology, and soils in the disturbed areas as mapped in yellow and green in the Total Project Area in Exhibit A to meet wetland criteria outlined in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and appropriate regional supplement;
- iv. A planting plan, consisting of a list of the native, live and pest free wetland tree and shrub species to be planted with 400 stems per acre of which at least fifty percent shall be tree species;
- v. A plan for monitoring the enhanced wetland areas including parameters to be monitored, a monitoring period of 10 years (with monitoring to occur and monitoring reports to be submitted in years 3, 5, 7 and 10). The monitoring and report preparation shall be performed by a qualified environmental consultant; and
- vi. A plan for stream riparian enhancement. This shall include a planting plan for the stream riparian areas. These shall be planted with 400 woody stems per acre of which 200 shall be tree species.

(b) The following wetland enhancement targets shall be in the Ohio EPA approved Enhancement Plan discussed above in Section (a). If all of the targets below are met prior to the 10th year of monitoring, the RAAW Defendants may be released early from wetland enhancement monitoring:

- i. All wetland areas in the impacted areas (mapped in green and yellow) shall meet the three wetland criteria as outlined in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and appropriate regional supplement.
- ii. All enhanced wetland areas must meet a woody stem count of 400 stems per acre of which 50 percent must be tree species (this can include native volunteer species).
- iii. The enhanced wetlands may not consist of more than 20 percent areal cover of invasive species as listed in the Ohio Rapid Assessment Method for Wetlands, Manual for using Version 5.0, Ohio EPA Technical Bulletin Wetland/2001-1-1.

(c) The following stream riparian enhancement targets shall be in Enhancement Plan approved by Ohio EPA. If all of the targets below are met prior to the 10th year of monitoring, the RAAW Defendants may be released early from monitoring:

- i. All stream riparian areas within the covenant area must meet a woody stem count of 400 stems per acre of which fifty percent must be tree species (this can include native volunteer species).
- ii. The stream riparian areas in the covenant areas shall not consist of more than 20 percent cover of invasive species as listed in the Ohio Rapid Assessment Method for Wetlands, Manual for using Version 5.0, Ohio EPA Technical Bulletin Wetland/2001-1-1.

10. By no later than sixty (60) days following receipt of approval of the RAAW Defendants' Enhancement Plan by Ohio EPA, the RAAW Defendants are enjoined and ordered to initiate implementation of the Enhancement Plan on Site.

11. By no later than three hundred sixty-five (365) days following entry of the Consent Order, the RAAW Defendants are enjoined and ordered to complete implementation of the Enhancement Plan on Site.

12. The RAAW Defendants shall monitor the Total Project Area to measure compliance with the wetland and stream riparian enhancement targets identified above for a period of ten (10) years or until satisfactory performance is attained following the entry of this Consent Order. All monitoring and reporting shall follow applicable requirements outlined in Table 6.b in the Standardized Monitoring Protocols, Data Analysis and Reporting Requirements for Mitigation Wetlands in Ohio v.1.0. Ohio EPA Technical Report WET/2004-6 (2004).

13. By no later than thirty (30) days following entry of this Consent Order, the RAAW Defendants are enjoined and ordered to submit to Ohio EPA for review and approval a proposed environmental covenant consistent with the template on Ohio EPA's website: http://www.epa.ohio.gov/Portals/35/401/Environmental_Covenant_boilerplate_2015.docx for the protection in perpetuity of the following the Total Project Area as described above.

14. The RAAW Defendants shall submit a signed, filed, and recorded environmental covenant, as described above, to Ohio EPA within ninety (90) days of Ohio EPA approval of the covenant language. The RAAW Defendants shall submit an executed and signed Environmental Covenant not more than 180 days after the Consent Decree is signed.

15. Signs shall be placed within visual distance along the covenant area boundary that indicates the area is a protected wetland and stream enhancement project and that mowing, dumping, or any other activity that would result in a degradation of the wetland and stream complexes is prohibited.

VI. SUBMITTAL OF DOCUMENTS

16. Documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be sent to: Environmental Protection Agency, Northeast District Office, Division of Surface Water (ATTN: DSW Enforcement Group Leader) at 2110 E. Aurora Rd., Twinsburg, OH 44087.

VII. STIPULATED PENALTIES

17. In the event that the RAAW Defendants fail to comply with any requirement of Section V of this Order, the RAAW Defendants are liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- (a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days – three hundred dollars (\$300.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days – six hundred dollars (\$600.00) per day per requirement not met;

- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days – nine hundred dollars (\$900.00) per day per requirement not met.

18. Payments due pursuant to the above paragraph shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the violation. Payments shall be accompanied by a written explanation of the deadline missed and/or the violation. Any payment required to be made under this paragraph shall be made by delivering a certified check or checks for the appropriate amount(s), made payable to “Treasurer, State of Ohio,” to Scott Hainer, Ohio Attorney General’s Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The payment of stipulated penalties by the RAAW Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations shall not be construed to limit Plaintiff’s authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order. Further, payment of any stipulated penalty by the RAAW Defendants shall not be considered an admission of liability on the part of the RAAW Defendants.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

19. Performance of the terms of this Consent Order by the RAAW Defendants is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, the RAAW Defendants’ performance is not excused by the failure to obtain or any shortfall of any Federal or State grants, loans and/or funds or by the processing of any applications for the same.

IX. EFFECT OF CONSENT ORDER

20. This Consent Order does not constitute authorization or approval of any additional wetlands or stream fill activities. A 404 individual permit application and 401 water quality certification application must be submitted to the U.S. Army Corps of Engineers and Ohio EPA, respectively, prior to impacting any wetlands or streams that are not protected by an environmental covenant pursuant to Section V of this Consent Order.

X. MISCELLANEOUS

21. Nothing in this Consent Order shall affect the RAAW Defendants' obligations to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

22. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve the RAAW Defendants from the obligations created by this Consent Order.

23. The RAAW Defendants shall inform the Ohio EPA of any change of registered agent including the registered agent's address or telephone number, or the sale of any property that is the subject of this action.

XI. COSTS

24. The RAAW Defendants shall pay any court costs assessed to the RAAW Defendants by the Clerk of Courts at the conclusion of this action.

25. The RAAW Defendants are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. The RAAW Defendants shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" to the Fiscal Officer, Ohio

EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date he receives notice of the costs from Ohio EPA.

XII. CONTINUING JURISDICTION

26. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering the RAAW Defendants' compliance with this Consent Order.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

27. The parties agree and acknowledge that final approval by the Plaintiff and the RAAW Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. The State of Ohio and the RAAW Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

28. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, 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 upon the parties a notice of the judgment and its 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.

3/4/16

DATE

Petykotos
JUDGE KONTOS
COURT OF COMMON PLEAS
TRUMBULL COUNTY

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

[Signature]

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Counsel for Plaintiff, State of Ohio

[Signature]
RAAW, LLC
by: Robert A. Walley, Sr., Owner

[Signature]
Robert A. Walley, Sr.

[Signature]
Robert M. Walley
Defendants

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Counsel for Defendants Robert A. Walley, Sr., Robert M. Walley, and RAAW, LLC

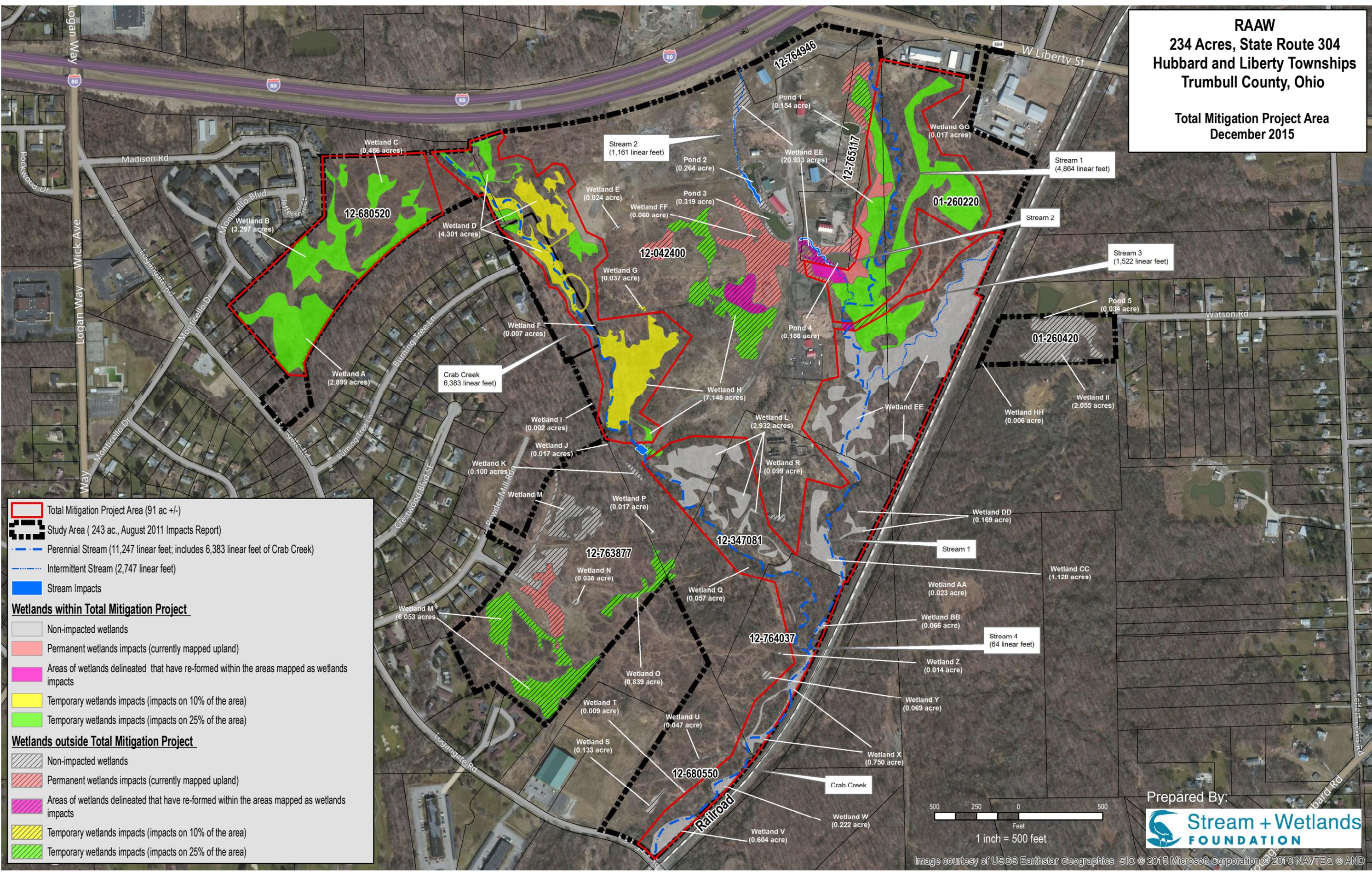
FILED
COURT OF COMMON PLEAS

MAR 4 2016

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

RAAW
234 Acres, State Route 304
Hubbard and Liberty Townships
Trumbull County, Ohio

Total Mitigation Project Area
December 2015



Total Mitigation Project Area (91 ac +/-)

Study Area (243 ac., August 2011 Impacts Report)

Perennial Stream (11,247 linear feet; includes 6,383 linear feet of Crab Creek)

Intermittent Stream (2,747 linear feet)

Stream Impacts

Wetlands within Total Mitigation Project

- Non-impacted wetlands
- Permanent wetlands impacts (currently mapped upland)
- Areas of wetlands delineated that have re-formed within the areas mapped as wetlands impacts
- Temporary wetlands impacts (impacts on 10% of the area)
- Temporary wetlands impacts (impacts on 25% of the area)

Wetlands outside Total Mitigation Project

- Non-impacted wetlands
- Permanent wetlands impacts (currently mapped upland)
- Areas of wetlands delineated that have re-formed within the areas mapped as wetlands impacts
- Temporary wetlands impacts (impacts on 10% of the area)
- Temporary wetlands impacts (impacts on 25% of the area)



Prepared By:

Stream + Wetlands
FOUNDATION