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STREET ADDRESS:

Lazarus Government Center  
122 S. Front Street  
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184  
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049  
Columbus, OH 43216-1049

OHIO EPA/CDO

August 24, 2005

**CERTIFIED MAIL**

Mr. Tim Rogers  
Wal-Mart Real Estate Business Trust and Wal-Mart Stores East, LP  
702 S.W. 8<sup>th</sup> Street  
Bentonville, Arkansas 72716-8611

**RE: Issuance of Covenant Not To Sue for the  
Proposed Wal-Mart Supercenter Store No. 3447 Property  
04NFA196**

Dear Mr. Rogers:

I am happy to inform you that on August 24, 2005, the Director of the Ohio Environmental Protection Agency ("Director") issued a Covenant Not To Sue ("Covenant") to Wal-Mart Real Estate Business Trust and Wal-Mart Stores East, LP for the Proposed Wal-Mart Supercenter Store No. 3447 property located at 3589 and 3651 through 3679 East Main Street, Whitehall and Columbus, Franklin County, Ohio. The Covenant was issued as Final Findings and Orders pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300.

Based on the NFA Letter and subject to the conditions outlined in the Covenant, the Ohio Environmental Protection Agency covenants not to sue and releases Wal-Mart Real Estate Business Trust and Wal-Mart Stores East, LP and EE-J Company, Holland Investment, Inc. and Columbus Jewish Federation and their respective agents, employees, 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 at the property for the releases of hazardous substances or petroleum identified and addressed in the Phase I and Phase II Property Assessments completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.

You will find the certified copy of the Covenant enclosed. When filing the Covenant and its exhibits at the Franklin County Recorder's Office, please use the enclosed Affidavit from Ohio EPA to guide the recording of the documents in the County's deed records.

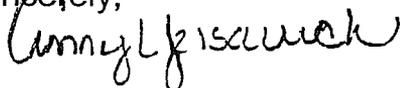
Bob Taft, Governor  
Bruce Johnson, Lieutenant Governor  
Joseph P. Koncellik, Director

As stated under the "Conditions and Limitations" of the Covenant (CNS), the Environmental Covenants for the Property - attached as CNS Exhibit 4 - must be recorded with the Franklin County Recorder's Office within 30 days of the CNS issuance date, as a separate document from the required recording of the CNS and its remaining exhibits. The CNS becomes effective on the recording date of the Environmental Covenant. The CNS also requires the Volunteer to submit to Ohio EPA a copy of the Environmental Covenant showing the filing date stamp of the Recorder's Office.

The issuance of the Covenant is a final action of the Director and will be public noticed in accordance with OAC 3745-47-07. The action may be appealed to the Environmental Review Appeals Commission ("Commission"). 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 thirty (30) days after notice or issuance of the action. (See ORC 3745.04 and 3745.07.) A copy of the appeal must be served on the Director within three (3) days after the appeal is filed with the Commission. The appeal may be filed with the Commission at 309 South Fourth Street, Room 222, Columbus, Ohio 43215.

Many persons within the agency, Wal-Mart Real Estate Business Trust and Wal-Mart Stores East, LP, EEJ Company, Holland Investment, Inc., Columbus Jewish Federation and Burgess and Niple, among others, worked hard to remove the environmental barriers associated with redeveloping this property. Congratulations on the issuance of this Covenant. If you have any questions or concerns, please feel free to contact me at (614) 644-2285 or [amy.yersavich@epa.state.oh.us](mailto:amy.yersavich@epa.state.oh.us).

Sincerely,



Amy Yersavich, Manager  
Division of Emergency and Remedial Response  
Voluntary Action Program

Enclosure

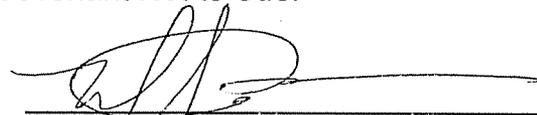
cc: Thomas J. Mignery, Certified Professional, Burgess & Niple  
Brian J. Considine, Esq., Dawda, Mann, Mulcahy, and Sadler, PLC  
Raymond R. Moreno, DERR-Central District Office  
Ann M. Wood, Legal Office

TO BE RECORDED IN DEED RECORDS,  
PURSUANT TO R.C. 317.08(A)

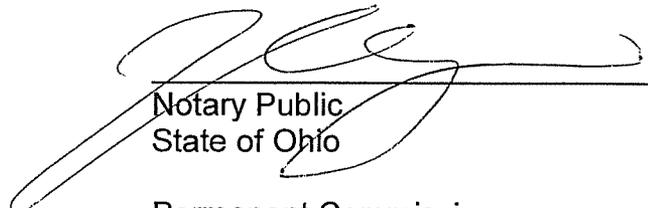
AFFIDAVIT

STATE OF OHIO )  
 )  
COUNTY OF FRANKLIN ) ss:

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Miles Davidson, who, being duly sworn according to law, deposes and says that: (i) he 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 August 23, 2005 regarding the property known as Proposed Wal-Mart Supercenter Store No. 3447, located at 3589 and 3651 through 3679 East Main Street in Whitehall and Columbus, Franklin County, Ohio, and further described in Exhibit 1 of the attached Covenant Not to Sue.

  
\_\_\_\_\_  
Miles Davidson  
Records Management Officer  
Ohio EPA Legal Office

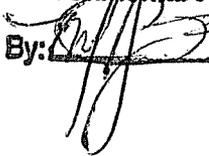
Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 24 day of August, 2005.

  
\_\_\_\_\_  
Notary Public  
State of Ohio  
Permanent Commission  
No expiration, R.C. 147.03

This instrument prepared by:  
Ann M. Wood, Attorney  
Ohio EPA Legal Office  
P.O. Box 1049  
Columbus, Ohio 43216-1049

MARCUS J. GLASGOW  
NOTARY PUBLIC, STATE OF OHIO  
LIFETIME COMMISSION

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:  Date: AUG. 23, 2005

OHIO E.P.A.

AUG 23 2005

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the matter of:**

Wal-Mart Real Estate Business Trust and  
Wal-Mart Stores East, LP  
702 S.W. 8<sup>th</sup> Street  
Bentonville, Arkansas, 72716-8611

**Covenant Not to Sue**

**Director's Final Findings  
and Orders**

**Regarding property known as:**

Proposed Wal-Mart Supercenter  
Store No. 3447  
3651 East Main Street  
Whitehall, Ohio

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. 04NFA196 (the "NFA Letter"), was submitted on December 20, 2004 to the Director under the Voluntary Action Program on behalf of Wal-Mart Real Estate Business Trust and Wal-Mart Stores East, LP (the "Volunteer" or "Wal-Mart"), by Thomas J. Mignery, a certified professional, No. CP 125, as defined in ORC 3746.01(E) and OAC 3745-300-01(A)(8) (the "Certified Professional").
2. The Certified Professional submitted to the Director addenda to the NFA Letter, dated May 27, 2005 and June 8, 2005, respectively. For the purposes of these Findings and Orders, the term "NFA Letter" includes the addenda.
3. The NFA Letter describes the investigational activities undertaken at the

approximately 42.238-acre property, known as the Proposed Wal-Mart Supercenter Store No. 3447 located at 3589 and 3651 through 3679 East Main Street, Whitehall and Columbus, 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 the NFA letter, the current owners of the Property are EE-J Company, 3589 East Main Street, Whitehall, Ohio 43213; Holland Investment, Inc., 4308 East Main Street, Columbus, Ohio 43213; and Columbus Jewish Federation, 1175 College Avenue, Columbus, Ohio 43209.

4. The Certified Professional prepared pursuant to OAC 3745-300-13(I) an Executive Summary of the NFA Letter, which is attached hereto as Exhibit 3.
5. Based upon the information contained in the NFA Letter, the Volunteer undertook or completed the following investigational and remedial 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 Phase II Property Assessment, in accordance with OAC 3745-300-07, including but not limited to investigations of identified areas and affected media, to assess environmental conditions related to releases of hazardous substance and petroleum;
  - c. identification, in the Phase I Property Assessment or Phase II Property Assessment, of one or more releases of hazardous substances or petroleum with chemicals of concern ("COCs") that include but are not limited to volatile organic compounds, semi-volatile organic compounds, metals, and total petroleum hydrocarbons, for which the Volunteer determined the applicable standards;
  - d. activity and use limitations contained in proposed Environmental Covenants prepared pursuant to ORC 5301.80 to 5301.92, subject to execution by the Director and recording as described in these Findings and Orders;
  - e. a demonstration that the Property complies with applicable standards for the identified chemicals of concern in the identified areas and affected media at the Property through the use of generic numerical standards, in accordance with OAC 3745-300-08, or the use of a Property-specific risk assessment, in accordance with OAC 3745-300-09.

6. The Certified Professional has verified by affidavit that the investigational and remedial activities undertaken at the Property comply with the applicable standards established in ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible to receive a covenant not to sue under the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws and regulations.
7. At the time that analyses were performed, TestAmerica Analytical Testing Corporation, American Analytical Laboratories, Inc. and Datachem Laboratories were certified laboratories, Nos. CL0018, CL0042 and CL0022, respectively, as defined in ORC 3746.01(D) and OAC 3745-300-01(A), whose services were used in support of the NFA Letter (the "Certified Laboratories").
8. The Certified Laboratories have declared in affidavits contained in the NFA Letter that they each performed analyses for which they were certified and qualified, pursuant to ORC Chapter 3746 and OAC 3745-300-04, that formed the basis for the issuance of the NFA Letter by the Certified Professional.
9. The Environmental Covenants will be recorded in the Franklin County Recorder's Office as described in the Environmental Covenant and Order No. 2 herein. Copies of the executed Environmental Covenants are attached hereto as Exhibit 4. The Environmental Covenants upon recording will:
  - a. restrict the use of the Property to commercial or industrial land uses on the portion of the Property located in Whitehall;
  - b. prohibit residential uses on the portion of the Property located in Columbus; and
  - c. prohibit the extraction of ground water at or underlying the Property for any purpose, potable or otherwise, except for investigation or remediation of the ground water.

#### Applicable Standards

10. Based on the information contained in the NFA Letter and all conditions set forth in these Findings and Orders, the Property meets the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for commercial and industrial land use. The applicable standards, the methods of achieving compliance with the standards, and the associated points of compliance for the standards for each complete exposure pathway, are identified in the NFA Letter, which contains a summary table entitled "Complete Pathway Determination and Applicable Standards Determination" and "Point of Compliance", "Applicable Standards", and Compliance

with VAP Applicable Standards” in the NFA Letter at sections 4.3, 4.4 and 5.0, respectively. The applicable standards include but are not limited to:

- a. commercial and industrial land use standards for direct contact to chemicals of concern related to hazardous substances in soil. The standards consist of generic numerical standards from Tables III of OAC 3745-300-08 and standards derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09(D) and apply at a point of compliance from the existing ground surface to a depth of 2 feet below existing ground surface;
- b. commercial and industrial land use standards for direct contact to chemicals of concern related to petroleum in soil. The standards consist of generic numerical standards in accordance with OAC 3745-300-08(B)(3)(a)(i) - (ii) at a point of compliance from the existing ground surface to a depth of 2 feet below existing ground surface;
- c. soil standards and ground water standards for direct contact by construction or excavation workers to chemicals of concern in soil and ground water. The standards consist of generic numerical standards from Table IV of OAC 3745-300-08 and property specific risk assessment procedures derived in accordance with OAC 3745-300-09(D) and apply at a point of compliance from the existing ground surface to a depth of 12 feet below existing ground surface;
- d. ground water standards based on potable use for chemicals of concern in the Critical Resource sand and gravel aquifer emanating from the Property;
- e. surface water standards, determined in accordance with OAC 3745-300-08(D), for human exposures to the chemicals of concern in the surface water contained in Mason Run located on the Property;
- f. sediment standards for human receptor exposures to the chemicals of concern in sediment, derived using Property-specific risk assessment procedures in accordance with OAC 3745-300-09(D) and (F)(2)(a), for the human receptor direct contact exposures to the chemicals of concern in the sediment contained in the wetland and in Mason Run located on the Property;
- g. sediment standards for important ecological resources that are exposed to the chemicals of concern in sediment, determined in accordance with OAC 3745-300-09(F)(2)(b), (F)(2)(c) or (F)(3).

11. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, a covenant not to sue may be issued for the Property in accordance with ORC 3746.12(A), and the voluntary action for the Property is protective of public health and safety and the environment.

### 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 Wal-Mart Real Estate Business Trust, Wal-Mart Stores East, LP, EE-J Company, Holland Investment, Inc. and Columbus Jewish Federation, or their respective agents, employees, 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 at the Property for the releases of hazardous substances or petroleum identified and addressed in the Phase I Property Assessment or Phase II Property Assessment conducted in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.

#### **Conditions and Limitations**

#### Effectiveness of the Covenant Not to Sue – Recording of the Environmental Covenant

2. The Covenant provided in Order No. 1 herein shall become effective upon the date the Environmental Covenant is recorded in accordance with this Order. The Environmental Covenant shall be filed as a document separate from the filing required by Order No. 3 herein. Within thirty (30) days after the issuance of these Findings and Orders, Wal-Mart Real Estate Business Trust, Wal-Mart Stores East, LP, EE-J Company, Holland Investment, Inc. and Columbus Jewish Federation 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 and 5301.88, the Environmental Covenant as executed and attached hereto as Exhibit 4. The document for recording may be an executed original or a copy of the same authenticated by Ohio EPA; and
  - b. submit to Ohio EPA a copy of the recorded Environmental Covenant that shows the filing date stamp of the Franklin County Recorder's Office or other reliable information that verifies the recording of the document in accordance with this Order. The submission shall include a cover letter that identifies

*"Recorded - Environmental Covenant for NFA Letter No 04NFA196"*. The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 122 S. Front Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA Central District Office, P.O. Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Proposed Wal-Mart Supercenter Store No. 3447

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

3. Within thirty (30) days after the issuance of these Findings and Orders, Wal-Mart Real Estate Business Trust, Wal-Mart Stores East, LP, EE-J Company, Holland Investment, Inc. and Columbus Jewish Federation 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); and
  - 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. 04NFA196"*. The submission shall be addressed and delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 122 S. Front Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA Central District Office, P.O. Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Proposed Wal-Mart Supercenter Store No. 3447

Requirement to Include Notice of Activity and Use Limitations upon Property Conveyance

4. Each instrument EE-J Company, Holland Investment, Inc. and Columbus Jewish Federation uses to convey the Property or any portion of the Property shall include a notice of the activity and use limitations for the Property in accordance with paragraph 5 of each of the Environmental Covenants attached hereto as Exhibit 4. The submission to Ohio EPA required by the Environmental Covenants shall include a cover letter that identifies *"Conveyance of Property Subject to Activity and Use Limitations - NFA Letter No. 04NFA196"*. The submission shall be addressed and

delivered by regular U.S. mail or by other reliable means to: Ohio EPA, 122 S. Front Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer, and Ohio EPA Central District Office, P.O. Box 1049, Columbus, Ohio 43216-1049, Attention: DERR Site Coordinator for Proposed Wal-Mart Supercenter Store No. 3447.

#### Scope of Covenant

5. The Covenant provided in Order No. 1 shall only apply to the approximately 42.238-acre Property described in the NFA Letter, these Findings and Orders, and the Exhibits attached hereto, upon which the investigational and remedial activities specified in the NFA Letter were conducted.
6. Pursuant to ORC 3746.12(B), 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.
7. Pursuant to ORC 3746.05, any use of the Property that does not comply with the institutional controls identified herein (i.e., the activity and use limitations contained in the Environmental Covenant), voids the Covenant on and after the date of the commencement of the noncomplying use.
8. The Covenant shall not apply to releases of hazardous substances or petroleum:
  - a. that occur after the issuance of the NFA Letter to the Volunteer, including but not limited to, releases of asbestos that may occur from asbestos-containing materials remaining at the Property that were not abated or required to be abated pursuant to OAC Chapter 3745-20.
  - b. on or emanating from the Property, that are not identified and addressed in the Phase I Property Assessment or the Phase II Property Assessment of the NFA Letter; or
  - c. for which investigational or remedial activities were conducted that were not in compliance with ORC Chapter 3746 or OAC Chapter 3745-300.
9. 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; or
  - c. as otherwise specifically provided in ORC Chapter 3746, including but not limited to obligations arising under other applicable laws.
10. Nothing in ORC Chapter 3746 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.
11. 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.

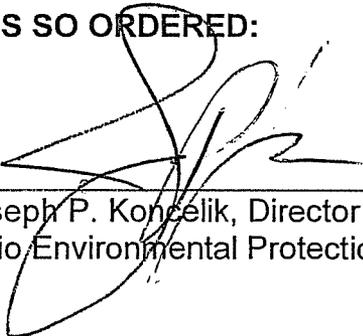
Ohio EPA Access to Property

12. Pursuant to ORC 3746.21 or 3746.171 or the Environmental Covenant, authorized representatives of the Director shall be granted access to the Property for inspection or investigation purposes, including but not limited to determining whether the Property is being used in compliance with the activity and use limitations contained in the Environmental Covenant.

**Transfer**

13. Pursuant to ORC 3746.14 and OAC 3745-300-13(K), 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:**

  
\_\_\_\_\_  
Joseph P. Koncelik, Director  
Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Date

**Exhibit 1**  
**Legal Description**

**DESCRIPTION OF  
WAL-MART MAIN STREET  
COLUMBUS JEWISH FEDERATION LAND  
FRANKLIN COUNTY, OHIO  
CONTAINING 13.592 ACRES  
DECEMBER 8<sup>TH</sup>, 2004**

Situate City of Columbus, County of Franklin, State of Ohio, and being all of a 16.009 acre tract of land (6.768 acres remaining PID 010-099194), and a 16.009 acre tract of land (7.104 acres remaining PID 010-099196) as conveyed to Columbus Jewish Federation by deed as recorded in Inst. No. 01985 B04 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Franklin County Recorders Office, unless noted otherwise) and being more particularly bounded and described as follows:

Commencing for reference at intersection of the centerline of Collingwood Road with the centerline of East Main Street;

thence along said centerline North eighty-eight degrees ten minutes no seconds East (N88°10'00"E) for twenty-five and 32/100 feet (25.32') to a point;

thence continuing along said centerline North eighty-eight degrees seven minutes no seconds East (N88°07'00"E) for two hundred eighty-six and 91/100 feet (286.91') to a railroad spike set;

thence continuing along said centerline North eighty-eight degrees seven minutes no seconds East (N88°07'00"E) for one hundred twenty-six and 23/100 feet (126.23') to a railroad spike set at the northwest corner of a 0.055 acre tract of land as conveyed to Una Tsou Cheadle by deed recorded in Inst. No. 34176F18;

thence leaving said centerline along the west line of said 0.055 acre tract South no degrees seven minutes twenty-five seconds West (S00°07'25"W) for two hundred forty and 00/100 feet (240.00') to an iron pin set at the southwest corner of said 0.055 acre tract;

thence along the south line of said 0.055 acre tract North eighty-eight degrees seven minutes no seconds East (N88°07'00"E) for one hundred fifty-seven and 00/100 feet (157.00'), passing an iron pin found at 50.00' at the southwest corner of a 0.590 acre tract as conveyed to Norwell Freeland by deed recorded in Inst. No. 200103160054053, to an iron pin set at the southeast corner of said 0.590 acre tract, said point also being on the west line of a 7.812 acre tract of land as conveyed to Old Trailer Court by deed recorded in Inst. No. 012320C04;

thence along said west line South no degrees seven minutes twenty-five seconds West (S00°07'25"W) for eight hundred forty-two and 14/100 feet (842.14') to an iron pin set on the west line of said 7.812 acre tract;

thence continuing along said west line South no degrees twenty-three minutes twenty-five seconds West (S00°23'25"W) for two hundred twenty-nine and 74/100 feet (229.74') to an iron pin set at the southeast corner of a 10.780 acre tract of land as conveyed to Columbus Jewish Federation by deed recorded in Inst. No. 01369 B14, said point also being the **TRUE POINT OF BEGINNING** of the herein described tract of land;

thence continuing along said west line South zero degrees twenty-three minutes twenty-five seconds West (S00°23'25"W) for two hundred fifty-five and 35/100 feet (255.35') to an iron pin set at a corner thereof;

thence along a south line of said 7.812 acre tract North eighty-nine degrees thirty-two minutes twenty seconds East (N89°32'20"E) for five hundred eighteen and 68/100 feet (518.68') to an iron pipe found at the northwest corner of lot 4 of Plat of Ashton Road Extension as recorded in Plat Book 81, page 46;

thence along the west line of said Plat of Ashton South zero degrees twenty-four minutes thirty-eight seconds West (S00°24'38"W) for five hundred twenty-four and 16/100 feet (524.16') to an iron pipe found at the southwest corner of lot 3 of said Plat of Ashton, said point also being on the north line of a 5.02 acre tract of land conveyed to Mary M. Perry by deed recorded in Inst. No. 32678E08;

thence along said north line North eighty-nine degrees forty-two minutes fifty seconds West (N89°42'50"W) for six hundred fifty-seven and 15/100 feet (657.15') to an iron pin set at the northwest corner of said 5.02 acre tract, said point also being on the east line of an existing railroad right-of-way;

thence along the east line of said railroad right-of-way North thirty-eight degrees five minutes fifty-two seconds West (N38°05'52"W) for seven hundred sixty-eight and 85/100 feet (768.85') to an iron pin set at a corner of a 13.804 acre tract of land as conveyed to Holland Investment, Inc. by deed recorded in Inst. No. 200208010188245;

thence along a south line of said 13.804 acre tract North eighty-nine degrees fifty-six minutes nineteen seconds East (N89°56'19"E) for one hundred thirty and 00/100 feet (130.00') to an iron pin set at a corner thereof;

thence along an east line of said 13.804 acre tract North thirty-six degrees twenty-four minutes ten seconds West (N36°24'10"W) for two hundred thirteen and 57/100 feet (213.57') to an iron pin set at a southwest corner of said 10.780 acre tract;

Description of Wal-Mart Main Street  
Store No. 3447  
Columbus, Ohio

December 8<sup>th</sup>, 2004

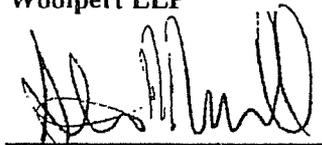
Page 3

thence along the south line of said 10.780 acre tract South eighty-nine degrees thirty-one minutes forty-six seconds East (S89°31'46"E) for six hundred fifteen and 13/100 feet (615.13') to the **TRUE POINT OF BEGINNING**, containing thirteen and 591/1000 (13.592) acres, being 6.517 acres in PID 010-099196 and 7.075 acres in PID 010-099194.

Iron pins set are 5/8" rebar, 30" in length, with a plastic plug placed on top inscribed with the name "WOOLPERT LLP", unless otherwise noted.

This description was prepared from a field survey performed by Woolpert LLP in July, 2004, with bearings based upon an assumed meridian, used to denote angular reference only, being East Main Street as shown on the plans for ODOT project FRA-40-18.63.

Woolpert LLP



Steven W. Newell  
Ohio Professional Surveyor #7212



**DESCRIPTION OF  
HOLLAND - COLUMBUS LAND  
FRANKLIN COUNTY, OHIO  
CONTAINING 0.531 ACRES  
DECEMBER 8<sup>th</sup>, 2004**

Situate in the City of Columbus, County of Franklin, State of Ohio, and being part of land a 12.886 acre tract of land as conveyed to Holland Investment, Inc. by deed recorded in Inst. No. 20020810188245 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Franklin County Recorders Office, unless noted otherwise) and being all of PID 010-099222, and being more particularly bounded and described as follows:

Commencing for reference at the intersection of the centerline of Collingwood Drive with the centerline of Main Street;

thence along said centerline North eighty-eight degrees ten minutes no seconds East (N88°10'00"E) for twenty-five and 32/100 feet (25.32') to a point;

thence continuing along said centerline North eighty-eight degrees seven minutes no seconds East (N88°07'00"E) for two hundred eighty-six and 91/100 feet (286.91') to a railroad spike set at the northwest corner of a 6.136 acre tract of land as conveyed to Columbus Jewish Federation by deed recorded in Inst. No. 01369B14;

thence continuing along said centerline North eighty-eight degrees seven minutes no seconds East (N88°07'00"E) for one hundred twenty-six and 23/100 feet (126.23') to a railroad spike set at the northwest corner of a 0.055 acre tract of land as conveyed to Una Tsou Cheadle by deed recorded in Inst. No. 34176F18;

thence leaving said centerline along the west line of said 0.055 acre tract South no degrees seven minutes twenty-five seconds West (S00°07'25"W) for two hundred forty and 00/100 feet (240.00') to an iron pin set at the southwest corner of said 0.055 acre tract;

thence along the south line of said 0.055 acre tract North eighty-eight degrees seven minutes no seconds East (N88°07'00"E) for one hundred fifty-seven and 00/100 feet (157.00'), passing an iron pin found at 50.00' at the southwest corner of a 0.590 acre tract as conveyed to Norwell Freeland by deed recorded in Inst. No. 200103160054053, to an iron pin set at the southeast corner of said 0.590 acre tract, said point also being on the west line of a 7.812 acre tract of land as conveyed to Old Trailer Court by deed recorded in Inst. No. 012320C04;

thence along said west line South no degrees seven minutes twenty-five seconds West (S00°07'25"W) for eight hundred forty-two and 14/100 feet (842.14') to an iron pin set on the west line of said 7.812 acre tract;

thence continuing along said west line South no degrees twenty-three minutes twenty-five seconds West (S00°23'25"W) for two hundred twenty-nine and 74/100 feet (229.74') to an iron pin set at the northwest corner of a 6.768 acre tract of land as conveyed to Columbus Jewish Federation by deed recorded in Inst. No. 01985 B04, said point also being on the corporation line of the City of Columbus and the City of Whitehall;

thence along the north line of said 6.768 acre tract and said corporation line North eighty-nine degrees thirty-one minutes forty-six seconds West (N89°31'46"W) for six hundred fifteen and 13/100 feet (615.13') to an iron pin set at a corner thereof, said point also being on an east line of a 12.866 acre tract of land as conveyed to Holland Investment, Inc. by deed recorded in Inst. No. 200208010188245, said point being the **TRUE POINT OF BEGINNING** of the herein described tract of land;

thence leaving said corporation line along a west line of said Columbus Jewish Federation land South thirty-six degrees twenty-four minutes ten seconds East (S36°24'10"E) for two hundred thirteen and 57/100 feet (213.57') to an iron pin set at a corner thereof;

thence continuing along a line of said Columbus Jewish Federation land South eighty-nine degrees fifty-six minutes nineteen seconds West (S89°56'19"W) for one hundred thirty and 00/100 feet (130.00') to an iron pin set at a corner thereof, said point also being on the east line of said railroad right-of-way;

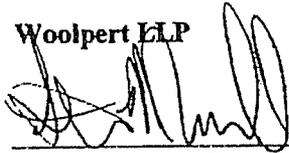
thence along the east line of said railroad right-of-way North thirty-eight degrees five minutes fifty-two seconds West (N38°05'52"W) for two hundred twenty and 06/100 feet (220.06) to an iron pin set;

thence leaving said railroad right-of-way line along said corporation line South eighty-nine degrees thirty-one minutes forty-six seconds East (S89°31'46"E) for one hundred thirty-nine and 04/100 feet (139.04') to the northeast corner of said PID 010-099222, said point also being a corner of land conveyed to Columbus Jewish Federation land by deed recorded in DMF# 01985 B04 to the **TRUE POINT OF BEGINNING**, containing zero and 531/1000 (0.531) acres, more or less.

Iron pins set are 5/8" rebar, 30" in length, with a plastic plug placed on top inscribed with the name "WOOLPERT LLP", unless otherwise noted.

This description was prepared from a field survey performed by Woolpert LLP in July, 2004, with bearings based upon an assumed meridian, used to denote angular reference only, being East Main Street as shown on the plans for ODOT project FRA-40-18.63.

Woolpert LLP



12/13/04

Steven W. Newell  
Ohio Professional Surveyor #7212



**DESCRIPTION OF  
WAL-MART MAIN STREET  
SITE NO. 3447  
FRANKLIN COUNTY, OHIO  
CONTAINING 28.115 ACRES  
DECEMBER 8<sup>TH</sup>, 2004**

Situate City of Whitehall and City of Columbus, County of Franklin, State of Ohio, and being all of a 6.191 acre tract of land (6.136 acres remaining), and a 10.780 acre tract of land (3.879 acres remaining) as conveyed to Columbus Jewish Federation by deed as recorded in Inst. No. 01369 B14, and part of a 13.804 acre tract of land (12.886 acres remaining) as conveyed to Holland Investment Inc. by deed as recorded in Inst. No. 200208010188245, and all of a 7.07 acre tract of land as conveyed to E.E-J. Company by deed recorded in Inst. No. 14547 J16 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Franklin County Recorders Office, unless noted otherwise) and being more particularly bounded and described as follows:

Commencing for reference at intersection of the centerline of Collingwood Road with the centerline of East Main Street;

thence along said centerline North eighty-eight degrees ten minutes no seconds East (N88°10'00"E) for twenty-five and 32/100 feet (25.32') to a point;

thence continuing along said centerline North eighty-eight degrees seven minutes no seconds East (N88°07'00"E) for two hundred eighty-six and 91/100 feet (286.91') to a railroad spike set at the northwest corner of the herein described tract of land, said point being the **TRUE POINT OF BEGINNING**;

thence continuing along said centerline North eighty-eight degrees seven minutes no seconds East (N88°07'00"E) for one hundred twenty-six and 23/100 feet (126.23') to a railroad spike set at the northwest corner of a 0.055 acre tract of land as conveyed to Una Tsou Cheadle by deed recorded in Inst. No. 34176F18;

thence leaving said centerline along the west line of said 0.055 acre tract South no degrees seven minutes twenty-five seconds West (S00°07'25"W) for two hundred forty and 00/100 feet (240.00') to an iron pin set at the southwest corner of said 0.055 acre tract;

thence along the south line of said 0.055 acre tract North eighty-eight degrees seven minutes no seconds East (N88°07'00"E) for one hundred fifty-seven and 00/100 feet (157.00'), passing an iron pin found at 50.00' at the southwest corner of a 0.590 acre tract as conveyed to Norwell Freeland by deed recorded in Inst. No. 200103160054053, to an iron pin set at the southeast corner of said 0.590

acre tract, said point also being on the west line of a 7.812 acre tract of land as conveyed to Old Trailer Court by deed recorded in Inst. No. 012320C04;

thence along said west line South no degrees seven minutes twenty-five seconds West (S00°07'25"W) for eight hundred forty-two and 14/100 feet (842.14') to an iron pin set on the west line of said 7.812 acre tract;

thence continuing along said west line South no degrees twenty-three minutes twenty-five seconds West (S00°23'25"W) for two hundred twenty-nine and 74/100 feet (229.74') to an iron pin set at the northwest corner of a 6.768 acre tract of land as conveyed to Columbus Jewish Federation by deed recorded in Inst. No. 01985 B04 said point also being on the City of Whitehall Corporation Line;

thence along the north line of said 6.768 acre tract and said corporation line North eighty-nine degrees thirty-one minutes forty-six seconds West (N89°31'46"W) for seven hundred fifty-four and 17/100 feet (754.17') to an iron pin set, said point also being on the east line of an existing railroad right-of-way;

thence along said existing railroad right-of-way North thirty-eight degrees five minutes fifty-two seconds West (N38°05'52"W) for six hundred twenty and 56/100 feet (620.56') to an iron pin set at the southeast corner of a 2.00 acre tract of land as conveyed to WB Storage Associates I by deed recorded in Inst. No. 25582 113;

thence along the east line of said 2.00 acre tract North zero degrees three minutes twenty-four seconds East (N00°03'24"E) for seven hundred eighty and 33/100 feet (780.33') to a railroad spike set on the centerline of said East Main Street;

thence along said centerline North eighty-eight degrees ten minutes zero seconds East (N88°10'00"E) for three hundred twenty-two and 62/100 feet (322.62') to a railroad spike set on said centerline;

thence leaving said centerline South zero degrees three minutes twenty-four seconds West (S00°03'24"W) for forty and 02/100 feet (40.02') to an iron pin set on the south line of said Main Street;

thence along the existing south line of said Main Street North eighty-eight degrees ten minutes zero seconds East (N88°10'00"E) for forty-five and 00/100 feet (45.00') to a railroad spike found at the northwest corner of a 0.918 acre tract of land as conveyed to Autozone Inc. by deed recorded in Inst. No. 21653 105;

thence leaving said south line along the west line of said 0.918 acre tract South zero degrees three minutes twenty-four seconds West (S00°03'24"W) for two

hundred fifty and 00/100 feet (250.00') to a railroad spike set at the southwest corner thereof;

thence along the south line of said 0.918 acre tract North eighty-eight degrees ten minutes zero seconds East (N88°10'00"E) for one hundred sixty and 00/100 feet (160.00') to a railroad spike set at the southeast corner thereof;

thence along the east line of said 0.918 acre tract North zero degrees three minutes twenty-four seconds East (N00°03'24"E) for two hundred fifty and 00/100 feet (250.00') to a railroad spike found at the northeast corner thereof, said point also being on the existing south line of said East Main Street;

thence along said south line North eighty-eight degrees ten minutes zero seconds East (N88°10'00"E) for thirty and 02/100 feet (30.02') to an iron pin set at a corner thereof;

thence leaving said south line on a new dividing line South zero degrees five minutes forty-nine seconds West (S00°05'49"W) for two hundred thirty-five and 60/100 feet (235.60') to a spike set;

thence continuing on a new dividing line North eighty-eight degrees one minute forty-two seconds East (N88°01'42"E) for two hundred seventeen and 92/100 feet (217.92') to a spike set;

thence continuing on a new dividing line North zero degrees five minutes forty-nine seconds East (N00°05'49"E) for two hundred thirty-five and 25/100 feet (235.25') to an iron pin set;

thence continuing along said south line North eighty-eight degrees seven minutes zero seconds East (N88°07'00"E) for eighty-one and 57/100 feet (81.98') to an iron pin set on said line;

thence leaving said south line North zero degrees four minutes twenty-seven seconds East (N00°04'27"E) for forty and 02/100 feet (40.02') to the **TRUE POINT OF BEGINNING**, containing twenty-eight and 115/1000 (28.115) acres, being 6.116 acres in PID 090-000647, 3.703 acres in PID 090-000049, 7.765 acres in PID 090-000086, 0.764 acres in PID 090-001839, 2.645 acres in PID 090-000275, and 7.122 acres in PID 090-002480.

Iron pins set are 5/8" rebar, 30" in length, with a plastic plug placed on top inscribed with the name "WOOLPERT LLP", unless otherwise noted.

This description was prepared from a field survey performed by Woolpert LLP in July, 2004, with bearings based upon an assumed meridian, used to denote

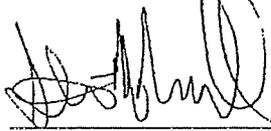
Description of Wal-Mart Main Street  
Store No. 3447  
Columbus, Ohio

December 8<sup>th</sup>, 2004

Page 4

angular reference only, being East Main Street as shown on the plans for ODOT  
project FRA-40-18.63.

Woolpert LLP



Steven W. Newell  
Ohio Professional Surveyor # 7290



**Exhibit 2**  
**Property Location Map**



**Exhibit 3**  
**Executive Summary**

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JUN 08 2005

OHIO EPA/CDO

**SECTION B – ATTACHMENT 1  
OHIO ENVIRONMENTAL PROTECTION AGENCY  
VOLUNTARY ACTION PROGRAM**

**EXECUTIVE SUMMARY AND FILING DOCUMENT FOR THE  
NO FURTHER ACTION LETTER**

**FOR**

**WAL-MART REAL ESTATE BUSINESS TRUST AND WAL-MART STORES EAST, LP  
702 S.W. 8<sup>th</sup> STREET  
BENTONVILLE, ARKANSAS 72716-8611**

**VOLUNTEER:**

**Wal-Mart Real Estate Business Trust and Wal-Mart Stores East, LP  
702 S.W. 8th Street  
Bentonville, Arkansas 72716-8611**

**Phone number and name of Volunteer contact person:**

**Tim Rogers  
Telephone: (479) 273-6863**

**CERTIFIED PROFESSIONAL ISSUING THE NFA:**

**Thomas J. Mignery  
CP 125  
Telephone: (614) 459-2050; Fax: (614) 451-1385**

**BURGESS & NIPLE, INC.  
Engineers and Architects  
5085 Reed Road  
Columbus, Ohio 43220**

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## 1.0 INTRODUCTION

This executive summary of the No Further Action (NFA) letter has been prepared pursuant to Ohio Administrative Code (OAC) 3745-300-13(I). The purpose of the summary is to meet the requirements of OAC 3745-300-13 (H) and (J), to use the format provided by the Ohio Environmental Protection Agency (EPA) for submitting the NFA letter, and OAC 3745-300-13 (J) for recording a summary of the NFA letter with the County Recorder's Office. A complete copy of the NFA letter is on file with and will be made available to the Ohio EPA, Division of Emergency and Remedial Response (DERR) Voluntary Action Program (VAP) in accordance with OAC 3745-300-13(J).

An NFA letter was issued to the Ohio EPA, DERR VAP on behalf of Wal-Mart on December 6, 2004 by Mr. Thomas J. Mignery, VAP-Certified Professional 125 (CP) of Burgess & Niple, Inc. (B&N). An NFA Addendum No. 1 was issued to the Ohio EPA, DERR VAP on behalf of Wal-Mart on May 27, 2005 by Mr. Thomas J. Mignery, VAP-Certified Professional 125 (CP) of Burgess & Niple, Inc. (B&N). An NFA Addendum No. 2 was issued to the Ohio EPA, DERR VAP on behalf of Wal-Mart on June 8, 2005 by Mr. Thomas J. Mignery, VAP-Certified Professional 125 (CP) of Burgess & Niple, Inc. (B&N).

The NFA herein describes the Phase I and Phase II Property Assessments (Phase I and Phase II) for the approximate 42.238-acre NFA Property (Property) in Whitehall, Ohio, and Columbus, Ohio. The Property is made up of ten parcels and three owners. The existing owners and addresses are EE-J Company, 3589 E. Main Street, Whitehall, Ohio, 43213; Holland Investment, Inc., 4308 E. Main Street, Columbus, Ohio 43213; and, Columbus Jewish Federation, 1175 College Avenue, Columbus, Ohio 43209. The addresses of the NFA Property are known as 3589 and 3651 to 3679 East Main Street, Whitehall, Ohio. The prospective buyer of the Property is Wal-Mart Real Estate Business Trust and Wal-Mart Stores East, LP (Wal-Mart). The intent of Wal-Mart is to take title to the Property following issuance of the Covenant Not to Sue.

A portion of the Holland Investment, Inc., property was carved out and deemed not eligible for VAP due to soil and groundwater impacts associated with a former underground storage tank (UST). The VAP Carve Out comprises 1.177 acres and is excluded in the 42.238-acre Property definition. The Phase II Property Assessment involved collecting soil, sediment, groundwater, and surface water samples and conducting human health and ecological risk assessments. A copy of the legal descriptions are attached.

## 2.0 SUMMARY OF NO FURTHER ACTION LETTER

The CP, Mr. Thomas J. Mignery CP125, issued an NFA letter on December 6, 2004, Addendum No. 1 on May 28, 2005, and Addendum No.2 on June 8, 2005 based upon the Phase I, Phase II, Human Health Risk Assessment (HHRA), and Ecological Risk Assessment (ERA). Two Environmental Covenants (EC) will be filed with the Franklin County Recorder for commercial/industrial land-use restrictions in Whitehall, nonresidential land-use restrictions in Columbus parcels, and the prohibited use of groundwater for potable and nonpotable purposes across the Property. A copy of the proposed ECs is attached and will be negotiated with Ohio EPA Legal prior to filing with the County. A summary of the Phase I, Phase II, HHRA, and ERA is provided below. Complete copies of the Phase I, Phase II, HHRA, and ERA are contained in the NFA letter.

### 2.1 Phase I Property Assessment

A Phase I was conducted by TesTech in April 2004 in accordance with the American Society for Testing and Materials (ASTM) Document E-1527-00, "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process." A VAP Phase I Property Assessment was completed by B&N in accordance with OAC 3745-300-06 in November 2004 to determine if Identified Areas (IAs) exist on the Property. Updates to the November 2004 VAP Phase I are summarized in the November 2004 VAP Phase II.

The VAP Phase I included a determination of eligibility for the Ohio VAP, a review of historic and current uses of the Property and surrounding properties, an environmental history review, a review of the history of hazardous substances or petroleum releases, a Property inspection, and identification of IAs as defined in OAC 3745-300-06(F). The following is a summary of the VAP Phase I.

The Property is comprised of three properties (ten parcels). The western portion of the Property, currently owned by EE-J Company, was historically utilized as an elementary school. The school building and associated outbuilding (used for storage and maintenance) are depicted on historical documents as far back as 1932. The school building has undergone renovations with subsequent additions to the structure from 1960 to the present. The central portion of the Property is currently owned by Holland Investment Inc. and contained a tree farm/orchard from at least the 1930s and later the East Main Drive-In movie theater (1951 or earlier). Along the north part of the Holland Investment property, a permit from the Whitehall Fire Department was issued to Research Fuels to operate a service station with two 10,000-gallon USTs. Operation of the Research Fuels service station USTs was approximately early

1976 to 1978. There are two buildings currently on the Holland Investment property and were built during the mid-1960s and housed a Service Merchandise/Zaire Stores, Bingo/Meeting Hall, Newspaper distribution center, and currently, an indoor cart racing center known as Speeds.

The eastern and southern portion (south of the Holland Investment property) of the Property is currently owned by the Columbus Jewish Federation. This land was previously undeveloped or farmed into the early 1960s. The south portion of the Columbus Jewish Federation property was used for disposal of construction and demolition debris (C&DD) in the 1960s and 1970s. Since then, this portion of the Property has been left fallow and is now vegetated with secondary growth forest and a moderately thick shrub and herbaceous layer. The Property is currently undeveloped and unused with the exception of an occasional trespasser. It is important to note that the Jewish Federation south parcels located in the City of Columbus are zoned residential, while the Jewish Federation parcels located in Whitehall are zoned manufacturing.

The Property is located in a mixed-use commercial/residential area in Whitehall and Columbus, Ohio. The Property is specifically situated along the south side of East Main Street and is bounded to the west by a commercial storage facility, to the southwest by a ditch/stormwater swale and abandoned railroad right-of-way, to the south by undeveloped land that is zoned for agricultural use, to the east by a stream known as Mason Run and a residential trailer park, and to the northeast by a commercial child enrichment center. Properties north of East Main Street are a mix of commercial and residential. A Speedway gas station was formerly located across East Main Street on the northeast side of the Property. Within the north-central portion of the Property is an AutoZone Inc. auto parts store, which is not part of the Property.

The history of the Property was evaluated as outlined in OAC 3745-300-02 to determine if the Property was eligible for VAP. Other than the Research Fuels UST and 550-gallon waste oil UST issues, there were no VAP eligibility concerns that would have prevented the Property from becoming VAP eligible. The VAP Phase I recommended a Phase II for the VAP Phase I ESA seven Identified Areas (IAs) as detailed below. Subsequent to the completion of the Phase I, petroleum-contaminated soils and groundwater were encountered near the former Research Fuels UST during the Phase II work. The UST area was determined to be regulated by the Bureau of Underground Storage Tank Regulations (BUSTR) protocol. Subsequent to the BUSTR determination, this area was deemed to be a 1.177-acre "Carve Out" of the VAP NFA eligible portion of the Property and will be addressed under BUSTR protocol. In May 2005, B&N submitted an Interim Response Action Report that addressed the removal of soil and

groundwater to meet BUSTR cleanup standards and confirmation soil and groundwater results. As of June 8, 2005, the BUSTR NFA has not been received but was considered “pending”.

On the basis of the Phase II amendments to the initial Phase I, the BUSTR VAP Carve Out area has been removed as a separate IA, resulting in six VAP IAs on the Property:

- IA 1 – Northern Property boundary adjacent to East Main Street – possible impacts due to leaking underground storage tanks (LUSTs) at 3651, 3696 and 3646 East Main Street identified in FirstSearch database;
- IA 2 – South and southwest portion of the Property – possible impacts due to historical construction and demolition (C&D) nonregulated landfill activities on portions of the Columbus Jewish Federation parcel;
- IA 3 – Outbuilding on EE-J Company parcel situated southwest of the school building – possible impacts to property due to historic equipment storage/maintenance and observation of an oil/water separator and sheen in a floor drain.
- IA 4 – Western edge of Property adjacent to a ditch, salvage yard, railroad tracks – visible sheen and scattered debris were identified in and along the off-site drainage ditch;
- IA 5 - Reported location of an allegedly removed 550-gallon waste oil UST. This UST was removed prior to BUSTR regulations and based on discussions with Ray Ladrick, BUSTR, the UST is not BUSTR regulated and eligible for VAP due to soil sample results meeting BUSTR protocol; and
- IA 6 – Former school on northern EE-J Company parcel identified to potentially contain asbestos-containing material (ACM) and lead-based paint. It should be noted that ACM was delineated by both TesTech and B&N within the former school as defined in the B&N asbestos survey located in the VAP Phase I appendix. If demolition will occur, ACM abatement will be required prior to demolition. However, VAP does not address ACM in structures unless it is determined that ACM may be impacting soil and/or groundwater. IA-6 was not recommended for VAP Phase II sampling.

The VAP Phase I report recommended a Phase II Property Assessment in the form of soil/groundwater sampling and analyses to evaluate the presence and/or level of contamination to the Property from metals, total petroleum hydrocarbons (TPH), volatile organic compounds (VOCs), and semivolatile organic compounds (SVOCs) from on-site and off-site activities.

## 2.2 Phase II Property Assessment

The purpose of the Phase II was to determine if chemicals of concern (COCs) exist at concentrations above VAP applicable standards within the various IAs. TesTech conducted a Phase II at the Property in April 2004 to further investigate Recognized Environmental Conditions (RECs) identified in the TesTech Phase I. Data collected from the TesTech Phase II investigation were used in the VAP Phase II, where applicable, in the evaluation of the Property including the preparation of a work plan to address the IAs listed in the VAP Phase I completed by B&N in November 2004. The VAP Phase II report included tables of TesTech Phase II investigation data. TesTech's Phase II included three (3) geotechnical borings, three (3) environmental soil borings, five (5) hand-auger borings, eight (8) test-pit samples, three (3) monitoring wells, one (1) sediment sample, one (1) surface water sample, one (1) water sample from a floor drain, and six (6) concrete ACM samples. TestAmerica Analytical Testing Corporation (TestAmerica), also a VAP-certified laboratory, completed the laboratory analyses on soil, sediment, surface water, and groundwater samples, as reported by TesTech. EMSL Analytical, Inc., of Westmont, New Jersey, completed the ACM sample analyses

Fieldwork for the Phase II conducted by B&N was an iterative process involving six separate sampling periods from August 2004 to November 2004. Sampling provided data for pathway completeness determination and a determination of VAP applicable standards. American Analytical Laboratories, Inc. (AAL) provided VAP-certified laboratory analytical services during the Phase II.

- August 11 and 12, 2004, sampling event consisted of soil and groundwater sampling using Geoprobe® sampling techniques and hand augers in IA-1 and IA-2. Information gathered during this initial phase of the investigation was used to define later phases of work. This phase of the investigation consisted of collection of soil and fill material from 12 Geoprobe® borings and two hand augers. The samples in IA-1 were analyzed for VOCs, polynuclear aromatic hydrocarbons (PAHs), and TPH.
- Between September 3 and September 10, 2004, additional sampling was conducted to provide more data in the southern portion of the Property, along the perimeter water

ways, and to evaluate groundwater. Soil samples were collected from Geoprobe® samplers, test pits, and during the installation of groundwater monitoring wells. Sediment samples were collected from the stream and ditch as well as surface water samples. Sampling occurred in IA-2 mainly but also in IA-3 on the EE-J property and off-property locations. This phase of the investigation consisted of:

- Collection of soil samples from three Geoprobe borings in IA-3 and the installation and sampling of one monitoring well. Samples were submitted to AAL and analyzed for one or more of the following: VOCs, TPH (solids), and PAH.
- Eleven test pits were dug and samples collected in IA-2. Seven groundwater monitoring wells were completed and sampled in this area. There were also four sediment samples collected along the southwestern edge of IA-2 which is designated as a wetland area. These samples were submitted to AAL for analysis of VOCs, SVOCs (test pit samples), PAH, TPH (solids) and heavy metals.
- One sediment sample and one surface water sample were collected from Mason Run in IA-1. Both samples were submitted to AAL and analyzed for heavy metals and PAHs. The water sample was also analyzed for VOCs, and the sediment was analyzed for TPH.
- Four surface water samples and four sediment samples were collected from off-site along the southwestern edge of the Property. All samples were submitted to AAL and analyzed for heavy metals and PAHs. The water samples were also analyzed for VOCs and the sediments were analyzed for TPH.
- September 23, 2004, sampling event was conducted to provide additional data in the wetland area of the southwestern portion of the Property and the surface water quality in the ditch adjacent to IA-4. This phase of the investigation consisted of the following:
  - Two sediment samples were collected from the wetland-designated area (IA-2) and two sediment samples collected along the ditch in IA-2. All four of these samples were submitted for bioassay analysis for use for the Ecological Assessment.

- One surface water sample was collected from the ditch, which is an off-property area. This sample was submitted to AAL for analysis of VOCs.
  
- A site investigation was conducted on October 8, 2004, as a follow-up to the results from samples collected from the ditch along the southwestern Property boundary. Previous samples collected indicated that impact to the surface water was evident. Specifically, chlorinated solvents and breakdown products were identified. This field event was designed to investigate whether impacts to the surface water in the ditch were the results of an on-Property or off-Property source. Samples were collected using hand augers and sediment and surface water sampling equipment.
  - Two sediment samples were collected near the outfall of two pipes entering the ditch. Four soil samples were collected using hand augers along the bank of the ditch. Seven surface water samples were collected from off property. And one discharge sample was collected from a pipe entering the west side of the ditch, off property. All of the samples were analyzed by AAL for chlorinated solvents and the breakdown products suite of parameters.
  
- On October 28, 2004, an investigation of a potential UST area was conducted in the northern portion of the Property. A magnetic survey was conducted over the area where a 2002 investigation was conducted to assess whether there were USTs left on-site as a result of a gasoline station being in this area of the Property in the 1970s. In addition to the area previously investigated for the USTs, only one anomaly was observed in the magnetic survey that was investigated by using a backhoe to see if another UST existed. No UST was located in the excavation, and therefore no soil or groundwater samples were collected.

Eight Geoprobe® were advanced in the area previously identified as containing USTs. In addition, three groundwater monitoring wells were installed and sampled to determine groundwater quality around the former tank cavity. The monitoring wells were installed using the Geoprobe® and hollow-stem augers. The soil samples collected in this area were submitted to AAL and analyzed for lead, benzene, toluene, ethylbenzene, xylene (BTEX)/methyl tert-butyl ether (MTBE), PAHs, and TPH. The groundwater samples were analyzed for lead, BTEX/MTBE and PAHs.

- Between November 15 and 22, 2004, the VAP Carve Out (BUSTR-Regulated) Area in the northern area of the Property was evaluated in detail. The purpose was to determine the size of the VAP Carve Out Area and to collect samples on the Property adjacent to the Carve Out area (revised to be included in IA-1) to demonstrate VAP compliance. Geoprobe® borings were advanced in this area and two monitoring wells installed and sampled during this time. In order to better screen soil and groundwater samples in the area of the former UST cavity, a mobile laboratory operated by MATRIX Environmental was on-site to analyze samples for VOCs on a real-time basis to determine extent of impacted soil and groundwater.

Soil and groundwater samples were collected at 15 Geoprobe® locations and submitted to a mobile laboratory with the intent of screening the samples to determine the extent of soil and groundwater impact from a former LUST. VAP samples were collected and submitted to AAL for analysis. Constituents analyzed included lead, BTEX, PAHs, and TPH.

The two groundwater monitoring wells were installed in IA-1 downgradient of the VAP Carve Out (BUSTR-Regulated) Area. These wells were sampled and analyzed for BTEX/MTBE and PAHs.

- Between April and May 2005, B&N sampled monitoring wells MW-1 through MW-8 for dissolved metals as a result of Ohio EPA concerns on the December 2004 NFA as detailed in a March 25, 2005 letter. Samples were collected on April 13-14, 2005. The results are shown on Table 1. All samples were collected using low flow bladder pumps and exhibited turbidity results >300 NTU. Therefore, all samples were field filtered. The results indicate that only one parameter, arsenic, was detected in MW-5 at 101 ug/l, above the UPUS for arsenic at 50 ug/l. A confirmation sample was collected on April 21, 2005 and detected arsenic at 130 ug/l. The confirmation sample indicates that POGWMUPUS is not applicable to the uppermost zone of saturation. Furthermore, the uppermost zone of saturation or sand and gravel aquifer is classified as Critical Resource groundwater without a USD, based on best professional judgment and the identification of > 100 gpm wells within the sand and gravel aquifer as shown on the ODNR Franklin County Groundwater Resources Map.

- B&N met with OEPA on April 28, 2005 to discuss the resampling results and agreed that one additional monitoring well was warranted to address POGWMUPUS for the deeper aquifer. MW-5D was installed adjacent to MW-5 and is screened from 55' to 60' bgs to address groundwater quality in the deeper portion of the sand and gravel aquifer. Although a clayey silt layer was identified from 43-45.4 feet bgs and the "upper" sand and gravel layer (MW-5) was approximately 5 feet higher than the "lower" sand and gravel layer, B&N and OEPA agreed that the "lower and upper" sand and gravel deposits are one aquifer.
- A groundwater sample was collected from MW-5D on May 5, 2005 and detected 11.7 ug/l of arsenic. In addition, a shallow groundwater monitoring well MW-14 was installed to document the localized nature of the arsenic UPUS exceedance in MW-5. MW-14 is located on the eastern edge of the site and detected 6.3 ug/l, which is well below the UPUS of 50 ug/l. Moreover, B&N collected a groundwater sample from MW-12 on May 25, 2005 to assess arsenic concentrations downgradient from the highest arsenic concentration in soil on the Property (B-2). Arsenic was detected in MW-12 at 8.7 ug/l.
- Due to the presence of the arsenic exceedance of UPUS in the sand and gravel aquifer, VAP protocol requires a POGWMUPUS demonstration of the underlying zone of saturation. However, a POGWMUPUS demonstration does not apply to the underlying shale bedrock formation. According to ODNR Franklin County Groundwater Resources map, the shale bedrock is non-water-bearing zone. Ohio EPA has recognized that POGWMUPUS does not apply to the shale bedrock formation and there is no need to demonstrate POGWMUPUS for a non-water bearing zone.

During each phase of the investigation, laboratory results were summarized and evaluated and used to design the next phase of the Phase II fieldwork. Several rounds of groundwater levels were collected and groundwater flow direction determined. A summary of the Phase II findings is provided below.

### **2.2.1 Soil Investigation and Findings**

Soil samples were collected from various identified areas across the Property between March 2004 and November 2004. Including the TesTech samples collected in the spring of 2004, fifty-five (55) soil samples were collected from the Geoprobe® borings, hand augers, test pits and HSA borings during

monitor well installations. Samples collected during the Phase II Property Assessment followed the sampling and decontamination protocol outlined in the *Technical Guidance Manual for Hydrogeologic Investigations and Ground Water Monitoring* (Ohio EPA, February 1995). The samples were compared to the Ohio VAP Single-Chemical Generic Direct-Contact Soil Standards (SCGDCSS) for Commercial Land-Use (OAC 3745-300-08, Table III), and also compared to the SCGDCSS for Construction/Excavation Worker Exposure (OAC 3745-300-08 Table IV) to determine compliance.

Wright's Drilling and Pro-Terra Environmental Contracting Co. under the guidance of an experience field geologist completed test pits with the use of a backhoe. The purpose of the test pits was to collect soil samples, evaluate the thickness and content of the fill material in IA-2, and validate the presence of a tank cavity in the VAP Carve Out Area.

#### **2.2.1.1 IA-1 Potential Off-Property Contamination from LUSTS – Sampling Results**

Ten soil samples were collected and analyzed for constituents consistent with evaluating the impacts of leaking petroleum storage tanks. USTs were known to have existed across East Main Street as well as in the VAP Carve Out (BUSTR-Regulated) Area. The chemicals of concern in this area included heavy metals, lead, BTEX/MTBE, PAHs, and TPH. The TPH was further divided into gasoline range of 10 to organics (GRO), and diesel range organics (DRO) subdivided into organics with a carbon 20 and a carbon range of 20 to 34. Each soil sample was analyzed for BTEX/MTBE and PAHs. All results were below the laboratory detection limits. None of the concentrations in IA-1 exceeded either the respective BUSTR limits or VAP SCGDCSS for commercial/industrial and construction and excavation activities.

#### **2.2.1.2 IA-2 Former C&DD Disposal Area – Sampling Results**

Due to the presence of nonregulated C&DD in this portion of the Property, soil samples were analyzed for heavy metals, VOCs, SVOCs, and TPH. Since only PAHs were identified in the SVOC scan during the first set of analyses, the remainder of the SVOCs were dropped from the COCs analyzed in subsequent samples. In all, there were 31 soil samples analyzed. None of the metals, VOCs, and TPH exceeded the SCGDC for the commercial and industrial land use or a construction worker scenario. Only two samples exceeded commercial/industrial land-use standards for benzo(a)pyrene, while all samples exceeded residential land-use standards.

#### **2.2.1.3 IA-3 One-Story Block Building – EE-J Property – Sampling Results**

Three soil samples were analyzed for VOCs, PAHs, and TPH. All of the VOCs and PAHs were below the laboratory detection limits. Only low concentrations of TPH (35 milligrams per kilogram [mg/kg] of DRO [C10-20] and 35 mg/kg of DRO C20-34) were present in one sample and below the SCGDCSS for commercial/industrial land use and construction and excavation activities.

#### **2.2.1.4 IA-4 Off-Property Contamination from Southwest Ditch – Sampling Results**

Four soil samples were collected from the bank adjacent to the ditch at a depth of 0 to 2 feet below ground level. Samples were analyzed for chlorinated solvents and breakdown products. Detections within these samples included 0.008 mg/kg of trichloroethene in sample BNHA-4 and 0.015 mg/kg of cis-1,2-dichloroethene in BNHA-6. These results are below the SCGDCSS for commercial/industrial land use and the construction and excavation activities.

#### **2.2.1.5 IA-5 Waste Oil UST Northeast of SPEEDS – Sampling Results**

Three soil samples were analyzed for VOCs (BTEX), PAHs, and TPH. All of the VOCs and PAHs were below the laboratory detection limits. Only low concentrations of TPH (15 mg/kg of DRO [C10-20] and 26 mg/kg of DRO C20-34) were present in one sample. This is below the SCGDCSS for commercial/industrial land use and construction and excavation activities. Results indicate that no apparent release has occurred from the former UST that was allegedly removed in 1979 and that soil results meet BUSTR standards, and therefore, according to Mr. Ray Ladrick – BUSTR, the UST is not BUSTR regulated and eligible for the VAP.

#### **2.2.1.6 VAP Carve Out (BUSTR-Regulated) Area – Sampling Results**

Seventeen soil samples were collected from the VAP Carve Out area. Three of these samples were collected by TesTech and analyzed for heavy metals, BTEX and TPH. The samples were collected along the south side of East Main Street to evaluate the possibility of impacts in the subsurface from off-property LUSTS. Metals were detected at concentrations above the laboratory detection limits in each sample. The BTEX compounds were all below the laboratory detection limits. TPH was present in all

three soil samples, and the GRO ranged from a low of below the detection limit to 116 mg/kg. The DRO (C10-20) ranged from 52.5 mg/kg to 493 mg/kg. The DRO (C20-34) ranged from a low of 50.9 mg/kg to 1780 mg/kg. However, the results are below the SCGDCSS for commercial and industrial land use and the construction and excavation activities. The rest of the soil samples were collected by B&N to characterize and delineate the impacted medium due to a leaking tank removed in the late 1970s.

The samples were analyzed for BUSTR chemicals of concern, which included lead, BETX/MTBE, PAHs, and TPH. Results from the soil samples collected near the former tank cavity indicated that the impacted area with concentrations of chemicals of concern is relatively localized to the northeast of the former UST tank cavity. Only samples from two soil Geoprobe® borings and one hollow-stem auger sample exceeded BUSTR and VAP SCGDCSS for commercial/industrial land use and construction and excavation activities. The chemicals of concern that exceeded the VAP limit were benzene in all three samples and ethylbenzene in one sample. In May 2005, B&N submitted an Interim Response Action Report that addressed the removal of soil and groundwater to meet BUSTR cleanup standards and confirmation soil and groundwater results.

### **2.2.2 Groundwater Investigation and Findings**

Groundwater samples were collected for screening purposes within most IAs. These samples were collected using Geoprobe® sampling techniques and either analyzed at the mobile laboratory in the case of the investigation in the VAP Carve Out Area and some of the samples in IA-1, or sent to the fixed laboratory, AAL, for analysis. Ultimately, 15 groundwater monitoring wells were installed, three in the VAP Carve Out Area, across the Property. None were placed in IA-4 or IA-5 as neither of these areas warranted a monitoring well. The monitoring wells were constructed using hollow-stem auger techniques. A detailed description of the construction of each monitoring well is included in the Phase II Property Assessment Report.

With the exception of arsenic in MW-5, all chemicals of concern from all monitoring wells on the Property meet the VAP UPUS standards. Groundwater in the VAP Carve Out (BUSTR-Regulated) Area did not meet UPUS at the time of the original NFA, however, following the March –April 2005 remediation, groundwater meets UPUS and BUSTR standards. As stated earlier, the actual area impacted above BUSTR standards is localized to approximately 20 feet northeast of the former tank cavity. This area was addressed and remediated under BUSTR protocol. In May 2005, B&N submitted an Interim Response Action Report that addressed the removal of soil and groundwater to meet BUSTR cleanup

standards and confirmation soil and groundwater results. The chemicals of concern in this area are petroleum-related compounds, specifically benzene and toluene.

#### **2.2.2.1 Groundwater Classification and Protection of Groundwater Meeting UPUS**

Based on the sampling events conducted at the Property, the sand and gravel groundwater zone beneath the Property exceeds UPUS, and therefore, groundwater classification is required. Based on ODNR Franklin County Groundwater Resources mapping, groundwater in the sand and gravel aquifer is classified as Critical Resource. The provisions for the protection of groundwater meeting unrestricted potable use standards (POGWMUPUS) do not apply to the shale bedrock formation. The shale bedrock formation is a non-water-bearing formation based on ODNR Franklin County Groundwater Resources mapping. Ohio EPA has agreed that no POGWMUPUS demonstration is necessary for a non-water-bearing formation.

As a result of the Critical Resource groundwater classification due to the arsenic exceedance, the response requirements include a demonstration that on-site receptors will be protected. The Environmental Covenant will prohibit potable groundwater use and any wells other than for potential monitoring purposes. In addition, the Volunteer is required to demonstrate that groundwater quality will not migrate off-site in exceedance of UPUS in the future. As documented in Attachment 4 of the NFA Addendum No. 1, B&N has modeled the arsenic solute transport in the future. The results indicate that no arsenic in exceedance of UPUS is expected to migrate off-site in the foreseeable future.

#### **2.2.3 Sediment Investigation and Results**

Sediment samples on Property were limited to one sample from Mason Run (IA-1) in the northeast corner of the Property, four from the wetland area (IA-2 and IA-4) for bioassay analysis, four in IA-2, and two from the ditch bank (IA-4). Samples were collected using a stainless-steel trowel that was thoroughly cleaned and rinsed between each sample collected. Chain-of-custody procedures discussed under soil collection were used.

The Mason Run sediment samples were collected and analyzed for evaluation of potential contamination coming from off-site sources north of East Main Street where a former gasoline station was located and C&D material was identified in the stream. Mason Run traverses the Property only in the northeast corner of the Property for approximately 100 feet. Other off-Property sources of PAHs exist

upstream of this area and may also have contributed to the impacted sediment. Other chemicals of concern that were analyzed included metals and TPH. A Property Specific Risk Assessment was performed for a child and adult trespasser scenario and the exposure scenarios were found to be protective of human health.

Four sediment samples from IA-2 were collected in the wetland area and analyzed for heavy metals, PAHs, and TPH. Several PAH compounds were detected. The chemical of concern that was closest to a commercial or construction worker SCGDC was benzo(a)pyrene at 3.4 mg/kg. The limit is 6.3 mg/kg for a commercial scenario. Other PAHs had concentrations in the single digits in parts per million (ppm) but the limits for these were much greater. These results were also compared to ecological exposures and were below the SCGDCSS for commercial/industrial land use and construction and excavation activities.

Two sediment samples were collected in IA-4 along the bank of the ditch to assess whether contaminated surface water from off-site impacted the sediments on the Property. These samples were analyzed for chlorinated solvents and breakdown products. One of the samples, SD-14, contained cis-1,2-dichloroethene at a concentration of 0.079 mg/kg, which is slightly over the laboratory detection limit. This sample also contained vinyl chloride at 0.042 mg/kg. The detection of VOCs in sediments was expected due to the identification of chlorinated solvents in surface water as a result of off-Property sources.

Four samples, two in IA-2 and two in IA-4, were collected for bioassay evaluation and are discussed in detail in the ERA report. The conclusions of that assessment indicated that the soils met the VAP applicable standards. Section 2.4.3 of this Summary further defines the applicable ecological standards.

#### **2.2.4 Surface Water Investigation and Results**

It is important to note that the only surface water on the Property is approximately 100 feet of Mason Run. One surface water sample was collected from the Property in Mason Run (IA-1). This sample was collected jointly with the sediment sample previously described. Results from testing for heavy metals, VOCs (BTEX/MTBE), and PAHs indicate that all chemicals of concern are below the laboratory detection limits except for barium.

The Phase II Property Assessment Report also documented surface water samples collected off Property along the southwest property boundary. Ohio EPA personnel, Chris Bonner and Mike Dalton, both acknowledged under Technical Assistance, that the ditch has received numerous releases including metals, VOCs, and petroleum substances from upgradient sources. The detection of chlorinated solvents in sediments and surface water was not a surprise to Ohio EPA and, given the nondetection of solvents in soil samples from suspected source areas on Property, Ohio EPA was comfortable that solvents in sediments and surface water are not a result of historical operations on the Property. Samples were collected by submerging a stainless-steel sampling cup into the stream water and immediately transferring the water to appropriate sample containers. The water was poured into the sample containers slowly in order to minimize turbulence. Samples were immediately placed in coolers and chilled with ice for delivery to AAL.

#### **2.2.5 Exposure Pathway Assessment**

Under VAP (OAC 3745-300-07), existing and potential pathways must be evaluated to determine if they are complete for human and ecological receptors. This is based on current and future intended land use. As discussed in Section 2.1, the Property currently has mixed uses and a portion undeveloped and wooded. Future intended land use is to be commercial for the front portion, and the area that is currently wooded will remain undeveloped/nonresidential. Potential receptors are:

- Commercial Worker - Exposure to an adult as a commercial worker.
- Adult Trespasser – Portions of the undeveloped area in IA-2 and IA-4 will remain undeveloped in the future. In addition, there is a potential for adults to traverse this portion of the Property, as well as the sediments of Mason Run in IA-1.
- Child Trespasser – Due to the presence of residential development to the south and southeast of the Property, there is a potential for a child to enter portions of the undeveloped area in IA-2 and IA-4 as well as the sediments of Mason Run in IA-1.
- The Construction/Excavation Worker – There is the potential for a construction or excavation worker to perform work on the Property.
- Ecological receptors.

### 2.2.5.1 Human Health Exposure Pathways

For the Property, the complete exposure pathways for the Human Health Risk Assessment (HHRA) are:

1. Dermal contact with and ingestion of soil,
2. Inhalation of vapors (indoors and outdoors) from soils,
3. Inhalation of fugitive dusts from soil,
4. Dermal contact with and ingestion of groundwater,
5. Inhalation of vapors (indoors and outdoors) from groundwater
6. Dermal contact with and ingestion of calculated leach-derived groundwater,
7. Dermal Contact with surface water and sediments and
8. Inhalation of vapors (indoors and outdoors) from calculated leach-derived groundwater.

### 2.2.5.2 Ecological Exposure Pathways

Potential ecological exposure pathways include:

1. Soil ingestion by mammals or birds
2. Soil direct contact with soil to plants, soil invertebrates, or microorganisms
3. Sediment ingestion by mammals or birds
4. Sediment direct contact with fish or macroinvertebrates
5. Plants ingestion by mammals or birds
6. Soil fauna ingestion by mammals or birds.

## 2.3 Determination of Applicable Standards

Soil analytical results were compared to the Ohio VAP SCGDCSS for commercial land use (OAC 3745-300-08, Table III), and then adjusted to include a trespasser exposure under a risk assessment. The results were also compared to the SCGDCSS for construction/excavation worker exposure (OAC 3745-300-08 Table IV). The above-listed standards are for single-chemical exposures; therefore, a multiple-chemical standard (MCS) adjustment was determined. The MCS became the applicable standards or cleanup levels for a COC in a particular Identified Area. The MCS is discussed in further detail with the soil/sediment analytical results presented in the Phase II ESA.

Additionally, there is the potential for COCs detected in the soils to leach to groundwater. To determine whether or not leaching may be a compliance issue at the Property, maximum detected concentrations and 95-percent UCLs were compared to the Site-Specific Target Levels derived by the Ohio EPA and presented in the *Ohio EPA Leach-Based Soil Values Technical Guidance Document* (February 2002).

Groundwater analytical results were compared to the Ohio VAP Generic UPUS (OAC 3745-300-008, Table VI) and the Risk-Based Generic UPUS (OAC 3745-300-008, Table VII). An MCS adjustment is not performed on groundwater samples that exceed the UPUS. When groundwater in a saturated zone underlying the Property complies with UPUS, any future development or remedial activities undertaken at the Property must ensure that the migration of hazardous substances or petroleum from sources or source areas on the Property will not result in UPUS being exceeded anywhere within the saturated zone. The applicable standards that provide for the protection of groundwater meeting unrestricted potable use standards (POGWMUPUS) must be addressed.

#### **2.4 Determination of Compliance with Applicable Standards**

The Property was determined to meet VAP applicable standards, assuming that the two Environmental Covenants are filed, which identify the Property commercial/industrial land-use restriction in Whitehall, nonresidential land-use restriction in the Jewish Federation Columbus parcels, and groundwater-use restriction at both parcels. In addition, a groundwater potable use restriction is included for both ECs. The site meets applicable standards prior to the issuance of this NFA letter and no Operations and Maintenance Plan is required.

##### **2.4.1 Data Analysis**

Soil and sediment sampling was conducted during the Phase II Property Assessment between August 2004 and November 2004. Most of the soil/sediment samples were analyzed for metals, VOCs and PAHs. Fifty-five (59) soil samples were collected from the Geoprobe® borings, hand augers, test pits, and HSA borings during monitoring well installation. Fifteen (15) sediment samples were collected from the ditch adjacent to the abandoned railway, the wetlands, and Mason Run. Phase II ESA Table 4 summarizes the potential and/or suspected COCs, as well as the detected COCs, in soil within each Identified Area.

Groundwater samples collected from monitoring wells MW-1 through MW-8, MW-5D and MW-14 were analyzed for metals, VOCs and PAHs as COCs. A solute transport groundwater modeling effort was used to demonstrate that groundwater UPUS standards for arsenic will be met at the property line. POGWMUPUS standards do not apply to the shale bedrock formation that is non-water-bearing.

#### **2.4.2 Compliance with Generic Numerical Standards**

Soil results were compared to SCGDCCS as well as MCS. Although SCGDSS were exceeded by several soil samples, the same soil samples met the MCS using VAP-approved statistical analyses. Ohio EPA VAP, through Technical Assistance, agreed to this methodology. Based upon groundwater sampling results, there was one UPUS exceedance of arsenic in one well MW-5, which was confirmed in a subsequent sampling event. However, there is no UPUS exceedance along the downgradient Property line, and no multiple- chemical adjustments were required.

#### **2.4.3 Property Risk Assessment Findings**

The HHRA conducted for the Property assessed the probability for the occurrence of adverse health effects to targeted receptors (potential trespassers, commercial workers, and construction workers) under current and future exposure scenarios to COCs that are present in the soils and groundwater at the Property. The HHRA was performed to address the potential for a child or adult trespasser on IA-2 and IA-4 of the Property, as well as the Mason Run sediments in IA-1.

The risk characterizations for the exposure scenarios demonstrate that the risk for a potential child and/or adult trespasser, a commercial/industrial worker, and the construction/excavation worker meets the VAP guidelines stated above provided the following institutional controls are followed.

- Two separate Environmental Covenants are required to comply with VAP applicable standards, which limit the Property to commercial/industrial land use in Whitehall and specifically, nonresidential for the Jewish Federation Columbus parcels.
- Prohibit the potable and nonpotable use of groundwater at the Property

B&N completed an ERA only for areas of the Property which either provide currently or are anticipated to provide in the future, important ecological habitat. This included the southern undeveloped portion of the Property and the western property border, which is adjacent to the western ditch (ERA Property). The pathway from fill material in IA-2 to the stream as well as the stream water quality impacts onto the Property during flooding was determined to be complete. In addition, dermal contact and ingestion from ecological receptors were also included as complete pathways.

An acceptable level of risk for sediment and surface water assessment is shown by the absence of toxic effect to either organism (*Hyallela azteca* and *Chironomus tentans*) as defined in the Ohio EPA sediment toxicity test and U.S. EPA sediment toxicity manuals and compliance with WQS in accordance with OAC 3745-1. No observed significant adverse effects on the health or viability of the local individuals or populations of species were identified. Based on the information presented in the ERA, the Property meets VAP applicable ERA acceptable risk standards.

#### **2.4.4 Determination of Whether Remedial Activities Are Required**

No remedial activities are required to comply with VAP applicable standards other than the Environmental Covenants being filed as outlined above.

### **2.5 Remedial Activities**

No active or passive remediation is required for the property to meet VAP applicable standards. However, two Environmental Covenants are required to comply with VAP applicable standards, which limit the Property to commercial/industrial land use in Whitehall and specifically, non-residential for the Jewish Federation Columbus parcels. The entire Property includes a groundwater-use restriction. Proposed Environmental Covenants are included as an appendix to the Phase II ESA with the anticipation that Ohio EPA Legal staff and the Volunteer's counsel will negotiate and finalize prior to issuance of a Covenant Not to Sue.

### **2.6 Planned Remedies**

No O&M Plan or planned remedies were required to meet the VAP applicable standards for the Property. The Volunteer anticipates that as a contingency of the Covenant, the two Environmental Covenants will be filed with the County Recorder's office within a defined time frame within the Covenant, and the Covenant will then be effective.

### 3.0 CONCLUSIONS

The Property meets all VAP applicable standards, assuming the Declaration of Institutional Controls is filed and restricts land use to commercial/industrial and prohibits groundwater use on Property. The points of compliance for soil dermal exposures are 2 feet below ground surface for the commercial worker and the depth of the excavation for the construction/subsurface utility worker. The voluntary action remedy is protective of human health and the environment.