

OHIO EPA
SEP 25 98
ENTERED DIRECTOR'S JOURNAL

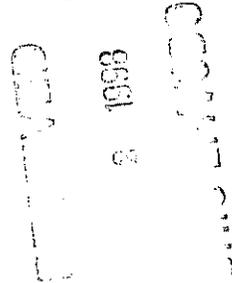
BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of:	:
	:
Dominion Homes Inc.,	:
5501 Frantz Road	:
P.O. Box 7166	:
Dublin, Ohio 43017	: <u>Covenant Not to Sue</u>
	:
Owner of the:	: <u>Director's Final Findings</u>
	: <u>and Orders</u>
Doherty Road Site	:
Doherty Road	:
Columbus, Ohio 43119	:
Franklin County	:
	:

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

FINDINGS

1. A complete No Further Action Letter (NFA Letter No. 98NFA034) was submitted to the Ohio EPA Division of Emergency and Remedial Response on behalf of Dominion Homes, Inc., on August 21, 1998, by Gerald R. Myers, Certified Professional (Certified Professional No. CP131) as defined in ORC Section 3746.01(E) (the Certified Professional). The NFA Letter No. 98NFA034 will be referred to hereafter in these Findings and Orders as the "NFA".



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

By: Zona L. Clements Date 9-25-98

2. The NFA describes investigational and remedial activities undertaken at a 6.014 acre tract of land, designated the Doherty Road site, located approximately one-quarter mile north of West Broad Street, on the west side of Doherty Road in Franklin County, Ohio (the Property). The Property is a smaller portion of land owned by Dominion Homes, Inc. An exact legal description of the larger parcel owned by Dominion Homes Inc. is contained in the warranty deed recorded in the Franklin County Recorder's Office in O.R. 30927 D16 and O.R. 33707 D12. The exact legal description of the Property is attached hereto as Exhibit A. A site location map is attached as Exhibit B.
3. Based upon information contained in the NFA, the following investigational and remedial activities were undertaken by Dominion Homes, Inc. at the Property:
 - a) Completion of a Phase I Property Assessment, in accordance with OAC Rule 3745-300-06; and
 - b) Completion of a Phase II Property Assessment, in accordance with OAC Rule 3745-300-07, including but not limited to investigations of soil and ground water to assess environmental conditions related to releases of hazardous substance and petroleum, and the implementation of a remedy to remove contaminated soils exceeding generic direct contact soil standards for residential use.
4. The Certified Professional has verified by affidavit that the investigational and remedial activities undertaken at the Property comply with the standards established in ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible to receive a Covenant Not Sue under the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws.
5. DLZ Laboratories (Certified Laboratory No. CL 00014) and ATEL Laboratories (Certified Laboratory No. CL 0017) are certified laboratories as defined in ORC Section 3746.01(D) and OAC 3745-300-04.
6. According to information provided in the NFA, DLZ Laboratories and ATEL Laboratories performed analyses for which they are qualified, which formed the basis for the issuance of the NFA as determined by the Certified Professional.
7. No land use restriction has been placed on the Property described in the NFA and, based on the information contained in the NFA, the Property meets the applicable standards for residential use.
8. Based on the information contained in the NFA, the Director has determined that the issuance of a Covenant Not to Sue for the Property is protective of human health, safety and the environment.

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ORDERS

1. Upon the effective date of these Orders, and subject to the conditions outlined below, the Ohio EPA hereby releases and covenants not to sue Dominion Homes, Inc., and its agents, employees, shareholders, officers, directors, successors or assigns, from all civil liability to the State to perform additional investigational and remedial activities to address the releases of hazardous substances or petroleum addressed through the Phase I and Phase II property assessments completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.
2. The NFA and the Covenant provided in these Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.
3. The NFA and the Covenant provided in these Orders shall be filed in the Office of the County Recorder of Franklin County, Ohio, in the same manner as a deed to the Property.

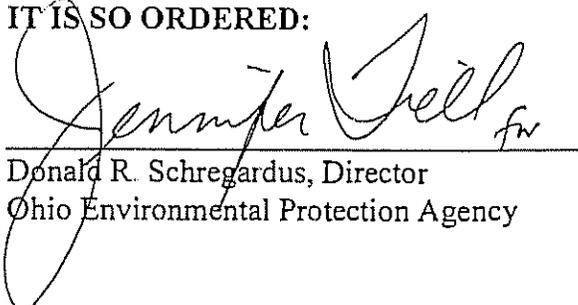
Conditions of and Limitations on the Covenant

1. This Covenant shall only apply to the Property described in the NFA, upon which the investigational and remedial activities specified in the NFA were conducted.
2. Pursuant to ORC Section 3746.12(B), this Covenant shall remain in effect for as long as the Property to which this Covenant pertains continues to comply with the applicable standards upon which this Covenant is based, as outlined in Finding Numbers 1 through 8 above.
3. This Covenant shall not apply to releases of hazardous substances or petroleum:
 - (a) that occur after the submittal of the NFA to Ohio EPA, or
 - (b) on or emanating from the Property that are not described in the NFA, or
 - (c) for which investigational and/or remedial activities were conducted that were not in compliance with ORC Chapter 3746 or OAC Chapter 3745-300.
4. This Covenant shall not apply to:
 - (a) 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. Sections 9607 and 9613, as amended; or
 - (b) claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. Section 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; or

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- (c) as otherwise specifically provided in ORC Chapter 3746.
5. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC Sections 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 a property where a voluntary action is being or has been conducted under ORC Chapter 3746 and the rules adopted thereunder, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
 6. Nothing in this Covenant shall be construed to limit and/or waive the Director's authority to revoke this Covenant pursuant to any of the circumstances for revocation of a Covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300.

IT IS SO ORDERED:


Donald R. Schregardus, Director
Ohio Environmental Protection Agency

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Date

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EXHIBIT A

**DESCRIPTION OF 6.014 ACRES
RESIDENTIAL LEAD CLEANUP SITE
DOHERTY ROAD**

Situate in the State of Ohio, County of Franklin, City of Columbus, being in Virginia Military Survey Number 1571 and being a strip of land, on, over and across the 10.280 and 19.128 acre tracts conveyed to The Borrer Corporation by deeds of record in O.R. 30927 D16 and O.R. 33707 D12, respectively, records of the Recorder's Office, Franklin County, Ohio, and being more particularly described as follows;

Beginning for reference at a railroad spike found at the point of intersection of the (southerly extension) easterly right-of-way line of Doherty Road with the centerline of West Broad Street said railroad spike also being at the southwesterly corner of the 6.542 acre tract conveyed to Jack Travis and L. Lee Walker by deed of record in O.R. 14537 E16;

Thence S 87° 15' 35" W, a distance of 30.00 feet, along the centerline of West Broad Street to the point of intersection of the (southerly extension) westerly right-of-way line of Doherty Road with said centerline and being the southeasterly corner of the easterly half of the original 98.78 acre tract conveyed to George Kotsanos Inc., by deed of record in Deed Book 2602, Page 477;

Thence N 02° 14' 15" W, a distance of 1192.46 feet, along the westerly right-of-way line of said Doherty Road (and its southerly extension) and the easterly line of the said original 98.78 acre tract, to an iron pin set at the southeasterly corner of the said 10.280 acre tract;

Thence continuing N 02° 14' 15" W, a distance of 655.21 feet along the westerly right-of-way line of Doherty Road and the easterly line of said 10.280 acre tract to the point of true beginning of the herein described tract;

Thence the following seventy (70) courses and distances across said 10.280 and 19.128 acre tracts;

1. Thence S 06° 38' 09" W, a distance of 22.09 feet to a point;
2. Thence N 84° 55' 35" W, a distance of 38.91 feet to a point;
3. Thence S 05° 04' 25" W, a distance of 40.00 feet to a point;
4. Thence S 84° 55' 35" E, a distance of 40.00 feet to a point;
5. Thence S 05° 04' 25" W, a distance of 40.00 feet to a point;
6. Thence N 84° 55' 35" W, a distance of 80.00 feet to a point;
7. Thence S 05° 04' 25" W, a distance of 80.00 feet to a point;
8. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;

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9. Thence S 05° 04' 25" W, a distance of 40.00 feet to a point;
10. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
11. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
12. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
13. Thence S 05° 04' 25" W, a distance of 40.00 feet to a point;
14. Thence N 84° 55' 35" W, a distance of 20.00 feet to a point;
15. Thence S 05° 04' 25" W, a distance of 40.00 feet to a point;
16. Thence S 84° 55' 35" E, a distance of 20.00 feet to a point;
17. Thence S 05° 04' 25" W, a distance of 40.00 feet to a point;
18. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
19. Thence S 05° 04' 25" W, a distance of 120.00 feet to a point;
20. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
21. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
22. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
23. Thence S 05° 04' 25" W, a distance of 120.00 feet to a point;
24. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
25. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
26. Thence N 84° 55' 35" W, a distance of 80.00 feet to a point;
27. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
28. Thence S 84° 55' 35" E, a distance of 80.00 feet to a point;
29. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
30. Thence N 84° 55' 35" W, a distance of 80.00 feet to a point;
31. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
32. Thence S 84° 55' 35" E, a distance of 80.00 feet to a point;

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33. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
34. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
35. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
36. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
37. Thence S 05° 04' 25" W, a distance of 40.00 feet to a point;
38. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
39. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
40. Thence N 84° 55' 35" W, a distance of 80.00 feet to a point;
41. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
42. Thence N 84° 55' 35" W, a distance of 80.00 feet to a point;
43. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
44. Thence S 84° 55' 35" E, a distance of 40.00 feet to a point;
45. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
46. Thence N 84° 55' 35" W, a distance of 80.00 feet to a point;
47. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
48. Thence N 84° 55' 35" W, a distance of 40.00 feet to a point;
49. Thence N 05° 04' 25" E, a distance of 120.00 feet to a point;
50. Thence S 84° 55' 35" E, a distance of 40.00 feet to a point;
51. Thence N 05° 04' 25" E, a distance of 80.00 feet to a point;
52. Thence S 84° 55' 35" E, a distance of 40.00 feet to a point;
53. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
54. Thence S 84° 55' 35" E, a distance of 120.00 feet to a point;
55. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
56. Thence S 84° 55' 35" E, a distance of 40.00 feet to a point;

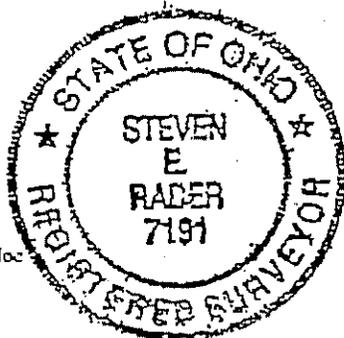
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- 57. Thence S 05° 04' 25" W, a distance of 60.00 feet to a point;
- 58. Thence S 84° 55' 35" E, a distance of 80.00 feet to a point;
- 59. Thence N 05° 04' 25" E, a distance of 20.00 feet to a point;
- 60. Thence S 84° 55' 35" E, a distance of 120.00 feet to a point;
- 61. Thence N 05° 04' 25" E, a distance of 40.00 feet to a point;
- 62. Thence S 84° 55' 35" E, a distance of 60.00 feet to a point;
- 63. Thence S 05° 04' 25" W, a distance of 20.00 feet to a point;
- 64. Thence S 84° 55' 35" E, a distance of 20.00 feet to a point;
- 65. Thence S 05° 04' 25" W, a distance of 60.00 feet to a point;
- 66. Thence S 84° 55' 35" E, a distance of 80.00 feet to a point;
- 67. Thence S 05° 04' 25" W, a distance of 20.00 feet to a point;
- 68. Thence S 84° 55' 35" E, a distance of 40.00 feet to a point;
- 69. Thence S 05° 04' 25" W, a distance of 60.00 feet to a point;
- 70. Thence S 84° 55' 35" E a distance of 77.21 feet to a point in the westerly right-of-way line of Doherty Road and the easterly line of said 10.280 acre tract; said point being located S 02° 14' 15" E a distance of 142.06 feet from the northeasterly corner of said 10.280 acre tract;

Thence S 02° 14' 15" E, a distance of 18.07 feet along the westerly right-of-way line of Doherty Road and the easterly line of said 10.280 acre tract to the point of True Beginning containing 6.014 acres, more or less.

The bearings in the above description were based on the bearing of N 89° 56' 04" E, as determined between Franklin County Engineer's Monuments "FRANK-39" and "FRANK-139," by the Franklin County Engineer's Office.



R. D. ZANDE & ASSOCIATES, INC.

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Steven E. Rader
 Registered Surveyor No. 7191 SEP 25 98 ENTERED DIRECTOR'S JOURNAL

COVINGBUS

SITE

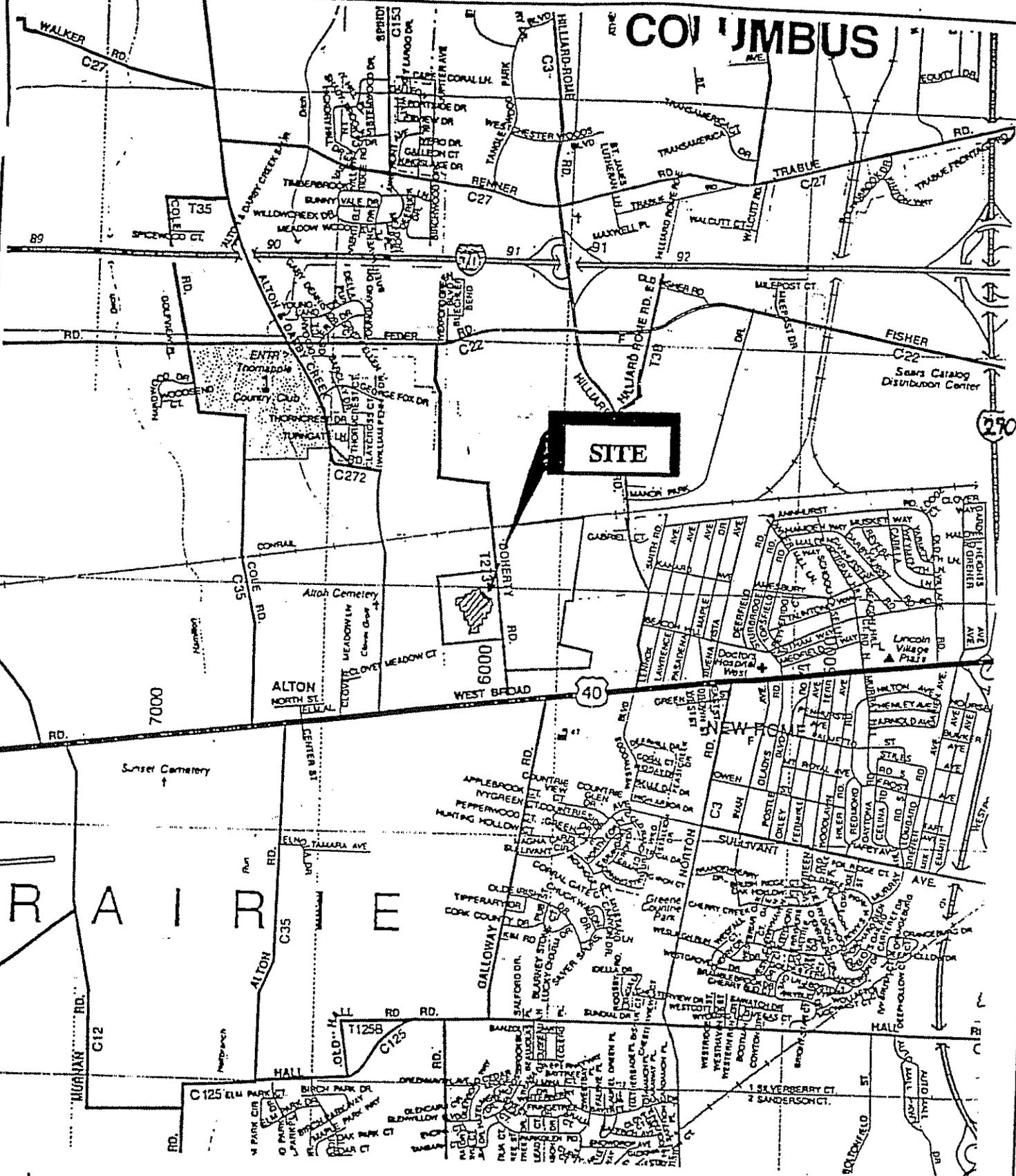


EXHIBIT B

DOHERTY ROAD SITE - LOCATION MAP
DOMINION HOMES, INC.

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NORTH